

1 Michael R. Lozeau (State Bar No. 142893)
Richard T. Drury (State Bar No. 163559)
2 Douglas J. Chermak (State Bar No. 233382)
LOZEAU DRURY LLP
3 1516 Oak Street, Suite 216
Alameda, CA 94501
4 Tel: (510) 749-9102
Fax: (510) 749-9103 (fax)
5 E-mail: michael@lozeaudrury.com
richard@lozeaudrury.com
6 doug@lozeaudrury.com

7 Attorneys for Plaintiff
8 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
12 corporation,

13 Plaintiff,

14 vs.

15 REPUBLIC SERVICES, INC., a
corporation,

16 Defendant.

Case No. _____

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

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

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18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its
19 counsel, hereby alleges:

20 **I. JURISDICTION AND VENUE**

21 1. This is a civil suit brought under the citizen suit enforcement provisions of the
22 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or
23 “the Act”). This Court has subject matter jurisdiction over the parties and the subject matter
24 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
25 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
26 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
27 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
28 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

1 2. On January 22, 2010, Plaintiff provided notice of Defendant’s violations of the
2 Act, and of its intention to file suit against Defendant, to the Administrator of the United
3 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
4 Executive Director of the State Water Resources Control Board (“State Board”); the
5 Executive Officer of the Regional Water Quality Control Board, Central Valley Region
6 (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A
7 true and correct copy of CSPA’s notice letter is attached as Exhibit A, and is incorporated by
8 reference.

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

15 4. Venue is proper in the Eastern District of California pursuant to Section
16 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
17 within this judicial district. Pursuant to Local Rule 3-120, intradistrict venue is proper in
18 Sacramento, California, because the source of the violations is located within Sacramento
19 County.

20 **II. INTRODUCTION**

21 5. This complaint seeks relief for Defendant’s discharges of polluted storm water
22 and non-storm water pollutants from Defendant’s hauling and collection facility located at
23 3326 Fitzgerald Road in Rancho Cordova, California (“the Facility”) in violation of the Act
24 and the State of California’s “Waste Discharge Requirements (WDRs) For Discharges of
25 Storm Water Associated With Industrial Activities Excluding Construction Activities,” State
26 Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by
27 Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ, National
28 Pollutant Discharge Elimination System (“NPDES”) Permit No. CAS000001, (hereinafter

1 “the Order” or “Permit”). Defendant’s violations of the discharge, treatment technology,
2 monitoring requirements, and other procedural and substantive requirements of the Permit
3 and the Act are ongoing and continuous.

4 6. The failure on the part of persons and facilities such as Defendant and its
5 industrial facility to comply with storm water requirements is recognized as a significant
6 cause of the continuing decline in water quality of the American River, Morrison Creek, the
7 Sacramento River, the Sacramento-San Joaquin River Delta (“the Delta”), and other area
8 receiving waters. The general consensus among regulatory agencies and water quality
9 specialists is that storm pollution amounts to a substantial portion of the total pollution
10 entering the aquatic environment each year. In most areas of Sacramento County, storm
11 water flows completely untreated through storm drain systems or other channels directly to
12 the waters of the United States.

13 **III. PARTIES**

14 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
15 (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of
16 California with its main office in Stockton, California. CSPA has approximately 2,000
17 members who live, recreate and work in and around waters of the State of California,
18 including the American River, the Sacramento River, the San Joaquin River, the Delta, and
19 the San Francisco Bay. CSPA is dedicated to the preservation, protection, and defense of the
20 environment, the wildlife and the natural resources of all waters of California. To further
21 these goals, CSPA actively seeks federal and state agency implementation of the Act and
22 other laws and, where necessary, directly initiates enforcement actions on behalf of itself and
23 its members.

24 8. Members of CSPA reside in and around the Sacramento-San Joaquin Delta and
25 enjoy using the American River, the Sacramento River, and the Delta for recreation and
26 other activities. Members of CSPA use and enjoy the waters into which Defendant has
27 caused, is causing, and will continue to cause, pollutants to be discharged. Members of
28 CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife and engage

1 in scientific study including monitoring activities, among other things. Defendant's
2 discharges of pollutants threaten or impair each of those uses or contribute to such threats
3 and impairments. Thus, the interests of CSPA's members have been, are being, and will
4 continue to be adversely affected by Defendant's failure to comply with the Clean Water Act
5 and the Permit. The relief sought herein will redress the harms to Plaintiff caused by
6 Defendant's activities.

7 9. Continuing commission of the acts and omissions alleged above will irreparably
8 harm Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy
9 at law.

10 10. Defendant REPUBLIC SERVICES, INC. (hereinafter "Defendant" or
11 "Republic Services") is a corporation organized under the laws of Delaware. Defendant
12 Republic Services operates Allied Waste Services of Sacramento, a hauling and collection
13 facility in Rancho Cordova, California.

14 **IV. STATUTORY BACKGROUND**

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

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

26 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
27 U.S. EPA has authorized California's State Board to issue NPDES permits including general
28 NPDES permits in California.

1 14. The State Board elected to issue a statewide general permit for industrial storm
2 water discharges. The State Board issued the General Permit on or about November 19,
3 1991, modified the General Permit on or about September 17, 1992, and reissued the
4 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
5 Act, 33 U.S.C. § 1342(p).

6 15. In order to discharge storm water lawfully in California, industrial dischargers
7 must comply with the terms of the General Permit or have obtained and complied with an
8 individual NPDES permit. 33 U.S.C. § 1311(a).

9 16. The General Permit contains several prohibitions. Effluent Limitation B(3) of
10 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
11 discharges through implementation of the Best Available Technology Economically
12 Achievable (“BAT”) for toxic and nonconventional pollutants and the Best Conventional
13 Pollutant Control Technology (“BCT”) for conventional pollutants. BAT and BCT include
14 both nonstructural and structural measures. General Permit, Section A(8). Discharge
15 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-
16 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
17 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to
18 any surface or ground water that adversely impact human health or the environment.
19 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that
20 cause or contribute to an exceedance of any applicable water quality standards contained in
21 Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

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

28 18. EPA has established Parameter Benchmark Values as guidelines for

1 determining whether a facility discharging industrial storm water has implemented the
2 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
3 Parameter Benchmark Values for the following parameters, among others: total suspended
4 solids – 100 mg/L; oil & grease – 15 mg/L; total organic carbon – 110 mg/L; pH – 6.0 – 9.0
5 s.u.; biochemical oxygen demand (5-day) – 30 mg/L; and iron – 1.0 mg/L. The State Board
6 has proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

7 19. Dischargers must develop and implement a Storm Water Pollution Prevention
8 Plan (“SWPPP”). The SWPPP must describe storm water control facilities and measures
9 that comply with the BAT and BCT standards. The General Permit requires that an initial
10 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
11 among other requirements, identify and evaluate sources of pollutants associated with
12 industrial activities that may affect the quality of storm and non-storm water discharges from
13 the facility and identify and implement site-specific best management practices (“BMPs”) to
14 reduce or prevent pollutants associated with industrial activities in storm water and
15 authorized non-storm water discharges (Section A(2)). The SWPPP’s BMPs must
16 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
17 individuals and their responsibilities for developing and implementing the SWPPP (Section
18 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
19 pattern and nearby water bodies, the location of the storm water collection, conveyance and
20 discharge system, structural control measures, impervious areas, areas of actual and potential
21 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
22 handled and stored at the site (Section A(5)); a description of potential pollutant sources
23 including industrial processes, material handling and storage areas, dust and particulate
24 generating activities, and a description of significant spills and leaks, a list of all non-storm
25 water discharges and their sources, and a description of locations where soil erosion may
26 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
27 at the Facility and a description of the BMPs to be implemented at the Facility that will
28 reduce or prevent pollutants in storm water discharges and authorized non-storm water

1 discharges, including structural BMPs where non-structural BMPs are not effective (Section
2 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
3 where necessary (Section A(9),(10)).

4 20. Section C(11)(d) of the General Permit's Standard Provisions requires
5 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
6 Section A(9) of the General Permit requires an annual evaluation of storm water controls
7 including the preparation of an evaluation report and implementation of any additional
8 measures in the SWPPP to respond to the monitoring results and other inspection activities.

9 21. The General Permit requires dischargers commencing industrial activities
10 before October 1, 1992 to develop and implement an adequate written monitoring and
11 reporting program no later than October 1, 1992. Existing facilities covered under the
12 General Permit must implement all necessary revisions to their monitoring programs no later
13 than August 1, 1997.

14 22. As part of their monitoring program, dischargers must identify all storm water
15 discharge locations that produce a significant storm water discharge, evaluate the
16 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
17 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
18 conduct visual observations of these discharge locations for at least one storm per month
19 during the wet season (October through May) and record their findings in their Annual
20 Report. Dischargers must also collect and analyze storm water samples from at least two
21 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall
22 collect storm water samples during the first hour of discharge from (1) the first storm event
23 of the wet season, and (2) at least one other storm event in the wet season. All storm water
24 discharge locations shall be sampled." Section B(5)(c)(i) requires dischargers to sample and
25 analyze during the wet season for basic parameters, such as pH, total suspended solids,
26 electrical conductance, and total organic content or oil & grease, certain industry-specific
27 parameters, and Section B(5)(c)(ii) toxic chemicals and other pollutants likely to be in the
28 storm water discharged from the facility. Section B(5)(c)(iii) requires discharges to sample

1 for parameters dependent on a facility's standard industrial classification ("SIC") code.
2 Facilities that fall under SIC Code 4953 are required to analyze their storm water discharge
3 samples for iron. Dischargers must also conduct dry season visual observations to identify
4 sources of non-storm water pollution. Section B(7)(a) indicates that the visual observations
5 and samples must represent the "quality and quantity of the facility's storm water discharges
6 from the storm event." Section B(7)(c) requires that "if visual observation and sample
7 collection locations are difficult to observe or sample...facility operators shall identify and
8 collect samples from other locations that represent the quality and quantity of the facility's
9 storm water discharges from the storm event."

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

16 24. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
17 enforcement actions against any "person," including individuals, corporations, or
18 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
19 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
20 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to
21 \$32,500 per day per violation for all violations occurring through January 12, 2009, and
22 \$37,500 per day per violation for all violations occurring after January 12, 2009, pursuant to
23 Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1
24 - 19.4.

25 25. The Regional Board has established water quality standards for the American
26 River, Morrison Creek, the Sacramento River, the Sacramento-San Joaquin Delta and their
27 tributaries in the Water Quality Control Plan for the Sacramento and San Joaquin River
28 Basins, generally referred to as the Basin Plan.

1 26. The Basin Plan provides that the pH “shall not be depressed below 6.5 nor
2 raised above 8.5.”

3 27. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
4 waters shall be maintained free of toxic substances in concentrations that produce
5 detrimental physiological responses in human, plant, animal, or aquatic life.”

6 28. The Basin Plan provides that “[w]aters shall be free of changes in turbidity that
7 cause nuisance or adversely affect beneficial uses.”

8 29. The Basin Plan provides that “[w]aters shall not contain oils, greases, waxes,
9 or other materials in concentrations that cause nuisance, result in a visible film or coating on
10 the surface of the water or on objects in the water, or otherwise adversely affect beneficial
11 uses.”

12 30. The Basin Plan includes a numeric water quality standard for iron of 0.3
13 milligrams per liter (“mg/L”).

14 31. The Basin Plan includes a dissolved oxygen concentration standard of 7.0
15 mg/L.

16 32. The Basin Plan provides that electrical conductivity in the Sacramento River
17 shall not exceed 240 micromhos/cm (50 percentile) or 340 micromhos/cm (90 percentile) at
18 the I Street Bridge in Sacramento.

19 33. The Basin Plan establishes a maximum limit for total dissolved solids of 125
20 mg/L for the American River (from Folsom Dam to the Sacramento River).

21 **V. STATEMENT OF FACTS**

22 34. Defendant Republic Services operates Allied Waste Services of Sacramento, a
23 hauling and collection facility at 3326 Fitzgerald Road in Rancho Cordova, California. The
24 Facility is engaged in the collection and transfer of municipal solid waste for disposal as well
25 maintenance of vehicles involved in collection and hauling. The Facility falls within the
26 Standard Industrial Classification (“SIC”) Codes 4121 and 4953. The Facility covers about
27 four acres, the majority of which is paved and used for storing trucks and transporting and
28 storing waste materials throughout the Facility. On information and belief, Plaintiff alleges

1 that there is at least one large building located on the property. On information and belief,
2 Plaintiff alleges that trucks and waste are stored primarily outside of this building.

3 35. Defendant channels and collects storm water falling on the Facility through a
4 series of storm water drains that lead to at least two storm water outfalls. Each storm drain
5 collects storm water runoff from a particular area of the Facility. The Facility's outfalls
6 discharge to the City of Rancho Cordova's storm drain system.

7 36. On information and belief, Plaintiff alleges that the industrial activities at the
8 site include the transfer of solid waste from collection vehicles to transport vehicles which
9 move the waste to a remote landfill for disposal. It also includes the storage and
10 maintenance of trucks, tractors, and other machinery used to transfer and dispose of these
11 materials.

12 37. Significant activities at the site take place outside and are exposed to rainfall.
13 These activities include transfer, storage, and disposal of the numerous types of materials
14 handled by the Facility; the storage, maintenance, and use of vehicles and equipment for
15 materials handling; and the storage, handling, and disposal of waste materials. Loading and
16 delivery of materials occurs outside. Trucks enter and exit the Facility directly from and to a
17 public road. Trucks, tractors, and other machinery are the primary means of moving
18 materials around the Facility. These areas are exposed to storm water and storm flows due
19 to the lack of overhead coverage, berms, and other storm water controls.

20 38. Industrial machinery, heavy equipment and vehicles, including trucks and
21 tractors are operated and stored at the Facility in areas exposed to storm water flows.
22 Plaintiff is informed and believes, and thereupon alleges, that such machinery and equipment
23 leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are
24 exposed to storm water flows, and that such machinery and equipment track sediment and
25 other contaminants throughout the Facility.

26 39. Plaintiff is informed and believes, and thereupon alleges that the storm water
27 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
28 and other pollutants as it flows toward the storm water drains. Storm water and any

1 pollutants contained in that storm water entering the drains flow directly to the Facility's
2 outfalls which discharges to the City of Rancho Cordova's storm drain system, which in turn
3 flows either to the American River or Morrison Creek, which in turn flows to the
4 Sacramento River and ultimately flows into the Delta.

5 40. The management practices at the Facility are wholly inadequate to prevent the
6 sources of contamination described above from causing the discharge of pollutants to waters
7 of the United States. The Facility lacks sufficient structural controls such as grading,
8 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
9 flows from coming into contact with these and other exposed sources of contaminants. The
10 Facility lacks sufficient structural controls to prevent the discharge of water once
11 contaminated. The Facility lacks adequate storm water pollution treatment technologies to
12 treat storm water once contaminated.

13 41. Since at least June 16, 2005, Defendant has taken samples or arranged for
14 samples to be taken of storm water discharges at the Facility. The sample results were
15 reported in the Facility's annual reports submitted to the Regional Board. Defendant
16 Republic Services certified each of those annual reports pursuant to Sections A and C of the
17 General Permit.

18 42. Since at least June 16, 2005, the Facility has detected oil & grease and
19 electrical conductance in storm water discharged from the Facility. Since at least May 22,
20 2006, the Facility has detected total suspended solids in storm water discharged by the
21 Facility. Since at least December 21, 2006, the Facility has detected pH in storm water
22 discharged by the Facility. Levels of these pollutants detected in the Facility's storm water
23 have been in excess or outside of EPA's numeric parameter benchmark values and the State
24 Board's proposed value for electrical conductance. Levels of these pollutants detected in the
25 Facility's storm water have been below water quality standards established in the Basin Plan.

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1 43. The following discharges on the following dates contained concentrations of
2 pollutants in excess of numeric water quality standards established in the Basin Plan:

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Date	Parameter	Measured Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
12/18/2007	pH	6.1	6.5 – 8.5	South Drain
12/18/2007	pH	6.06	6.5 – 8.5	North Drain
12/21/2006	pH	6.17	6.5 – 8.5	South Drain
12/21/2006	pH	5.86	6.5 – 8.5	North Drain

12 44. The levels of total suspended solids in storm water detected by the Facility
13 have exceeded the benchmark value for total suspended solids of 100 mg/L established by
14 EPA. For example, on April 11, 2007, the level of total suspended solids measured by
15 Defendant in the Facility’s discharged storm water was 760 mg/L. That level of total
16 suspended solids is over seven and a half times the benchmark value for total suspended
17 solids established by EPA. The Facility also has measured levels of total suspended solids in
18 storm water discharged from the Facility in excess of EPA’s benchmark value of 100 mg/L
19 on April 10, 2009; December 16, 2008; December 18, 2007; December 21, 2006; and May
20 22, 2006.

21 45. The levels of oil & grease in storm water detected by the Facility have
22 exceeded the benchmark value for oil & grease of 15 mg/L established by EPA. For
23 example, on April 11, 2007, the level of oil & grease measured by Defendant in the
24 Facility’s discharged storm water was 110 mg/L. That level of oil & grease is over seven
25 times the benchmark value for oil & grease established by EPA. The Facility also has
26 measured levels of oil & grease in storm water discharged from the Facility in excess of
27 EPA’s benchmark value of 15 mg/L on April 10, 2009; December 16, 2008; December 18,
28 2007; December 21, 2006; May 22, 2006; and June 16, 2005.

1 46. The electrical conductance levels detected by the Facility in its storm water
2 have been greater than the numeric water quality standards applicable to electrical
3 conductance in California. The electrical conductance levels detected by the Facility in its
4 storm water have been greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the
5 State Board. For example, on April 11, 2007, the electrical conductance level measured by
6 Defendant in the Facility's discharged storm water was 490 $\mu\text{mho/cm}$. That electrical
7 conductance level is almost two and a half times the State Board's proposed benchmark
8 value. The Facility also has measured levels of electrical conductance in storm water
9 discharged from the Facility in excess of the State Board's proposed value of 200 $\mu\text{mho/cm}$
10 on May 22, 2006; and June 16, 2005.

11 47. The levels of pH in storm water detected by the Facility have been outside the
12 benchmark value for pH of 6.0 – 9.0 established by EPA. On December 21, 2006, the level
13 of pH measured by Defendant in the Facility's discharged storm water was 5.86.

14 48. Defendant has not analyzed any storm water samples for iron during the 2004-
15 2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 wet seasons. On information and
16 belief, Plaintiff alleges that Defendant has failed to comply with Section B(5)(c)(iii) of the
17 General Permit by failing to analyze all of its storm water samples for iron during the 2004-
18 2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 wet seasons.

19 49. Defendant's SWPPP indicates that biochemical oxygen demand is a pollutant
20 that would be present in storm water discharges. Plaintiff alleges that Defendant has not
21 analyzed any storm water samples for biochemical oxygen demand during the 2004-2005,
22 2005-2006, 2006-2007, 2007-2008, and 2008-2009 wet seasons. On information and belief,
23 Plaintiff alleges that Defendant has failed to comply with Section B(5)(c)(ii) of the General
24 Permit by failing to analyze all of its storm water samples for biochemical oxygen demand
25 during the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 wet seasons.

26 50. On information and belief, Plaintiff alleges that since at least June 16, 2005,
27 Defendant has failed to implement BAT and BCT at the Facility for its discharges of
28 suspended solids, oil & grease, iron, electrical conductance, pH, biochemical oxygen

1 demand, and other pollutants. Section B(3) of the General Permit requires that Defendant
2 implement BAT for toxic and nonconventional pollutants and BCT for conventional
3 pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has
4 failed to implement BAT and BCT.

5 51. On information and belief, Plaintiff alleges that Defendant has failed to comply
6 with Section B(4) of the General Permit for its failures to conduct monthly wet season visual
7 observations at the Facility during the 2004-2005 wet season and its failure to properly
8 record its visual observations on April 10, 2009; December 16, 2008; December 17, 2007;
9 April 11, 2007; December 21, 2006; and May 22, 2006.

10 52. On information and belief, Plaintiff alleges that since at least May 6, 2005,
11 Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for
12 the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP
13 prepared for the Facility does not set forth site-specific best management practices for the
14 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and
15 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an
16 adequate assessment of potential pollutant sources, structural pollutant control measures
17 employed by the Defendant, or an adequate description of best management practices to be
18 implemented at the Facility to reduce pollutant discharges. According to information
19 available to CSPA, Defendant's SWPPP has not been evaluated to ensure its effectiveness
20 and revised where necessary to further reduce pollutant discharges. Plaintiff is informed and
21 believes, and thereupon alleges, that the SWPPP does not include each of the mandatory
22 elements required by Section A of the General Permit.

23 53. Information available to CSPA indicates that as a result of these practices,
24 storm water containing excessive pollutants is being discharged during rain events from the
25 Facility directly to the City of Rancho Cordova's storm drain system that flows into either
26 the American River or Morrison Creek, and then into the Sacramento River and the Delta.

27 54. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
28 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent

1 with Section A(9) of the General Permit.

2 55. Plaintiff is informed and believes that Defendant failed to submit to the
3 Regional Board a true and complete annual report certifying compliance with the General
4 Permit since at least May 6, 2005. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the
5 General Permit, Defendant must submit an annual report, that is signed and certified by the
6 appropriate corporate officer, outlining the Facility's storm water controls and certifying
7 compliance with the General Permit. Plaintiff is informed and believes, and thereupon
8 alleges, that Defendant has signed incomplete annual reports that purported to comply with
9 the General Permit when there was significant noncompliance at the Facility.

10 56. Information available to Plaintiff indicates that Defendant has not fulfilled the
11 requirements set forth in the General Permit for discharges from the Facility due to the
12 continued discharge of contaminated storm water. Plaintiff is informed and believes, and
13 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and
14 continuing.

15 **VI. CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**
17 **Failure to Implement the Best Available and**
18 **Best Conventional Treatment Technologies**
19 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

20 57. Plaintiff realleges and incorporate Paragraphs 1-56, as if fully set forth herein.

21 58. The General Permit's SWPPP requirements and Effluent Limitation B(3)
22 require dischargers to reduce or prevent pollutants in their storm water discharges through
23 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
24 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its
25 discharges of suspended solids, oil & grease, iron, electrical conductance, biochemical
26 oxygen demand, and other un-monitored pollutants in violation of Effluent Limitation B(3)
27 of the General Permit.

28 59. Each day since May 6, 2005, that Defendant has failed to develop and
implement BAT and BCT in violation of the General Permit is a separate and distinct violation

1 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

2 60. Defendant has been in violation of the BAT/BCT requirements every day since
3 May 6, 2005. Defendant continues to be in violation of the BAT/BCT requirements each day
4 that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

5
6 **SECOND CAUSE OF ACTION**
7 **Discharges of Contaminated Storm Water**
8 **in Violation of Permit Conditions and the Act**
9 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

10 61. Plaintiff re-alleges and incorporates Paragraphs 1-60, inclusive, as if fully set
11 forth herein.

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

19 63. Plaintiff is informed and believes, and thereupon alleges, that since at least May
20 6, 2005, Defendant has been discharging polluted storm water from the Facility in excess of
21 applicable water quality standards in violation of the Discharge Prohibition A(2) of the
22 General Permit.

23 64. During every rain event, storm water flows freely over exposed materials, waste
24 products, and other accumulated pollutants at the Facility, becoming contaminated with
25 suspended solids, oil & grease, pH, iron, specific conductivity and other unmonitored
26 pollutants at levels above applicable water quality standards. The storm water then flows
27 untreated from the Facility into City of Rancho Cordova storm drain system. This
28 contaminated storm water then flows into the American River or Morrison Creek, the
Sacramento River, and Delta.

65. Plaintiff is informed and believes, and thereupon alleges, that these discharges of

1 contaminated storm water are causing or contributing to the violation of the applicable water
2 quality standards in a Statewide Water Quality Control Plan and/or the applicable Regional
3 Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

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

7 67. Every day since at least May 6, 2005, that Defendant has discharged and
8 continues to discharge polluted storm water from the Facility in violation of the General Permit
9 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
10 violations are ongoing and continuous.

11 **THIRD CAUSE OF ACTION**
12 **Failure to Prepare, Implement, Review, and Update**
13 **an Adequate Storm Water Pollution Prevention Plan**
14 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

15 68. Plaintiff realleges and incorporate Paragraphs 1-67, as if fully set forth herein.

16 69. Section A and Provision E of the General Permit requires dischargers of storm
17 water associated with industrial activity to develop and implement an adequate SWPPP no
18 later than October 1, 1992.

19 70. Defendant has failed to develop and implement an adequate SWPPP for the
20 Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the
21 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials without
22 appropriate best management practices; the continued exposure of significant quantities of
23 various materials to storm water flows; the continued exposure and tracking of waste resulting
24 from the operation or maintenance of vehicles at the site, including trucks; the failure to either
25 treat storm water prior to discharge or to implement effective containment practices; and the
26 continued discharge of storm water pollutants from the Facility at levels in excess of EPA
27 benchmark values.

28 71. Defendant has failed to update the Facility's SWPPP in response to the
analytical results of the Facility's storm water monitoring.

1 79. Defendant has falsely certified compliance with the General Permit in each of
2 the annual reports submitted to the Regional Board since at least July 28, 2005.

3 80. Each day since at least July 28, 2005 that Defendant has falsely certified
4 compliance with the General Permit is a separate and distinct violation of the General Permit
5 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of
6 the General Permit's certification requirement each day that it maintains its false certification
7 of its compliance with the General Permit.

8 **VII. RELIEF REQUESTED**

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

10 a. Declare Defendant to have violated and to be in violation of the Act as
11 alleged herein;

12 b. Enjoin Defendant from discharging polluted storm water from the Facility
13 unless authorized by the Permit;

14 c. Enjoin Defendant from further violating the substantive and procedural
15 requirements of the Permit;

16 d. Order Defendant to immediately implement storm water pollution control
17 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
18 pollutants in the Facility's storm water from contributing to violations of any water quality
19 standards;

20 e. Order Defendant to comply with the Permit's monitoring and reporting
21 requirements, including ordering supplemental monitoring to compensate for past monitoring
22 violations;

23 f. Order Defendant to prepare a SWPPP consistent with the Permit's
24 requirements and implement procedures to regularly review and update the SWPPP;

25 g. Order Defendant to provide Plaintiff with reports documenting the quality
26 and quantity of their discharges to waters of the United States and their efforts to comply with
27 the Act and the Court's orders;

28 h. Order Defendant to pay civil penalties of \$32,500 per day per violation for

1 all violations occurring through January 12, 2009, and \$37,500 per day per violation for all
2 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
3 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

4 i. Order Defendant to take appropriate actions to restore the quality of waters
5 impaired or adversely affected by their activities;

6 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,
7 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

8 k. Award any such other and further relief as this Court may deem appropriate.

9 Dated: May 6, 2010

Respectfully submitted,
LOZEAU DRURY LLP

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By: Douglas J. Chermak
Douglas J. Chermak
Attorneys for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

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

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 22, 2010

James E. O'Connor, Chairman and Chief Executive Officer
Donald W. Slager, President and Chief Operating Officer
Republic Services, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

Sean Crawford, Operations Manager
Stan Vines, Maintenance Manager
Current Manager
Allied Waste Services of Sacramento
3326 Fitzgerald Road
Rancho Cordova, CA 95742

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

Dear Messrs. O'Connor, Slager, Crawford, and Vines:

I am writing on behalf of the California Sportfishing Protection Alliance (CSPA) in regard to violations of the Clean Water Act (CWA) that CSPA believes are occurring at Republic Services, Inc./Allied Waste Services of Sacramento located at 3326 Fitzgerald Road in Rancho Cordova, 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 the Sacramento River, the 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 Allied Waste Services (all recipients are hereinafter collectively referred to as Allied Waste).

This letter addresses Allied Waste's unlawful discharge of pollutants from the Facility into the City of Rancho Cordova storm drain system, Morrison Creek, the Sacramento River, 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, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter General Permit). The WDID identification number for the Facility listed on documents submitted to the State Water Resources Control Board (State Board) and California Regional Water Quality Control

Board, Central Valley Region (Regional Board) is 5S34I004059. 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, 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, Allied Waste is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Republic Services, Inc., Allied Waste Services of Sacramento, James E. O'Connor, Donald W. Slager, Sean Crawford, and Stan Vines under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On March 17, 1992, Browning-Ferris Industries (Browning-Ferris) filed its Notice of Intent For General Permit To Discharge Storm Water Associated With Industrial Activity and on May 12, 1997, Browning-Ferris filed its Notice of Intent For Existing Facility Operators to Comply With The Terms Of The General Permit To Discharge Storm Water Associated With Industrial Activity (collectively NOI). In 1999, Browning-Ferris was sold to Allied Waste Industries. In 2008, Allied Waste Industries, Inc. merged with Republic Services, Inc., forming a combined company called Republic Services, Inc. based in Phoenix. However, the most recent storm water annual report submitted by the Facility refers to the Facility as Allied Waste. CSPA will do likewise for purposes of this letter. CSPA also notes that Republic Services, Inc. lists the current name of the facility at Allied Waste Services of Sacramento.

Allied Waste certifies that the Facility is classified under SIC codes 4212 (solid waste hauler) and 4953 (refuse systems). The Facility collects and discharges storm water from its 4 acre industrial site into at least two storm drain outfalls located at the facility. Based on the Facility's NOI, the storm water discharged by Allied Waste to those drains is then discharged to the City of Sacramento storm drain system, the closest receiving water of which is the Folsom South Canal. The Folsom South Canal and the City of Sacramento storm drain system empty into the American River, which flows to the Sacramento River, and then flows to the Delta. The Facility's drains also may discharge through storm drains into Morrison Creek, a tributary of the Sacramento River. The Regional Board has identified waters of the American River (from Nimbus Dam to the confluence with the Sacramento River) and the waters of the Sacramento River (from Knights Landing to the Delta) as failing to meet applicable water quality standards for mercury and unknown toxicity. See http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/swrcb/r5_final303dlist.pdf.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the Sacramento River, the Delta and their tributaries, including Morrison Creek, in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region of 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. The beneficial uses of the Sacramento River, the Delta and their tributaries, including Morrison Creek, 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. 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." Basin Plan at II-1.00 of II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of Morrison Creek, the Sacramento River and Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the Sacramento River, the Delta and their tributaries, including Morrison Creek. It 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. For the Delta, the Basin Plan establishes trace element water quality objectives for several metals, including 0.3 mg/L for iron. *Id.* at Table III-1. 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-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan strictly limits increases in turbidity in Central Valley waters. *Id.* at III-9.00. The Basin Plan establishes a dissolved oxygen standard of 7.0 mg/L for the Sacramento River and Delta waters. *Id.* at III-5.00. The Basin Plan establishes a maximum limit for total dissolved solids of 125 mg/L for the American River (from Folsom Dam to the Sacramento River). *Id.* at Table III-3. The Basin Plan provides that electrical conductivity in the Sacramento River shall not exceed 240 micromhos/cm (50 percentile) or 340 micromhos/cm (90 percentile) at the I Street Bridge. *Id.*

The U.S. Environmental Protection Agency ("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"). The following benchmarks have been established for pollutants discharged by Allied Waste: pH of 6.0-9.0 units; total suspended solids ("TSS") of 100 mg/L, oil & grease ("O&G") of 15 mg/L, total organic carbon of 120 mg/L, biochemical oxygen demand ("BOD") (5-day) of 30 mg/L, and iron of 1.0 mg/L. The State Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

Allied 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, 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.

Allied Waste has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, O&G, and other pollutants in violation of the General Permit. Allied 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).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan 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.

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
12/18/2007	pH	6.1	6.5 ó 8.5	South Drain
12/18/2007	pH	6.06	6.5 ó 8.5	North Drain
12/21/2006	pH	6.17	6.5 ó 8.5	South Drain
12/21/2006	pH	5.86	6.5 ó 8.5	North Drain

The following discharges of pollutants from Allied Waste 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.

Date	Parameter	Observed Concentration	EPA Benchmark Value	Location (as identified by the Facility)
4/10/2009	Total Suspended Solids	130 mg/L	100 mg/L	South Side
4/10/2009	Oil & Grease	16 mg/L	15 mg/L	South Side
12/16/2008	Total Suspended Solids	220 mg/L	100 mg/L	Back middle storm drain
12/16/2008	Oil & Grease	26 mg/L	15 mg/L	Back middle storm drain
12/16/2008	Total Suspended Solids	300 mg/L	100 mg/L	Front storm drain
12/16/2008	Oil & Grease	34 mg/L	15 mg/L	Front storm drain
12/18/2007	Total Suspended Solids	160 mg/L	100 mg/L	South Drain
12/18/2007	Oil & Grease	32 mg/L	15 mg/L	South Drain
12/18/2007	Total Suspended Solids	140 mg/L	100 mg/L	North Drain
4/11/2007	Total Suspended Solids	760 mg/L	100 mg/L	South Drain
4/11/2007	Specific Conductivity	490 µmho/cm	200 µmho/cm (proposed)	South Drain
4/11/2007	Oil & Grease	110 mg/L	15 mg/L	South Drain
4/11/2007	Total Suspended Solids	150 mg/L	100 mg/L	North Drain
4/11/2007	Specific Conductivity	440 µmho/cm	200 µmho/cm (proposed)	North Drain
4/11/2007	Oil & Grease	110 mg/L	15 mg/L	North Drain
12/21/2006	Oil & Grease	32 mg/L	15 mg/L	South Drain
12/21/2006	pH	5.86	6.0 ó 9.0	North Drain
12/21/2006	Total Suspended Solids	260 mg/L	100 mg/L	North Drain
12/21/2006	Oil & Grease	71 mg/L	15 mg/L	North Drain
5/22/2006	Total Suspended Solids	220 mg/L	100 mg/L	South Drain
5/22/2006	Specific Conductivity	340 µmho/cm	200 µmho/cm (proposed)	South Drain

5/22/2006	Oil & Grease	46 mg/L	15 mg/L	South Drain
6/16/2005	Specific Conductivity	710 µmho/cm	200 µmho/cm (proposed)	South Drain
6/16/2005	Oil & Grease	18 mg/L	15 mg/L	South Drain
6/16/2005	Specific Conductivity	3300 µmho/cm	200 µmho/cm (proposed)	East Drain
6/16/2005	Oil & Grease	17 mg/L	15 mg/L	East Drain

CSPA's investigation, including its review of Allied Waste's analytical results documenting pollutants of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that Allied Waste has not implemented BAT and BCT for its discharges of TSS, specific conductivity, O&G, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Allied Waste was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Allied Waste is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers 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 alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since January 22, 2005, and that will occur at Allied Waste 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 Allied Waste has discharged storm water containing impermissible levels of TSS, specific conductivity, and O&G 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 each of these pollutants in storm water 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, Allied Waste is subject to penalties for violations of the General Permit and the Act since January 22, 2005.

B. Failure to Sample and Analyze for 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.* Allied Waste failed to sample a second storm event during the 2005-2006 and the 2004-2005 rainy seasons.

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for [t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 4953, including Allied Waste, must analyze each of its storm water samples for iron. *Id.*, Table D (Sector L). Allied Waste's Storm Water Pollution Prevention Plan (öSWPPPö), revised February 23, 2007, indicates that BOD should be monitored in the Facility's storm water discharges, given the presence of that pollutant in discharges from the Facility. CSPA's review of Allied Waste's monitoring data indicates that you have failed to analyze for BOD and iron in each sample taken at the Facility's two outfalls during the past five years. Specifically, there were eight failures during the 2008-2009 rainy season, four failures during the 2007-2008 rainy season, eight failures during the 2006-2007 rainy season, eight failures during the 2005-2006 rainy season, and eight failures during the 2004-2005 rainy season.¹

Each of the above listed failures to analyze for specific required parameters is a violation of General Permit, Section B(5)(c)(ii) and Section B(5)(c)(iii). 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, Allied Waste is subject to penalties for violations of the General Permit and the Act since January 22, 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 (öSWPPPö) 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 (öBMPsö) 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:

¹ The Facility reported that it was unable to collect a second storm water samples during the 2007-2008 rainy season due to a lack of rainfall.

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 review of Allied Waste's SWPPP (revised February 23, 2007), investigation of the conditions at Allied Waste, and review of Allied Waste's Annual Reports indicate that Allied Waste has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Allied Waste has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Allied Waste has been in continuous violation of Section A and Provision E(2) of the General Permit every day since January 22, 2005 at the very latest, and will continue to be in violation every day that Allied Waste fails to prepare, implement, review, and update an effective SWPPP. Allied Waste is subject to penalties for violations of the Order and the Act occurring since January 22, 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. Allied Waste failed to make monthly visual observations as required under Section B(4) of the General Permit during the entire 2004-2005 rainy season, for a total of eight violations of the General Permit. In addition, on information and belief, CSPA alleges that Allied Waste failed to properly record its visual observations on April 10, 2009; December 16, 2008; December 17, 2007; April 11, 2007; December 21, 2006; and May 22, 2006. On these dates, Allied Waste

conducted observations of storm water discharges and did not report observing any pollutants. However, Allied Waste's storm water sampling results for these dates indicate levels of O&G above the benchmark value of 15 mg/L ó levels at which Allied Waste should be observing the presence of oil sheens or discoloration in the storm water discharges. For example, on April 11, 2007, Allied Waste reported that the discharges were clear but reported the value of O&G in the water at 110 mg/L. CSPA alleges that it is impossible for water with an O&G level of 110 mg/L to be free of visible sheens. 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, Allied Waste is subject to penalties for violations of the General Permit and the Act since January 22, 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. In addition, on the 2008-2009 Annual Report, Allied Waste noted that its storm water samples were taken "before the filter." To the extent the storm water data collected by Allied Waste is not representative of the quality of the Facility's various storm water discharges, 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, Allied Waste is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since January 22, 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) and (10) and B(14).

For at least the last five years, Allied Waste and its agents, Stan Vines, Mark Koivisto, and Gary E. Bellah, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, Allied Waste has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Allied Waste or its agent failed to submit a complete or correct report and every time Allied Waste or its agents falsely purported to comply with the Act. Allied Waste is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since January 22, 2005.

IV. Persons Responsible for the Violations.

CSPA puts Republic Services, Inc., Allied Waste Services of Sacramento, James E. O'Connor, Donald W. Slager, Sean Crawford, and Stan Vines 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 Republic Services, Inc., Allied Waste Services of Sacramento, James E. O'Connor, Donald W. Slager, Sean Crawford, and Stan Vines on notice that it intends to include those subsequently identified persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director;
California Sportfishing Protection Alliance,
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067

VI. Counsel.

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

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
michael@lozeaudrury.com
doug@lozeaudrury.com

Andrew L. Packard
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, California 94952
Tel. (707) 763-7227
andrew@packardlawoffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Allied Waste to a penalty of up to \$32,500 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 through January 12, 2009, and a maximum of \$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 Allied 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 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", is written over a faint rectangular background.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

cc: CT Corporation, Agent of Service of Process for Republic Services, Inc. (C2267166)

SERVICE LIST

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

Dorothy 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

Laura Yoshii, Acting Regional Administrator
U.S. EPA ó 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, Allied Waste, Rancho Cordova, CA

December 6, 2004	March 18, 2005	December 19, 2005
December 7, 2004	March 19, 2005	December 20, 2005
December 8, 2004	March 20, 2005	December 21, 2005
December 11, 2004	March 21, 2005	December 22, 2005
December 12, 2004	March 22, 2005	December 25, 2005
December 18, 2004	March 23, 2005	December 26, 2005
December 19, 2004	March 27, 2005	December 27, 2005
December 25, 2004	March 28, 2005	December 28, 2005
December 27, 2004	March 29, 2005	December 29, 2005
December 28, 2004	April 3, 2005	December 30, 2005
December 29, 2004	April 7, 2005	December 31, 2005
December 30, 2004	April 8, 2005	January 1, 2006
December 31, 2004	April 22, 2005	January 2, 2006
January 2, 2005	April 23, 2005	January 7, 2006
January 3, 2005	April 28, 2005	January 11, 2006
January 7, 2005	May 4, 2005	January 14, 2006
January 8, 2005	May 5, 2005	January 17, 2006
January 9, 2005	May 6, 2005	January 18, 2006
January 10, 2005	May 8, 2005	January 20, 2006
January 11, 2005	May 9, 2005	January 21, 2006
January 17, 2005	May 17, 2005	January 26, 2006
January 21, 2005	May 18, 2005	January 27, 2006
January 22, 2005	May 19, 2005	January 28, 2006
January 24, 2005	June 8, 2005	January 29, 2006
January 25, 2005	June 16, 2005	January 30, 2006
January 26, 2005	June 17, 2005	February 1, 2006
January 27, 2005	September 26, 2005	February 2, 2006
January 28, 2005	October 26, 2005	February 4, 2006
February 7, 2005	October 28, 2005	February 17, 2006
February 11, 2005	October 29, 2005	February 18, 2006
February 15, 2005	November 3, 2005	February 19, 2006
February 16, 2005	November 4, 2005	February 26, 2006
February 17, 2005	November 25, 2005	February 27, 2006
February 18, 2005	November 28, 2005	February 28, 2006
February 19, 2005	November 29, 2005	March 2, 2006
February 20, 2005	November 30, 2005	March 3, 2006
February 21, 2005	December 1, 2005	March 5, 2006
February 27, 2005	December 7, 2005	March 6, 2006
March 1, 2005	December 15, 2005	March 7, 2006
March 2, 2005	December 17, 2005	March 8, 2006
March 4, 2005	December 18, 2005	March 9, 2006

ATTACHMENT A
Rain Dates, Allied Waste, Rancho Cordova, CA

March 10, 2006	November 18, 2006	May 4, 2007
March 12, 2006	November 20, 2006	September 22, 2007
March 13, 2006	November 22, 2006	September 23, 2007
March 14, 2006	November 23, 2006	September 28, 2007
March 15, 2006	November 26, 2006	October 1, 2007
March 16, 2006	November 27, 2006	October 10, 2007
March 17, 2006	December 8, 2006	October 12, 2007
March 18, 2006	December 9, 2006	October 16, 2007
March 19, 2006	December 10, 2006	October 19, 2007
March 20, 2006	December 11, 2006	October 29, 2007
March 21, 2006	December 12, 2006	November 10, 2007
March 22, 2006	December 13, 2006	November 11, 2007
March 23, 2006	December 15, 2006	November 12, 2007
March 24, 2006	December 21, 2006	November 13, 2007
March 25, 2006	December 26, 2006	November 30, 2007
March 27, 2006	December 27, 2006	December 1, 2007
March 28, 2006	January 3, 2007	December 4, 2007
March 29, 2006	January 4, 2007	December 5, 2007
March 30, 2006	February 7, 2007	December 6, 2007
March 31, 2006	February 8, 2007	December 7, 2007
April 1, 2006	February 9, 2007	December 8, 2007
April 2, 2006	February 10, 2007	December 16, 2007
April 3, 2006	February 11, 2007	December 17, 2007
April 4, 2006	February 12, 2007	December 18, 2007
April 5, 2006	February 13, 2007	December 19, 2007
April 7, 2006	February 22, 2007	December 20, 2007
April 9, 2006	February 24, 2007	December 28, 2007
April 10, 2006	February 25, 2007	December 29, 2007
April 11, 2006	February 26, 2007	December 30, 2007
April 12, 2006	February 27, 2007	January 3, 2008
April 16, 2006	March 8, 2007	January 4, 2008
April 25, 2006	March 20, 2007	January 5, 2008
May 1, 2006	March 21, 2007	January 6, 2008
May 8, 2006	March 26, 2007	January 7, 2008
May 9, 2006	April 11, 2007	January 8, 2008
October 10, 2006	April 14, 2007	January 10, 2008
November 2, 2006	April 21, 2007	January 11, 2008
November 4, 2006	April 22, 2007	January 15, 2008
November 8, 2006	April 23, 2007	January 21, 2008
November 11, 2006	April 27, 2007	January 22, 2008
November 13, 2006	May 2, 2007	January 23, 2008
November 16, 2006	May 3, 2007	January 24, 2008

ATTACHMENT A
Rain Dates, Allied Waste, Rancho Cordova, CA

January 25, 2008	December 24, 2008	May 4, 2009
January 26, 2008	December 25, 2008	May 5, 2009
January 27, 2008	December 30, 2008	June 3, 2009
January 29, 2008	December 31, 2008	June 4, 2009
January 31, 2008	January 2, 2009	June 19, 2009
February 2, 2008	January 5, 2009	September 14, 2009
February 3, 2008	January 21, 2009	September 17, 2009
February 4, 2008	January 22, 2009	October 13, 2009
February 19, 2008	January 23, 2009	October 14, 2009
February 20, 2008	January 24, 2009	October 19, 2009
February 21, 2008	January 25, 2009	November 10, 2009
February 22, 2008	February 5, 2009	November 12, 2009
February 23, 2008	February 6, 2009	November 17, 2009
February 24, 2008	February 8, 2009	November 18, 2009
March 15, 2008	February 10, 2009	November 20, 2009
March 28, 2008	February 11, 2009	November 27, 2009
March 29, 2008	February 12, 2009	December 6, 2009
April 22, 2008	February 13, 2009	December 7, 2009
April 23, 2008	February 14, 2009	December 10, 2009
April 30, 2008	February 15, 2009	December 11, 2009
October 3, 2008	February 16, 2009	December 12, 2009
October 4, 2008	February 17, 2009	December 13, 2009
October 30, 2008	February 18, 2009	December 16, 2009
October 31, 2008	February 22, 2009	December 18, 2009
November 1, 2008	February 23, 2009	December 20, 2009
November 2, 2008	February 25, 2009	December 21, 2009
November 3, 2008	March 1, 2009	December 27, 2009
November 4, 2008	March 2, 2009	December 28, 2009
November 9, 2008	March 3, 2009	December 29, 2009
November 26, 2008	March 4, 2009	December 30, 2009
November 30, 2008	March 15, 2009	January 1, 2010
December 1, 2008	March 21, 2009	January 8, 2010
December 5, 2008	March 22, 2009	January 12, 2010
December 6, 2008	April 7, 2009	January 13, 2010
December 8, 2008	April 8, 2009	January 16, 2010
December 14, 2008	April 9, 2009	January 17, 2010
December 15, 2008	April 10, 2009	January 18, 2010
December 16, 2008	April 24, 2009	January 19, 2010
December 18, 2008	April 30, 2009	January 20, 2010
December 19, 2008	May 1, 2009	January 21, 2010
December 21, 2008	May 2, 2009	
December 22, 2008	May 3, 2009	