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18 CALIFORNIA SPORTFISHING
19 PROTECTION ALLIANCE

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 CALIFORNIA SPORTFISHING
23 PROTECTION ALLIANCE, a non-profit
24 corporation,

25 Plaintiff,

26 vs.

27 SOLANO GARBAGE COMPANY, a
28 corporation.

Defendant.

Case No. ~~009-00243~~

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

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

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

I. INTRODUCTION

1. This complaint seeks relief for Defendant's discharges of polluted storm water
and non-storm water pollutants from Defendant's facility ("the Facility") into the waters of
the United States in violation of the Act and the State of California's "Waste Discharge

**ORIGINAL
FILED**

JAN 20 2009

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND**

1 Requirements (WDRs) For Discharges of Storm Water Associated With Industrial Activities
2 Excluding Construction Activities,” State Water Resources Control Board (“State Board”)
3 Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ
4 and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System
5 (“NPDES”) Permit No. CAS000001, (hereinafter “the Order” or “Permit”). Defendant’s
6 violations of the discharge, treatment technology, monitoring requirements, and other
7 procedural and substantive requirements of the Permit and the Act are ongoing and
8 continuous.

9 2. The failure on the part of persons and facilities such as Defendant and its
10 industrial facility to comply with storm water requirements is recognized as a significant
11 cause of the continuing decline in water quality of Grizzly Bay, Suisun Bay, San Francisco
12 Bay (“Bay”), and other area receiving waters. The general consensus among regulatory
13 agencies and water quality specialists is that storm pollution amounts to a substantial portion
14 of the total pollution entering the aquatic environment each year. With every rainfall event,
15 millions of gallons of polluted rainwater originating from industries within the surrounding
16 area pour into the Bay.

17 3. The continuing decline in water quality in the San Francisco Bay is a matter of
18 serious public concern. The entire Bay and all of its major tributaries have been identified
19 by the State Board, the Regional Water Quality Control Board of the San Francisco Bay
20 Region (“Regional Board”), and Environmental Protection Agency (“EPA”) as impaired
21 water bodies under Section 303(d) of the Clean Water Act. 33 U.S.C. § 1313(d).

22 **II. JURISDICTION AND VENUE**

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

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

3 5. On or about November 7, 2008, Plaintiff provided notice of Defendant's
4 violations of the Act, and of its intention to file suit against Defendant, to the Defendant; the
5 Administrator of the United States EPA; the Administrator of EPA Region IX; the Executive
6 Director of the State Board; and to the Executive Officer of the Regional Board. A true and
7 correct copy of CSPA's notice letter is attached as Exhibit A, and is incorporated by
8 reference.

9 6. 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 7. Venue is proper in the Northern 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 3-2(c), intradistrict venue is proper in
18 Oakland, California because the sources of the violations are located within Solano County,
19 California.

20 **III. PARTIES**

21 8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
22 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
23 California with its main office in Stockton, California. CSPA has approximately 2,000
24 members who live, recreate and work in and around waters of the State of California,
25 including Grizzly Bay, Suisun Bay, San Francisco Bay and their tributaries. CSPA is
26 dedicated to the preservation, protection, and defense of the environment, the wildlife and
27 the natural resources of all waters of California. To further these goals, CSPA actively seeks
28 federal and state agency implementation of the Act and other laws and, where necessary,

1 directly initiates enforcement actions on behalf of itself and its members.

2 9. Members of CSPA reside in and around the Bay and enjoy using the Bay for
3 recreation and other activities. Members of CSPA use and enjoy the waters into which
4 Defendant has caused, is causing, and will continue to cause, pollutants to be discharged.
5 Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife
6 and engage in scientific study including monitoring activities, among other things.
7 Defendant's discharges of pollutants threaten or impair each of those uses or contribute to
8 such threats and impairments. Thus, the interests of CSPA's members have been, are being,
9 and will continue to be adversely affected by Defendant's failure to comply with the Clean
10 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused
11 by Defendant's activities.

12 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant
13 SOLANO GARBAGE COMPANY (hereinafter "Defendant" or "Solano Garbage") is a
14 corporation organized under the laws of California. Defendant Solano Garbage operates a
15 waste collection and recycling center in Fairfield, California.

16 **IV. STATUTORY BACKGROUND**

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

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

28 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the

1 U.S. EPA has authorized California's State Board to issue NPDES permits including general
2 NPDES permits in California.

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

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

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

24 17. EPA has established Parameter Benchmark Values as guidelines for
25 determining whether a facility discharging industrial storm water has implemented the
26 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
27 Parameter Benchmark Values for the following parameters, among others: total suspended
28 solids – 100 mg/L; pH – 6.0-9.0 s.u.; lead – 0.0816 mg/L; copper – 0.0636 mg/L; chemical

1 oxygen demand – 120 mg/L; total organic carbon – 110 mg/L; aluminum – 0.75 mg/L; iron
2 – 1.0 mg/L; and zinc – 0.117 mg/L. The California State Water Resources Control Board
3 has proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

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

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

1 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
2 at the Facility and a description of the BMPs to be implemented at the Facility that will
3 reduce or prevent pollutants in storm water discharges and authorized non-storm water
4 discharges, including structural BMPs where non-structural BMPs are not effective (Section
5 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where
6 necessary (Section A(9),(10)).

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

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

18 22. As part of their monitoring program, dischargers must identify all storm water
19 discharge locations that produce a significant storm water discharge, evaluate the
20 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
21 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
22 conduct visual observations of these discharge locations for at least one storm per month
23 during the wet season (October through May) and record their findings in their Annual
24 Report. Dischargers must also collect and analyze storm water samples from at least two
25 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall
26 collect storm water samples during the first hour of discharge from (1) the first storm event
27 of the wet season, and (2) at least one other storm event in the wet season. All storm water
28 discharge locations shall be sampled." Section B(5)(c)(i)-(iii) requires dischargers to sample

1 and analyze during the wet season for basic parameters, such as pH, total suspended solids
2 (“TSS”), electrical conductance, and total organic carbon (“TOC”) or oil and grease
3 (“O&G”), certain industry-specific parameters, and toxic chemicals and other pollutants
4 likely to be in the storm water discharged from the facility. Dischargers must also conduct
5 dry season visual observations to identify sources of non-storm water pollution.

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

12 24. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
13 enforcement actions against any “person,” including individuals, corporations, or
14 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
15 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
16 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to
17 \$27,500 per day (violations from January 30, 1997 through March 15, 2004) and \$32,500
18 per day (violations after March 15, 2004) pursuant to Sections 309(d) and 505 of the Act, 33
19 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

20 25. The Regional Board has established water quality standards for the San
21 Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally
22 referred to as the Basin Plan.

23 26. The Basin Plan provides that “[w]aters shall not contain suspended material in
24 concentrations that cause nuisance or adversely affect beneficial uses.”

25 27. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
26 waters shall be maintained free of toxic substances in concentrations that are lethal or that
27 produce other detrimental responses in aquatic organisms.”

28 28. The Basin Plan provides that “[w]aters shall not contain oils, greases, waxes,

1 or other materials in concentrations that result in a visible film or coating on the surface of
2 the water or on objects in the water, that cause nuisance, or that otherwise adversely affect
3 beneficial uses.”

4 29. The Basin Plan establishes a dissolved oxygen standard of 7.0 mg/L for waters
5 upstream from the Carquinez Bridge.

6 30. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081
7 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day
8 average) and 0.0048 mg/L (1-hour average); and lead of 0.0081 mg/L (4 day average) and
9 0.21 mg/L (1hour average).

10 31. The Basin Plan establishes Freshwater Water Quality Objectives for zinc of
11 0.12 mg/L (4-day average and 1-hour average); for copper of 0.009 mg/L (4-day average)
12 and 0.013 mg/L (1-hour average); and lead of 0.0025 mg/L (4-day average) and 0.065 mg/L
13 (1-hour average). The Basin Plan establishes a water for aluminum of 0.2 mg/L (secondary
14 maximum contaminant level).

15 32. The EPA has adopted saltwater numeric water quality standards for copper of
16 0.0031 mg/L (Criteria Maximum Concentration – “CMC”) and .0048 mg/L (Criteria
17 Continuous Concentration – “CCC”), for lead of 0.210 mg/L (CMC) and 0.0081 mg/L
18 (CCC), for zinc of 0.09 mg/L (CMC) and 0.081 mg/L (CCC).

19 33. The EPA has adopted freshwater numeric water quality standards for copper of
20 0.013 mg/L (CMC) and 0.009 mg/L (CCC); for lead of 0.065 mg/L (CMC) and 0.0025 mg/L
21 (CCC); and for zinc of 0.12 mg/L (CMC and CCC)

22 **V. STATEMENT OF FACTS**

23 34. Defendant Solano Garbage operates a waste collection and recycling center at
24 2901 Industrial Court in Fairfield, California. The Facility is engaged in recycling
25 operations as well as storing, processing, and trucking various waste materials. The Facility
26 falls within the Standard Industrial Classification (“SIC”) Codes 5093 and 4212. The
27 Facility covers about 10 acres, the majority of which is paved and used for transporting and
28 storing waste materials throughout the Facility. On information and belief, Plaintiff alleges

1 that there are at least four buildings located on the property. On information and belief,
2 Plaintiff alleges that recycling and processing is conducted both inside and outside of these
3 buildings. Materials are transported in and out of these buildings for storage in the paved
4 and unpaved areas of the Facility.

5 35. Defendant channels and collects storm water falling on the Facility through
6 seven storm water outfalls. Each storm drain collects storm water runoff from a particular
7 area of the Facility. These outfalls discharge the storm water to the City of Fairfield storm
8 drain system and/or to McCoy Creek, which empties into Suisun Slough, a tributary to
9 Grizzly Bay and Suisun Bay.

10 36. The industrial activities at the site include the storage, processing, and transfer
11 of a variety of materials including construction material and debris, hazardous material,
12 metal, organic material, oils, paint, paper, plastic, and other materials. It includes recycling
13 operations for materials such as paper, plastic, glass, wood/yard waste, scrap metal, tires,
14 construction debris and other materials. It includes the storage and maintenance of trucks,
15 tractors, and other machinery used to transfer and dispose of these materials. Materials
16 handled at the Facility include motor oil, hydraulic oil, transmission oil, greases, used oil and
17 oil filters, baled aluminum cans, baled paper, glass, paint, and solvents.

18 37. Significant activities at the site take place outside and are exposed to rainfall.
19 These activities include the storage and processing of the numerous types of materials
20 handled by the Facility; the storage and use of vehicles and equipment for materials
21 handling; and the storage, handling, and disposal of waste materials. Loading and delivery
22 of materials occurs both inside and outside. Trucks enter and exit the Facility directly from
23 and to a public road. Plaintiff alleges on information and belief that trucks and forklifts are
24 the primary means of moving materials around the unpaved storage areas of the Facility.
25 Plaintiff is informed and believes, and thereupon alleges, that recycling and transfer activities
26 also occur in exposed areas at the Facility. The Facility's exposed areas contain large piles of
27 a variety of materials. Plaintiff alleges on information and belief that some of the exposed
28 surfaces at the Facility are unpaved and sediment and other materials are disturbed as a result

of the recycling, storage, and transfer processes. These areas are exposed to storm water and storm flows due to the lack of overhead coverage, berms and other storm water controls.

3 38. Industrial machinery, heavy equipment and vehicles, including trucks and
4 trailers are operated and stored at the Facility in areas exposed to storm water flows.
5 Plaintiff is informed and believes, and thereupon alleges, that such machinery and equipment
6 leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are
7 exposed to storm water flows and that such machinery and equipment track sediment and
8 other contaminants throughout the Facility.

9 39. Plaintiff is informed and believes, and thereupon alleges that the storm water
10 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
11 and other pollutants as it flows toward the storm water drain. Storm water and any
12 pollutants contained in that storm water entering the drains flows directly to storm drains that
13 flow directly to McCoy Creek and/or Suisun Slough, which flows into Grizzly Bay and
14 Suisun Bay.

15 40. The management practices at the Facility are wholly inadequate to prevent the
16 sources of contamination described above from causing the discharge of pollutants to waters
17 of the United States. The Facility lacks sufficient structural controls such as grading,
18 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
19 flows from coming into contact with these and other exposed sources of contaminants. The
20 Facility lacks sufficient structural controls to prevent the discharge of water once
21 contaminated. The Facility lacks adequate storm water pollution treatment technologies to
22 treat contaminated storm water prior to its flowing off of the Facility.

23 41. Since at least December 27, 2004, Defendant has taken samples or arranged for
24 samples to be taken of storm water discharges at the Facility. The sample results were
25 reported in the Facility's annual reports submitted to the Regional Board. Defendant Solano
26 Garbage certified each of those annual reports pursuant to Sections A and C of the General
27 Permit.

28 42. Since at least December 27, 2004, the Facility has detected aluminum, iron,

1 and zinc in storm water discharged from the Facility. Since at least April 28, 2005, the
2 Facility has detected TSS and electrical conductance in storm water discharged from the
3 Facility. Since at least November 2, 2006, the Facility has detected TOC in storm water
4 discharged from the Facility. Levels of these pollutants detected in the Facility's storm
5 water have been in excess of EPA's numeric parameter benchmark values. Levels of these
6 pollutants detected in the Facility's storm water have been in excess of water quality
7 standards established in the Basin Plan.

8 43. The levels of total suspended solids in storm water detected by the Facility
9 have exceeded the benchmark value for total suspended solids of 100 mg/L established by
10 EPA. For example, on December 6, 2007, the level of suspended solids measured by
11 Defendant in the Facility's discharged storm water was 892 mg/L. That level of total
12 suspended solids is over eight times the benchmark value for suspended solids established by
13 EPA.

14 44. The levels of total organic carbon in storm water detected by the Facility have
15 exceeded the benchmark value for total organic carbon of 110 mg/L established by EPA.
16 For example, on November 2, 2006, the level of total organic carbon measured by Defendant
17 in the Facility's discharged storm water was 312 mg/L. That level of total organic carbon is
18 nearly three times the benchmark value for total organic carbon established by EPA.

19 45. The levels of iron in storm water detected by the Facility have exceeded the
20 benchmark value for iron of 1.0 mg/L established by EPA. For example, on December 6,
21 2007, the level of iron measured by Defendant in the Facility's discharged storm water was
22 5.2 mg/L. That level of iron is over five times the benchmark value for iron established by
23 EPA.

24 46. The levels of zinc in storm water detected by the Facility have exceeded the
25 benchmark value for zinc of 0.117 mg/L established by EPA. For example, on March 26,
26 2007, the level of zinc measured by Defendant in the Facility's discharged storm water was
27 4.8 mg/L. That level of zinc is over 41 times the benchmark value for zinc established by
28 EPA.

1 47. The levels of aluminum in storm water detected by the Facility have exceeded
2 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on
3 March 26, 2007, the level of aluminum measured by Defendant in the Facility's discharged
4 storm water was 3.2 mg/L. That level of aluminum is over four times the benchmark value
5 for aluminum established by EPA.

6 48. The electrical conductance levels detected by the Facility in its storm water
7 have been greater than the benchmark value of 200 µmho/cm proposed by the State Board.
8 For example, on November 2, 2006, the electrical conductance level measured by Defendant
9 in the Facility's discharged storm water was 464 µmho/cm. That electrical conductance
10 level is more than twice times the State Board's proposed benchmark value.

11 49. On information and belief, Plaintiff alleges that Defendants have failed to
12 analyze its storm water samples for chemical oxygen demand as required by the Table D of
13 the General Permit since at least December 27, 2004.

14 50. On information and belief, Plaintiff alleges that Defendants have failed to
15 analyze its storm water samples for copper as required by the Table D of the General Permit
16 since at least November 2, 2006.

17 51. On information and belief, Plaintiff alleges that Defendants have failed to
18 analyze its storm water samples for lead as required by the Table D of the General Permit
19 since at least November 2, 2006.

20 52. On information and belief, Plaintiff alleges that since at least December 27,
21 2004, Defendant has failed to implement BAT and BCT at the Facility for its discharges of
22 total suspended solids, total organic carbon, iron, zinc, aluminum, electrical conductance,
23 and other pollutants. The General Permit requires that Defendant implement BAT for toxic
24 and nonconventional pollutants and BCT for conventional pollutants by no later than
25 October 1, 1992. As of the date of this Complaint, Defendant has failed to implement BAT
26 and BCT.

27 53. On information and belief, Plaintiff alleges that Defendant failed to submit an
28 Annual Report to the Regional Board for the 2003-2004 rainy season.

1 54. On information and belief, Plaintiff alleges that since at least November 21,
2 2003, Defendant has failed to implement an adequate SWPPP for the Facility. Plaintiff is
3 informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does
4 not set forth site-specific best management practices for the Facility that are consistent with
5 BAT or BCT for the Facility. Plaintiff is informed and believes, and thereupon alleges, that
6 the SWPPP prepared for the Facility does not include an assessment of potential pollutant
7 sources, structural pollutant control measures employed by the Defendant, a list of actual and
8 potential areas of pollutant contact, or a description of best management practices to be
9 implemented at the Facility to reduce pollutant discharges. According to information
10 available to CSPA, Defendant's SWPPP has not been evaluated to ensure effectiveness and
11 revised where necessary to further reduce pollutant discharges. Plaintiff is informed and
12 believes, and thereupon alleges, that the SWPPP does not include each of the mandatory
13 elements required by Section A of the General Permit. Plaintiff is informed and believes,
14 and thereupon alleges, that the SWPPP does not contain an accurate map that clearly
15 delineates the boundaries of the Facility, storm water drainage areas with flow pattern and
16 nearby water bodies, the location of the storm water collection, conveyance and discharge
17 systems, structural control measures, impervious areas, areas of actual and potential pollutant
18 contact, and areas of industrial activity.

19 55. Information available to CSPA indicates that as a result of these practices,
20 storm water containing excessive pollutants is being discharged during rain events from the
21 Facility directly to a channel that flows into McCoy Creek and Suisun Slough, which flows
22 into Grizzly Bay and Suisun Bay. Grizzly Bay and Suisun Bay are parts of San Francisco
23 Bay.

24 56. Plaintiff is informed and believes, and thereupon alleges, that pollutants
25 discharged by the Facility in its storm water are contributing to violations of water quality
26 standards that apply to McCoy Creek and the San Francisco Bay and its tributaries. Plaintiff is
27 informed and believes, and thereupon alleges, that Defendant is discharging total suspended
28 solids, total organic carbon, iron, zinc, aluminum, electrical conductance, and other un-

1 monitored pollutants that are causing or contributing to exceedances of applicable water
2 quality standards. Defendant is contributing to violations of water quality standards
3 including, but not limited to, the narrative water quality standard for toxicity and the numeric
4 water quality standard for electrical conductance.

5 57. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
6 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent
7 with Section A(9) of the General Permit.

8 58. Plaintiff is informed and believes that Defendant failed to submit to the
9 Regional Board a true and complete annual report certifying compliance with the General
10 Permit since at least December 27, 2004. Pursuant to Sections A(9)(d), B(14), and C(9),
11 (10) of the General Permit, Defendant must submit an annual report, that is signed and
12 certified by the appropriate corporate officer, outlining the Facility's storm water controls
13 and certifying compliance with the General Permit. Plaintiff is informed and believes, and
14 thereupon alleges, that Defendant has signed incomplete annual reports that purported to
15 comply with the General Permit when there was significant noncompliance at the Facility.

16 59. Information available to Plaintiff indicates that Defendant has not fulfilled the
17 requirements set forth in the General Permit for discharges from the Facility due to the
18 continued discharge of polluted storm water. Plaintiff is informed and believes, and
19 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and
20 continuing.

21 **VI. CLAIMS FOR RELIEF**

22 **FIRST CAUSE OF ACTION**

23 **Failure to Develop and Implement the Best Available and 24 Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

25 60. Plaintiff realleges and incorporate Paragraphs 1-59, as if fully set forth herein.

26 61. The General Permit's SWPPP requirements and Effluent Limitation B(3)
27 require dischargers to reduce or prevent pollutants in their storm water discharges through
28 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional

1 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its
2 discharges of total suspended solids, total organic carbon, iron, zinc, aluminum, electrical
3 conductance, and other un-monitored pollutants in violation of Effluent Limitation B(3) of
4 the General Permit.

5 62. Each day since November 21, 2003 that Defendant has failed to develop and
6 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
7 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

8 63. Defendant has been in violation of the BAT/BCT requirements every day since
9 November 21, 2003. Defendant continues to be in violation of the BAT/BCT requirements
10 each day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

11 **SECOND 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 64. Plaintiff realleges and incorporate Paragraphs 1-63, as if fully set forth herein.

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

19 66. 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; the failure to either treat storm water
25 prior to discharge or to implement effective containment practices; and the continued
26 discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark
27 values.

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

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

8 76. Plaintiff is informed and believes, and thereupon alleges, that since at least
9 November 21, 2003, Defendant has been discharging polluted storm water from the Facility
10 directly to channels or storm drains that flow into the Suisun Bay and the San Francisco Bay,
11 in violation of the Discharge Prohibition A(2) of the General Permit.

12 77. During every rain event, rainwater flows freely over exposed materials, waste
13 products, and other accumulated pollutants at the Facility, becoming contaminated with these
14 pollutants. The rainwater then flows untreated from the Facility into a channel or storm drain.
15 This contaminated storm water flows into Suisun Bay, a part of the San Francisco Bay.

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

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

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

26 81. Every day since at least November 21, 2003, that Defendant has discharged and
27 continues to discharge polluted storm water from the Facility in violation of the General Permit
28 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These

1 violations are ongoing and continuous.

2 **FIFTH CAUSE OF ACTION**
3 **Failure to Submit Annual Report and False Certification of Compliance In Annual**
4 **Report**
5 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

6 82. Plaintiff realleges and incorporate Paragraphs 1-81, as if fully set forth herein.

7 83. Defendant has falsely certified compliance with the General Permit in each of
8 the annual reports submitted to the Regional Board since at least June 2004.

9 84. Plaintiff is informed and believes, and thereupon alleges that Defendant failed
10 to submit an Annual Report to the Regional Board for the 2003-2004 rainy season.

11 85. Each day since at least June 30, 2004 that Defendant has falsely certified
12 compliance with the General Permit is a separate and distinct violation of the General Permit
13 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of
14 the General Permit's certification requirement each day that it maintains its false certification
15 of its compliance with the General Permit.

16 **VII. RELIEF REQUESTED**

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

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

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

22 c. Enjoin Defendant from further violating the substantive and procedural
23 requirements of the Permit;

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

28 e. Order Defendant to comply with the Permit's monitoring and reporting
requirements, including ordering supplemental monitoring to compensate for past monitoring

1 violations;

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

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

7 h. Order Defendant to pay civil penalties of \$27,500 per day per violation for
8 all violations occurring before March 15, 2004, and \$32,500 per day per violation for all
9 violations occurring after August 28, 2002, for each violation of the Act pursuant to Sections
10 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

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

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

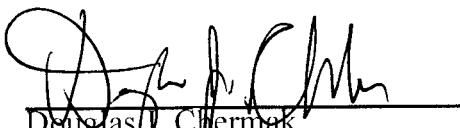
15 k. Award any such other and further relief as this Court may deem appropriate.

16
17 Dated: January 20, 2009

Respectfully submitted,

LOZEAU DRURY LLP

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By: 
Douglas J. Chermak
Attorney 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

October 30, 2008

Joe Della Zoppa, Executive Vice President
Barbara Hansen, Safety Manager
Solano Garbage Company
2901 Industrial Court, P.O. Box B
Fairfield, CA 94533

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

Dear Mr. Zoppa:

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 the Solano Garbage Company facility ("Facility") located at 2901 Industrial Court in Fairfield, California. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility (all recipients are hereinafter collectively referred to as "Solano Garbage").

This letter addresses Solano Garbage's unlawful discharge of pollutants from the Facility into the City of Fairfield storm drain system, Suisun Slough, and Suisun Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region ("Regional 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 Regional Board is 248I002528. 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 Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility.

Joe Della Zoppa
Barbara Hansen
Solano Garbage Company
October 30, 2008
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Consequently, Solano Garbage is hereby placed on formal notice by CSPA 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 Solano Garbage, Joe Della Zoppa, and Barbara Hansen 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 May 6, 1997, Solano Garbage Company filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Solano Garbage certifies that the Facility is classified under SIC codes 5093 (“processing of scrap material”) and 4212 (“local trucking without storage”). The Facility collects and discharges storm water from its 10-acre industrial site into at least seven storm water discharge locations at the Facility. Based on information and belief, the storm water discharged by Solano Garbage is discharged to the City of Fairfield storm drain system, which empties into Suisun Slough, and flows to Suisun Bay. The Regional Board has identified waters of Suisun Bay as failing to meet applicable water quality standards for PCBs, selenium, nickel, exotic species, dioxins, pesticides, and mercury. *See* http://www.waterboards.ca.gov/tmdl/docs/303dlists2006/final/r2_final303dlist.pdf.

The Regional Board has identified beneficial uses of the Bay region’s waters and established water quality standards for the Suisun Bay in the “Water Quality Control Plan for the San Francisco Bay Basin,” generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features.” *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at

3.3.7. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan provides a dissolved oxygen objective of 7.0 mg/L for waters upstream of the Carquinez Bridge. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and lead of 0.0081 mg/L (4 day average) and 0.21 mg/L (1hour average). *Id.* at Table 3-3. EPA has adopted numeric water quality standards for copper of .0031 mg/L (4-day average) and .0048 mg/L (1-hour average), for lead of .210 mg/L (4-day average) and .0081 mg/L (1-hour average), and for zinc of .090 mg/L (4-day average) and .081 mg/L (1-hour average). 65 Fed.Reg. 31712 (May 18, 2000).

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 Solano Garbage: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, total organic carbon (“TOC”) – 110 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, aluminum – 0.75 mg/L, zinc – 0.117 mg/L, iron – 1.0 mg/L, copper – 0.0636 mg/L, lead – 0.0816 mg/L. The State Water Quality Control 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.

Solano Garbage 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.

Solano Garbage has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, TOC, aluminum, iron, zinc, and other pollutants in violation of the General Permit. Solano Garbage'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 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	Benchmark Value	Location (as identified by the Facility)
12/6/2007	Total Suspended Solids	115 mg/L	100 mg/L	SD-2
12/6/2007	Aluminum	1.4 mg/L	0.75 mg/L	SD-2
12/6/2007	Iron	2 mg/L	1.0 mg/L	SD-2
12/6/2007	Zinc	0.23 mg/L	0.117 mg/L	SD-2
12/6/2007	Total Suspended Solids	892 mg/L	100 mg/L	SD-4
12/6/2007	Specific Conductivity	225 µmho/cm	200 µmho/cm (proposed)	SD-4
12/6/2007	Total Organic Carbon	157 mg/L	110 mg/L	SD-4
12/6/2007	Aluminum	2.3 mg/L	0.75 mg/L	SD-4
12/6/2007	Iron	5.2 mg/L	1.0 mg/L	SD-4
12/6/2007	Zinc	0.99 mg/L	0.117 mg/L	SD-4
3/26/2007	Total Suspended Solids	184 mg/L	100 mg/L	SD-2
3/26/2007	Aluminum	1.6 mg/L	0.75 mg/L	SD-2
3/26/2007	Iron	2.4 mg/L	1.0 mg/L	SD-2
3/26/2007	Zinc	0.53 mg/L	0.117 mg/L	SD-2
11/2/2006	Total Suspended Solids	438 mg/L	100 mg/L	SD-2
11/2/2006	Aluminum	2.0 mg/L	0.75 mg/L	SD-2

11/2/2006	Iron	3.7 mg/L	1.0 mg/L	SD-2
11/2/2006	Zinc	0.52 mg/L	0.117 mg/L	SD-2
11/2/2006	Total Suspended Solids	580 mg/L	100 mg/L	SD-4
11/2/2006	Specific Conductivity	464 µmho/cm	200 µmho/cm (proposed)	SD-4
11/2/2006	Total Organic Carbon	312 mg/L	110 mg/L	SD-4
11/2/2006	Aluminum	2.3 mg/L	0.75 mg/L	SD-4
11/2/2006	Iron	6 mg/L	1.0 mg/L	SD-4
11/2/2006	Zinc	1.2 mg/L	0.117 mg/L	SD-4
4/28/2005	Aluminum	1.9 mg/L	0.75 mg/L	SD-2
4/28/2005	Iron	2.6 mg/L	1.0 mg/L	SD-2
4/28/2005	Zinc	0.19 mg/L	0.117 mg/L	SD-2
4/28/2005	Total Suspended Solids	297 mg/L	100 mg/L	SD-4
4/28/2005	Specific Conductivity	263 µmho/cm	200 µmho/cm (proposed)	SD-4
4/28/2005	Aluminum	6.6 mg/L	0.75 mg/L	SD-4
4/28/2005	Iron	12.9 mg/L	1.0 mg/L	SD-4
4/28/2005	Zinc	0.55 mg/L	0.117 mg/L	SD-4
12/27/2004	Aluminum	1.7 mg/L	0.75 mg/L	SD-4
12/27/2004	Iron	2.9 mg/L	1.0 mg/L	SD-4
12/27/2004	Zinc	0.18 mg/L	0.117 mg/L	SD-4

CSPA's investigation, including its review of Solano Garbage'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 Solano Garbage has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, TOC, aluminum, iron, zinc, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit.

On information and belief, CSPA asserts that the results for Solano Garbage's storm water samples for the 2003-2004 rainy season contain pollutant levels that are in excess of the EPA's benchmark values and the State Board's proposed benchmarks for TSS, specific conductivity, TOC, aluminum, iron, zinc, and other pollutants. CSPA was unable to review a copy of Solano Garbage's 2003-2004 Annual Report for Storm Water Discharges, because a copy of the report does not exist in the file for Solano Garbage at the Regional Board office. (A copy of Solano Garbage's 2004-2005 Annual Report was also not at the Regional Board office, but CSPA obtained the data for that year from a table attached to the 2007-2008 Annual Report.) Excesses during the 2003-2004 rainy season would be consistent with the excesses observed in

the storm water sampling results for all other rainy seasons at Solano Garbage during the past five years.*

Solano Garbage was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Solano Garbage 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 October 30, 2003, 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 Solano Garbage has discharged storm water containing impermissible levels of TSS, specific conductivity, TOC, aluminum, iron, and zinc 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, Solano Garbage is subject to penalties for violations of the General Permit and the Act since October 30, 2003.

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). 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 5093, including Solano Garbage, must analyze each of its storm water samples for COD, iron, lead, zinc, copper, and aluminum. *Id.*, Table D (Sector N). CSPA’s review of Solano Garbage’s monitoring data indicates that you have failed to analyze for the following required parameters in samples taken on the following dates at the identified storm water discharge locations at the Facility:

* Alternatively, to the extent Solano Garbage failed to file an annual report for the 2003-2004 rainy season by July 1, 2004, then the facility is in violation of Section B(14) of the General Permit, requiring the submission of an annual report by July 1st for the previous rainy season.

Date	Parameter	Benchmark	Location
12/6/2007	COD	120 mg/L	SD-2
12/6/2007	COD	120 mg/L	SD-4
3/26/2007	COD	120 mg/L	SD-2
3/26/2007	COD	120 mg/L	SD-4
3/26/2007	Lead	0.0816 mg/L	SD-2
3/26/2007	Copper	0.0636 mg/L	SD-2
3/26/2007	Lead	0.0816 mg/L	SD-4
3/26/2007	Copper	0.0636 mg/L	SD-4
11/2/2006	Lead	0.0816 mg/L	SD-2
11/2/2006	Copper	0.0636 mg/L	SD-2
11/2/2006	Lead	0.0816 mg/L	SD-4
11/2/2006	Copper	0.0636 mg/L	SD-4
11/2/2006	COD	120 mg/L	SD-2
11/2/2006	COD	120 mg/L	SD-4
3/20/2006	COD	120 mg/L	SD-2
3/20/2006	COD	120 mg/L	SD-4
4/28/2005	COD	120 mg/L	SD-2
4/28/2005	COD	120 mg/L	SD-4
12/27/2004	COD	120 mg/L	SD-2
12/27/2004	COD	120 mg/L	SD-4

On information and belief, CSPA asserts that the results for Solano Garbage’s storm water samples for the 2003-2004 rainy season also did not contain analysis for COD, which would be consistent with the failures to analyze observed in the storm water sampling results for subsequent years.

Each of the above listed failures to analyze for specific required parameters is a violation of General Permit, 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, Solano Garbage is subject to penalties for violations of the General Permit and the Act since October 30, 2003.

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 as well as Solano Garbage’s Annual Reports indicate that Solano Garbage has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Solano Garbage has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Solano Garbage has been in continuous violation of Section A and Provision E(2) of the General Permit every day since October 30, 2003 at the very latest, and will continue to be in violation every day that Solano Garbage fails to prepare, implement, review, and update an effective SWPPP. Solano Garbage is subject to penalties for violations of the Order and the Act occurring since October 30, 2003.

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

Joe Della Zoppa
Barbara Hansen
Solano Garbage Company
October 30, 2008
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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.”

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 Solano Garbage 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, Solano Garbage is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since October 30, 2003.

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 the last five years, Solano Garbage and its agent, Barbara Hansen, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, Solano Garbage has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Solano Garbage failed to submit a complete or correct report and every time Solano Garbage or its agents falsely purported to comply with the Act. Solano Garbage is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since October 30, 2003.

IV. Persons Responsible for the Violations.

CSPA puts Solano Garbage Company, Joe Zoppa, and Barbara Hansen 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 Solano Garbage Company, Joe Zoppa, and Barbara Hansen on notice that it intends to include those persons in this action.

Joe Della Zoppa
Barbara Hansen
Solano Garbage Company
October 30, 2008
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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 Chermak
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
mrlozeau@lozeaulaw.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 Solano Garbage 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. 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 Solano Garbage 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

Joe Della Zoppa
Barbara Hansen
Solano Garbage Company
October 30, 2008
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delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

cc: CT Corporation, Agent of Service of Process for Solano Garbage Company (C0902377)

SERVICE LIST

Steve Johnson, 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
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

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

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

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A
Rain Dates, Solano Garbage, Fairfield, California

November 3, 2003	February 22, 2004	January 26, 2005
November 4, 2003	February 23, 2004	January 28, 2005
November 7, 2003	February 24, 2004	February 14, 2005
November 8, 2003	February 25, 2004	February 15, 2005
November 9, 2003	February 26, 2004	February 16, 2005
November 14, 2003	March 1, 2004	February 17, 2005
November 15, 2003	March 2, 2004	February 18, 2005
November 28, 2003	March 25, 2004	February 19, 2005
November 30, 2003	March 26, 2004	February 20, 2005
December 1, 2003	April 17, 2004	February 21, 2005
December 2, 2003	April 18, 2004	February 22, 2005
December 4, 2003	April 19, 2004	February 27, 2005
December 5, 2003	April 20, 2004	February 28, 2005
December 6, 2003	September 19, 2004	March 2, 2005
December 7, 2003	September 20, 2004	March 4, 2005
December 8, 2003	October 17, 2004	March 18, 2005
December 9, 2003	October 19, 2004	March 19, 2005
December 10, 2003	October 20, 2004	March 20, 2005
December 12, 2003	October 23, 2004	March 21, 2005
December 13, 2003	October 24, 2004	March 22, 2005
December 14, 2003	October 26, 2004	March 23, 2005
December 19, 2003	November 3, 2004	March 27, 2005
December 20, 2003	November 4, 2004	March 28, 2005
December 21, 2003	November 10, 2004	March 29, 2005
December 23, 2003	November 11, 2004	April 3, 2005
December 24, 2003	November 12, 2004	April 4, 2005
December 25, 2003	November 13, 2004	April 7, 2005
December 29, 2003	November 27, 2004	April 8, 2005
December 30, 2003	December 7, 2004	April 23, 2005
January 1, 2004	December 8, 2004	April 28, 2005
January 2, 2004	December 9, 2004	May 4, 2005
January 7, 2004	December 27, 2004	May 5, 2005
January 8, 2004	December 28, 2004	May 8, 2005
January 9, 2004	December 29, 2004	May 9, 2005
January 10, 2004	December 30, 2004	May 10, 2005
January 14, 2004	December 31, 2004	May 18, 2005
January 17, 2004	January 1, 2005	June 8, 2005
January 24, 2004	January 2, 2005	June 9, 2005
January 27, 2004	January 3, 2005	June 16, 2005
January 28, 2004	January 4, 2005	June 17, 2005
January 30, 2004	January 6, 2005	October 26, 2005
February 2, 2004	January 7, 2005	October 29, 2005
February 3, 2004	January 8, 2005	November 7, 2005
February 7, 2004	January 9, 2005	November 8, 2005
February 14, 2004	January 10, 2005	November 25, 2005
February 16, 2004	January 11, 2005	November 28, 2005
February 17, 2004	January 12, 2005	November 29, 2005
February 18, 2004	January 21, 2005	December 1, 2005
February 21, 2004	January 25, 2005	December 2, 2005

ATTACHMENT A

Rain Dates, Solano Garbage, Fairfield, California

December 7, 2005	March 24, 2006	February 26, 2007
December 17, 2005	March 25, 2006	February 27, 2007
December 18, 2005	March 27, 2006	February 28, 2007
December 19, 2005	March 28, 2006	March 26, 2007
December 20, 2005	March 29, 2006	April 11, 2007
December 21, 2005	March 31, 2006	April 14, 2007
December 22, 2005	April 1, 2006	April 15, 2007
December 23, 2005	April 2, 2006	April 21, 2007
December 25, 2005	April 3, 2006	April 22, 2007
December 26, 2005	April 4, 2006	April 23, 2007
December 27, 2005	April 5, 2006	May 2, 2007
December 28, 2005	April 7, 2006	May 4, 2007
December 29, 2005	April 8, 2006	July 18, 2007
December 30, 2005	April 11, 2006	September 21, 2007
December 31, 2005	April 12, 2006	October 10, 2007
January 1, 2006	April 13, 2006	October 12, 2007
January 2, 2006	April 15, 2006	October 16, 2007
January 3, 2006	April 16, 2006	November 10, 2007
January 4, 2006	April 17, 2006	November 11, 2007
January 7, 2006	April 23, 2006	December 4, 2007
January 11, 2006	May 20, 2006	December 6, 2007
January 14, 2006	May 21, 2006	December 7, 2007
January 18, 2006	May 22, 2006	December 17, 2007
January 21, 2006	October 5, 2006	December 18, 2007
January 27, 2006	November 2, 2006	December 19, 2007
January 28, 2006	November 11, 2006	December 20, 2007
January 30, 2006	November 13, 2006	December 28, 2007
February 1, 2006	November 14, 2006	December 29, 2007
February 2, 2006	November 26, 2006	December 30, 2007
February 4, 2006	November 27, 2006	January 3, 2008
February 17, 2006	December 9, 2006	January 4, 2008
February 18, 2006	December 10, 2006	January 5, 2008
February 19, 2006	December 11, 2006	January 6, 2008
February 26, 2006	December 12, 2006	January 8, 2008
February 27, 2006	December 13, 2006	January 9, 2008
February 28, 2006	December 22, 2006	January 10, 2008
March 2, 2006	December 24, 2006	January 11, 2008
March 3, 2006	December 26, 2006	January 20, 2008
March 5, 2006	December 27, 2006	January 21, 2008
March 6, 2006	January 17, 2007	January 22, 2008
March 7, 2006	January 27, 2007	January 23, 2008
March 9, 2006	February 7, 2007	January 24, 2008
March 11, 2006	February 8, 2007	January 25, 2008
March 12, 2006	February 9, 2007	January 26, 2008
March 13, 2006	February 10, 2007	January 27, 2008
March 14, 2006	February 11, 2007	January 28, 2008
March 16, 2006	February 12, 2007	January 29, 2008
March 17, 2006	February 22, 2007	January 31, 2008
March 20, 2006	February 23, 2007	February 1, 2008
March 21, 2006	February 25, 2007	February 2, 2008

ATTACHMENT A

Rain Dates, Solano Garbage, Fairfield, California

February 3, 2008
February 19, 2008
February 20, 2008

February 21, 2008
February 23, 2008
February 24, 2008

March 16, 2008
April 23, 2008