

California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

December 11, 2008

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

Dear Messrs. O'Connor, Cordesman, Zeiger, Boyle, Jenkins, Carvalho, and Howard:

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 both at Richmond Sanitary Service ("RSS") and at the West Contra Costa Sanitary Landfill ("WCL") located at #1 Parr Blvd. in Richmond, 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. RSS is owned by Richmond Sanitary Service, Inc., which is owned by Republic Services, Inc. West Contra Costa Sanitary Landfill is owned by West County Landfill, Inc. which is owned by Republic Services, Inc. This letter is being sent to you as the responsible owners, officers, or operators of RSS and WCL (all recipients are hereinafter collectively referred to as "Republic Services").

This letter addresses Republic Services' unlawful discharge of pollutants from RSS and WCL into San Pablo Creek and San Pablo Bay. RSS and WCL are 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 RSS listed on documents submitted to the Regional Board is 207I002523, and the WDID identification number for WCL on documents submitted to the Regional Board is 207I005532. RSS and WCL are 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 RSS and WCL. Consequently, Republic Services 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 Republic Services, Inc., Richmond Sanitary Service, Inc., West County Landfill, Inc., James E. O'Connor, Michael Cordesman, C. David Zeiger, Michael Boyle, and Peter Jenkins 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. This letter will first provide background information that pertains to both RSS and WCL, describe the alleged violations of the NPDES permit for RSS, describe the alleged violations of the NPDES permit for WCL, indicate the persons responsible for the violations, indicate the name and address of the noticing party, name the counsel representing CSPA in this matter, and describe the relevant penalty provisions.

I. Background.

On May 15, 1997, RSS filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). RSS certifies that that it is classified under SIC code 5093 (“processing of scrap material”) and under SIC code 4212 (“local trucking without storage”). According to its most recent annual report filed pursuant to the General Permit, RSS collects and discharges storm water from its 12-acre industrial site through four outfalls that discharge into San Pablo Bay and San Pablo Creek, which flows into the San Francisco Bay.

On March 23, 1992, WCL filed its NOI. WCL certifies that it is classified under SIC code 4953 (“landfills and land application site”). According to its most recent annual report filed pursuant to the General Permit, WCL collects and discharges storm water from its 350-acre industrial site through eleven outfalls that discharge into San Pablo Bay, a part of San Francisco Bay.

The Regional Board has identified waters of both San Pablo Bay and San Francisco Bay as failing to meet applicable water quality standards for PCBs, selenium, 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 San Francisco 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 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 (1-hour average). *Id.* at Table 3-3. The Basin Plan established Freshwater Water Quality Objectives for zinc of 0.12 mg/L (4-day average and 1-hour average); for copper of 0.009 mg/L (4-day average) and 0.013 mg/L (1-hour average); and lead of 0.0025 mg/L (4-day average) and 0.065 mg/L (1-hour average). *Id.* at Table 3-4. The U.S. Environmental Protection Agency ("EPA") has adopted saltwater numeric water quality standards for copper of 0.0031 mg/L (Criteria Maximum Concentration – "CMC") and .0048 mg/L (Criteria Continuous Concentration – "CCC"), for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC), and for zinc of 0.090 mg/L (CMC) and 0.081 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000). EPA has adopted freshwater numeric water quality standards for copper of 0.013 mg/L (CMC) and 0.009 mg/L (CCC); for lead of 0.065 mg/L (CMC) and 0.0025 mg/L (CCC); and for zinc of 0.12 mg/L (CMC and CCC).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by RSS and WCL: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 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, ammonia – 19 mg/L. The State Water Resources Control Board (“State Board”) also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. RSS’ Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

RSS 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.

RSS has discharged and continues to discharge storm water with unacceptable levels of total suspended solids, specific conductivity, oil & grease, and other pollutants in violation of the General Permit. RSS' 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 RSS¹ 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)
12/4/2007	Total Suspended Solids	1,600 mg/L	100 mg/L	RSS-1 (entrance)
12/4/2007	Specific Conductivity	320 µmho/cm	200 µmho/cm (proposed)	RSS-1 (entrance)
3/26/2007	Total Suspended Solids	590 mg/L	100 mg/L	RSS-4
3/26/2007	Specific Conductivity	250 µmho/cm	200 µmho/cm (proposed)	RSS-4
12/21/2006	Total Suspended Solids	1,600 mg/L	100 mg/L	RSS-4
12/21/2006	Specific Conductivity	530 µmho/cm	200 µmho/cm (proposed)	RSS-4
12/21/2006	Total Suspended Solids	230 mg/L	100 mg/L	RSS-1
3/20/2006	Total Suspended Solids	2,200 mg/L	100 mg/L	RSS-1 (Drainage from paved vehicle storage area)
3/20/2006	Specific Conductivity	900 µmho/cm	200 µmho/cm (proposed)	RSS-1 (Drainage from paved vehicle storage area)
3/20/2006	Total Suspended Solids	580 mg/L	100 mg/L	RSS-4 (Drainage from southwest)

¹ RSS' annual reports include laboratory sampling results for storm water discharges from outfalls for both RSS and WCL. RSS' reports seem to indicate that the outfalls with "RSS" in the title are particular to RSS. Thus, only the discharges associated with the "RSS" outfalls are reported in this table. Discharges associated with the other outfalls are presumed to apply to WCL and are indicated in the table in Section III(A) of this letter.

				paved storage tank area)
2/14/2005	Total Suspended Solids	1,800 mg/L	100 mg/L	RSS-1 (Drainage from paved vehicle storage area)
2/14/2005	Specific Conductivity	330 μ mho/cm	200 μ mho/cm (proposed)	RSS-1 (Drainage from paved vehicle storage area)
2/14/2005	Oil & Grease	25 mg/L	15 mg/L	RSS-1 (Drainage from paved vehicle storage area)
2/14/2005	Total Suspended Solids	210 mg/L	100 mg/L	RSS-4 (Drainage from southwest paved storage tank area)

CSPA's investigation, including its review of RSS' analytical results documenting pollutant levels in RSS' 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 RSS 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. RSS was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, RSS 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 December 11, 2003, and that will occur at RSS 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 RSS 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 RSS 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, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 2003.

B. Failure to Sample, Analyze, and Inspect Storm Events and Mandatory Parameters

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). “Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season.” *Id.* “All storm water discharge locations shall be sampled.” *Id.* “Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.” *Id.*

RSS has failed to collect the two required storm water samples from each storm water discharge location in each of the last five years despite discharging storm water from its facility. RSS failed to take the requisite samples when storm water discharges from the Facility did not occur within the first hour of a storm event. The General Permit does not excuse a facility from the requisite sampling where discharges from the facility occur more than an hour after the inception of a storm event. During the 2006-2007 rainy season, RSS only collected two samples from RSS-4 and one sample from RSS-1, failing to explain why it was unable to collect a second sample from RSS-1 and two samples from the third discharge location. During both the 2005-2006 and the 2004-2005 rainy seasons, RSS failed to explain why it did not collect storm water samples for a second event from RSS-1 and RSS-4 and failed to explain why it was unable to collect two samples from the third discharge location. During the 2003-2004 rainy season, RSS failed to explain why it did not collect storm water samples for a second event from RSS-2 and failed to explain why it was unable to collect two samples from the third discharge location. Each of these failures to collect requisite storm water samples is a violation of the General Permit, Section B(5).

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. General Permit, 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 RSS, 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 RSS’ monitoring data indicates that RSS has failed to analyze for COD, iron, lead, zinc, copper, and aluminum in every storm water sample taken at RSS during the past five years and has not provided a sufficient explanation for its failure to do so in each of the past five years. Each failure to analyze for a specific required parameter is a violation of General Permit, Section B(5)(c)(iii). Six samples per annual report (at least three storm drains times two storm events) times five annual reports (2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008) times six parameters adds up to 180 distinct violations of the General Permit.

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(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." RSS failed to conduct any visual observations during the 2006-2007 rainy season, which is a violation of the Section B(3), B(4), and B(7) of the General Permit. RSS did not provide explanations for its failures to conduct monthly wet season visual observations for October, November, December, January, February, April, and May during the 2005-2006 rainy season; for October, November, December, January, March, April, and May during the 2004-2005 rainy season; and for December, January, February, March, April, and May during the 2003-2004 rainy season. Each of these failures to conduct monthly wet season visual observations is a violation of the General Permit, Section B(4).

The above listed violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 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 RSS as well as RSS' Annual Reports indicate that RSS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. RSS has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. RSS has been in continuous violation of Section A and Provision E(2) of the General Permit every day since December 11, 2003 at the very latest, and will continue to be in violation every day that RSS fails to prepare, implement, review, and update an effective SWPPP. Republic Services is subject to penalties for violations of the Order and the Act occurring since December 11, 2003.

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

The above referenced data was obtained from the RSS' monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that RSS has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by RSS is not representative of the quality of the RSS' various storm water discharges or RSS failed to monitor all qualifying storm water discharges, CSPA, on information and belief, alleges that RSS' monitoring program violates Sections B(3), (4), 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, Republic Services is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 11, 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, RSS and its agents, C. David Zeiger and Michael Boyle, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, RSS has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time RSS failed to submit a complete or correct report and every time RSS or its agents falsely purported to comply with the Act. Republic Services is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since December 11, 2003.

III. WCL's Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

WCL has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. The relevant permit requirements are described in this notice of intent letter above in Section II(A).

WCL has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, total organic carbon, iron, and other pollutants in violation of the General Permit. WCL'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.

The following discharges of pollutants from WCL² 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)
5/2/2008	Specific Conductivity	1,700 µmho/cm	200 µmho/cm (proposed)	Area A (Composite)
5/2/2008	Iron	1.3 mg/L	1.0 mg/L	Area A (Composite)
2/19/2008	Total Suspended Solids	410 mg/L	100 mg/L	WCL-11G
2/19/2008	Specific Conductivity	3,300 µmho/cm	200 µmho/cm (proposed)	WCL-11G

² The source of this data is from both RSS' and WCL's Annual Reports to the Regional Board, which both contain laboratory sampling results that contain data for outfalls from both facilities. The data in this table includes all the troublesome discharges not included in the table above in Section II(A), however, it is unclear whether some of these discharge actually pertain to the RSS facility. In addition, the Regional Board does not have a 2006-2007 Annual Report on file for WCL; the data here is from the 2006-2007 RSS Annual Report. To the extent WCL failed to file an annual report for the 2006-2007 rainy season by July 1, 2007, then WCL 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.

2/19/2008	Iron	33 mg/L	1.0 mg/L	WCL-11G
2/19/2008	Specific Conductivity	1,500 µmho/cm	200 µmho/cm (proposed)	WCL-C
1/3/2008	Total Suspended Solids	2,100 mg/L	100 mg/L	WCL-8
1/3/2008	Specific Conductivity	1600 µmho/cm	200 µmho/cm (proposed)	WCL-8
1/3/2008	Iron	110 mg/L	1.0 mg/L	WCL-8
3/26/2007	Specific Conductivity	580 µmho/cm	200 µmho/cm (proposed)	WCL-9
3/26/2007	Iron	1.3 mg/L	1.0 mg/L	WCL-9
12/21/2006	Total Suspended Solids	160 mg/L	100 mg/L	IRRF-1
12/21/2006	Specific Conductivity	260 µmho/cm	200 µmho/cm (proposed)	IRRF-1
12/21/2006	Total Suspended Solids	140 mg/L	100 mg/L	IRRF-5
12/21/2006	Total Suspended Solids	48,000 mg/L	100 mg/L	WCL-8
12/21/2006	Specific Conductivity	2,300 µmho/cm	200 µmho/cm (proposed)	WCL-8
12/21/2006	Iron	350 mg/L	1.0 mg/L	WCL-8
12/21/2006	Total Suspended Solids	8,200 mg/L	100 mg/L	WCL-9
12/21/2006	Specific Conductivity	1,200 µmho/cm	200 µmho/cm (proposed)	WCL-9
12/21/2006	Iron	26 mg/L	1.0 mg/L	WCL-9
3/30/2006	Specific Conductivity	1,100 µmho/cm	200 µmho/cm (proposed)	WCL-C (Retention basin – Near new transfer station)
3/30/2006	Iron	1.5 mg/L	1.0 mg/L	WCL-C (Retention basin – Near new transfer station)
3/23/2006	Total Suspended Solids	330 mg/L	100 mg/L	WCL-9
3/23/2006	Specific Conductivity	680 µmho/cm	200 µmho/cm (proposed)	WCL-9
3/23/2006	Iron	14 mg/L	1.0 mg/L	WCL-9
3/20/2006	Total Suspended Solids	4,200 mg/L	100 mg/L	WCL-7 (Public Disposal Pad) – Runoff from paved public disposal area
3/20/2006	Specific Conductivity	1,300 µmho/cm	200 µmho/cm (proposed)	WCL-7 (Public Disposal Pad) – Runoff from paved public

				disposal area
3/20/2006	Iron	40 mg/L	1.0 mg/L	WCL-7 (Public Disposal Pad) – Runoff from paved public disposal area
3/20/2006	Total Suspended Solids	580 mg/L	100 mg/L	WCL-8 (Runoff along side of main road)
3/20/2006	Specific Conductivity	930 µmho/cm	200 µmho/cm (proposed)	WCL-8 (Runoff along side of main road)
3/20/2006	Iron	19 mg/L	1.0 mg/L	WCL-8 (Runoff along side of main road)
3/20/2006	Total Suspended Solids	260 mg/L	100 mg/L	WCL-9 (Runoff from Bay Environmental Power (NOVE))
3/20/2006	Specific Conductivity	730 µmho/cm	200 µmho/cm (proposed)	WCL-9 (Runoff from Bay Environmental Power (NOVE))
3/20/2006	Iron	14 mg/L	1.0 mg/L	WCL-9 (Runoff from Bay Environmental Power (NOVE))
2/14/2005	Total Suspended Solids	3,700 mg/L	100 mg/L	WCL-7 ((New) Runoff from paved public disposal area)
2/14/2005	Specific Conductivity	2,900 µmho/cm	200 µmho/cm (proposed)	WCL-7 ((New) Runoff from paved public disposal area)
2/14/2005	Total Organic Carbon	270 mg/L	110 mg/L	WCL-7 ((New) Runoff from paved public disposal area)
2/14/2005	Iron	57 mg/L	1.0 mg/L	WCL-7 ((New) Runoff from paved public disposal area)

2/14/2005	Total Suspended Solids	1,100 mg/L	100 mg/L	WCL-8 (Runoff from side of main road)
2/14/2005	Specific Conductivity	2,900 µmho/cm	200 µmho/cm (proposed)	WCL-8 (Runoff from side of main road)
2/14/2005	Iron	10 mg/L	1.0 mg/L	WCL-8 (Runoff from side of main road)
2/14/2005	Total Suspended Solids	260 mg/L	100 mg/L	WCL-9 (Runoff from NOVE)
2/14/2005	Specific Conductivity	730 µmho/cm	200 µmho/cm (proposed)	WCL-9 (Runoff from NOVE)
2/14/2005	Iron	7.5 mg/L	1.0 mg/L	WCL-9 (Runoff from NOVE)
2/14/2005	Specific Conductivity	250 µmho/cm	200 µmho/cm (proposed)	INNF-1
1/4/2005	Specific Conductivity	1,200 µmho/cm	200 µmho/cm (proposed)	WCL-3 (Retention Basin)

CSPA's investigation, including its review of WCL's analytical results documenting pollutant levels in WCL'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 WCL has not implemented BAT and BCT for its discharges of TSS, specific conductivity, total organic carbon, iron, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. WCL was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, WCL 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 December 11, 2003, and that will occur at WCL 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 WCL has discharged storm water containing impermissible levels of TSS, specific conductivity, total organic carbon, and iron 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 WCL 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, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 2003.

B. Failure to Sample, Analyze, and Inspect Storm Events and Mandatory Parameters

WCL has reported different amounts of storm water discharge locations in its Annual Reports. In the 2007-2008 Annual Report, it indicated that it has eleven storm water discharge locations. In earlier reports, it indicated that it has seven. However, WCL has never sampled discharges from seven distinct storm water discharge locations in its Annual Reports from the past five years, nor has it given any explanation for its failure to do so. WCL has failed to collect all of the two required storm water samples from each storm water discharge location in each of the last five years despite discharging storm water from its facility. WCL failed to take the requisite samples when storm water discharges from the Facility did not occur within the first hour of a storm event. For each of the five previous rainy seasons³, with the exception of the 2007-2008 rainy season, WCL failed to reasonably explain in its annual reports why it was unable to collect one or both of the required two storm water samples from each of its outfalls. Each of these failures to collect requisite storm water samples is a violation of the General Permit, Section B(5).

Facilities within SIC Code 4953, including WCL, must analyze each of its storm water samples for iron. General Permit, Table D (Sector N). CSPA's review of WCL's monitoring data indicates that WCL has failed to analyze for iron in every storm water sample taken at WCL during the past five years for the outfalls IRRF-1, IRRF-5, and IRC (TS)-1, and has not provided a sufficient explanation for its failure to do so in each of the past five years. Each failure to analyze for a specific required parameter is a violation of General Permit, Section B(5)(c)(iii). Five years times three outfalls times two samples per year adds up to 30 distinct violations of the General Permit.

WCL failed to provide explanations for its failures to conduct monthly wet season visual observations for October, November, December, January, February, April, and May during the 2005-2006 rainy season; and for October, November, December, January, March, April, and May during the 2004-2005 rainy season. Each of these failures to conduct monthly wet season visual observations is a violation of the General Permit, Section B(4).

The above listed violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 2003.

³ As noted above, CSPA has not reviewed the 2006-2007 Annual Report for WCL because it is not on file with the regional board. Based on its review of WCL's other annual reports and based on information and belief, CSPA alleges that WCL did not sample two storm events from each storm water discharge location during the 2006-2007 rainy season.

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

The SWPPP requirements are described in Section II(C) above. CSPA's investigation of the conditions at WCL as well as WCL's Annual Reports indicate that WCL has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. In addition, CSPA's review of WCL's SWPPP and Storm Water Monitoring Plan ("SWMP") attached to its 2005-2006 Annual Report shows that the SWPPP and SWMP were very inadequate at that time. For example, the SWPPP lacks a sufficient narrative describing potential pollutant sources and an associated narrative describing the storm water best management practices designed to treat those pollutant sources. There is also no site map attached.

Thus, CSPA alleges that WCL has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. WCL has been in continuous violation of Section A and Provision E(2) of the General Permit every day since December 11, 2003 at the very latest, and will continue to be in violation every day that WCL fails to prepare, implement, review, and update an effective SWPPP. Republic Services is subject to penalties for violations of the Order and the Act occurring since December 11, 2003.

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

The above referenced data was obtained from the WCL's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that WCL has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by WCL is not representative of the quality of the WCL's various storm water discharges or WCL failed to monitor all qualifying storm water discharges, CSPA, on information and belief, alleges that WCL's monitoring program violates Sections B(3), (4), 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, Republic Services is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 11, 2003.

E. Failure to File True and Correct Annual Reports.

For the last five years, WCL and its agents, C. David Zeiger and Michael Boyle, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, WCL has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time WCL failed to submit a complete or correct report and every time WCL or its agents falsely purported to comply with the Act. Republic Services is subject to penalties for violations of Section (C) of the General Industrial

Storm Water Permit and the Act occurring since December 11, 2003.

IV. Persons Responsible for the Violations.

CSPA puts Republic Services, Inc., Richmond Sanitary Service, Inc., West County Landfill, Inc., James E. O'Connor, Michael Cordesman, C. David Zeiger, Michael Boyle, and Peter Jenkins 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., Richmond Sanitary Service, Inc., West County Landfill, Inc., James E. O'Connor, Michael Cordesman, C. David Zeiger, Michael Boyle, and Peter Jenkins on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

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
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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 Republic Services 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 Republic Services 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 cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

cc: CT Corporation, Agent of Service of Process for Richmond Sanitary Service, Inc. (C1511627), Republic Services, Inc. (C2267166), and West County Landfill, Inc. (C1511323)

SERVICE LIST

Steve Johnson, Administrator
U.S. Environmental Protection Agency
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Washington, D.C. 20460

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1001 I Street Sacramento, CA 95814
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75 Hawthorne Street
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Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
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ATTACHMENT A

Rain Dates, RSS and WCL, Richmond, California

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

ATTACHMENT A

Rain Dates, RSS and WCL, Richmond, California

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

ATTACHMENT A

Rain Dates, RSS and WCL, Richmond, California

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