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10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING  
12 PROTECTION ALLIANCE

13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA SPORTFISHING  
16 PROTECTION ALLIANCE, a non-profit  
17 corporation,

17 Plaintiff,

18 vs.

19 USA WASTE OF CALIFORNIA, INC. a  
20 Delaware corporation, and MIKE  
21 DONOHUE, an individual,

21 Defendants.

Case No. 2:10-CV-01096-GEB-KJN

**[PROPOSED] CONSENT AGREEMENT**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387; and, California  
Health & Safety Code § 25249.5 *et seq.*)

22 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “Plaintiff” or  
23 “CSPA”) is a non-profit public benefit corporation dedicated to the preservation, protection, and  
24 defense of the environment, wildlife, and natural resources of California’s waters;

25 **WHEREAS**, Defendant USA Waste of California, Inc. (hereinafter “USA Waste”) owns and  
26 operates an approximately 4-acre recycling, waste transfer and local trucking facility located at 2569  
27

1 Scott Avenue, in Chico, California (the “Facility”), Defendant Mike Donohue was previously the  
2 District Manager for USA Waste at the Facility. He no longer holds that position and is now the  
3 District Fleet Manager at several sites other than the Facility;

4 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the “Parties;”

5 **WHEREAS**, the Facility collects and discharges storm water to Comanche Creek and  
6 Comanche Creek ultimately flows into the Sacramento River, and the Sacramento-San Joaquin Delta  
7 (a map of the Facility is attached hereto as Exhibit A and incorporated herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
9 to the National Pollutant Discharge Elimination System (“NPDES”), General Permit No. CAS000001  
10 [State Water Resources Control Board], Water Quality Order No. 91-13-DWQ (as amended by Water  
11 Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act,  
12 33 U.S.C. § 1342 (hereinafter “General Permit”);

13 **WHEREAS**, on or about March 4, 2010, Plaintiff provided notice of Defendants’ alleged  
14 violations of the Clean Water Act, and of its intention to file suit against Defendants, to the  
15 Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of  
16 EPA Region IX; the Executive Director of the State Water Resources Control Board (“State Board”);  
17 the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional  
18 Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies  
19 of CSPA’s “Clean Water Act Notice Of Violations Letter” is attached as Exhibit B and incorporated  
20 herein by reference);

21 **WHEREAS**, on or about September 10, 2010, Plaintiff provided notice of USA Waste’s  
22 alleged violations of California Health & Safety Code § 25249.5 *et seq.* (referred to as “Proposition  
23 65”) (“Proposition 65 Notice Letter”), and of its intention to file suit against USA Waste to the  
24 Proposition 65 Enforcement Reporting section of the office of the California Attorney General  
25 (“California Attorney General”); the District Attorney of each California county containing sources of  
26 drinking water potentially impacted by USA Waste’s violations of Proposition 65 as described in the  
27 Proposition 65 Notice Letter; and, to USA Waste, as required by California Health & Safety Code  
28

1 Section 25249.5 *et seq.* (true and correct copies of CSPA’s “Proposition 65 Notice Of Violations  
2 Letter” is attached as Exhibit C and incorporated herein by reference);

3 **WHEREAS**, unless otherwise noted, the Clean Water Act Notice Of Violations Letter and the  
4 Proposition 65 Notice Of Violations Letter shall hereinafter collectively be referred to as “the  
5 Notices”;

6 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and  
7 maintain that they have complied at all times with the provisions of the Clean Water Act and the  
8 General Permit, and California Health & Safety Code sections 25249.5 *et seq.*;

9 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States  
10 District Court, Eastern District of California, on May 4, 2010 and filed a First Amended Complaint  
11 pursuant to the Parties’ stipulated agreement on November 15, 2010;

12 **WHEREAS**, for purposes of this Consent Agreement only, the Parties stipulate that venue is  
13 proper in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to  
14 enter this Consent Agreement, but otherwise preserve all affirmative defenses in the event this  
15 Consent Agreement is not entered by this Court;

16 **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of  
17 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c) and to the Proposition  
18 65 Enforcement Reporting section of the office of the California Attorney General; and shall thereafter  
19 be submitted for approval by the Court, the date of which approval shall be referred to herein as the  
20 “Court Approval Date;”

21 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States  
22 District Court, CSPA shall request a dismissal of the First Amended Complaint with prejudice and the  
23 Parties shall stipulate and request that the Court retain jurisdiction for the enforcement of this  
24 Agreement as provided herein;

25 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter  
26 without further litigation.

27 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES, AND**  
28

1 **ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

2 **I. COMMITMENT OF DEFENDANTS**

3 **1. Compliance With General Permit & Clean Water Act.** Beginning immediately, and  
4 throughout the term of this Consent Agreement, USA Waste, as a corporate entity acting by and  
5 through its designated agent, representatives and/or employees, shall commence all measures needed  
6 to operate the Facility in full compliance with the requirements of the General Permit and the Clean  
7 Water Act, subject to any defenses available under the law.

8 **2. USA Waste’s Implementation of Specific Storm Water Best Management**  
9 **Practices.** Except as otherwise noted herein, within 30 days after the Court Approval Date, USA  
10 Waste shall complete or cause to be completed the implementations of the following storm water  
11 control measures/best management practices (“BMPs”):

12 (a) USA Waste shall improve the effectiveness of the Facility’s existing infiltration  
13 basin (“the Basin”) by removing sediment buildup therein and increasing the Basin’s overall  
14 capacity by deepening the Basin consistent with the conceptual drawings attached in Exhibit D,  
15 attached hereto, and incorporated herein by reference. As depicted in the drawings and as  
16 shown in the photographs in Exhibit D, USA Waste’ redesigned Basin includes one standpipe  
17 within the Basin with greater freeboard to increase the Basin’s storm water retention time.

18 (b) USA Waste shall install Triton Cartridge filters in all Facility storm water drain  
19 inlets and maintain them thereafter consistent with manufacturer’s recommendations;

20 (c) Throughout the Wet Season (i.e., October 1 through May 31) in each of the two  
21 Wet Seasons occurring during the term of this Consent Agreement (i.e., 2010-2011 and 2011-  
22 2012), USA Waste shall monitor local weather reporting in order to identify when the next  
23 anticipated qualifying storm event is likely to occur at the Facility;

24 (d) Throughout the Wet Season (i.e., October 1 through May 31) in each of the two  
25 Wet Seasons occurring during the term of this Consent Agreement (i.e., 2010-2011 and 2011-  
26 2012), USA Waste shall employ a regenerative sweeper to sweep the Facility’s impervious  
27

1 surfaces prior to the onset of any anticipated qualifying storm events in addition to sweeping on  
2 a quarterly basis, with one comprehensive Facility sweeping occurring during each of the  
3 months of January, March, July and October;

4 (e) USA Waste shall install structural controls necessary to direct all storm water  
5 flows away from the Facility's Public Drop Off Area and towards the Facility's storm water  
6 conveyance system and the Facility Basin, provided, however, if USA Waste determines that  
7 such structural controls will require material subsurface work (e.g., excavation, installation of  
8 drop inlets. Or additional subsurface piping), the schedule for completion shall be extended to  
9 90 days after the Court Approval Date or such later date as agreed to in writing by the Parties.

10 (f) USA Waste shall work with the adjacent auto wrecking facility to eliminate or  
11 reduce to the greatest extent feasible storm water run-on from the adjacent auto wrecking  
12 facility;

13 (g) During the Wet Season, USA Waste shall cover the Facility's Recyclable  
14 Stockpile Area (i.e., over the glass pit, the comingle pile and the plastic pit) with tarpaulins  
15 prior to and during rain events; and,

16 (h) USA Waste shall include a visual monitoring inspection form in the SWPPP and  
17 train Facility personnel responsible for conducting visual monitoring of storm water in the  
18 proper use of the form.

19 **3. SWPPP Amendments/Additional BMPs.** Within 30 days after the Court Approval  
20 Date, USA Waste shall formally amend the SWPPP for the Facility to incorporate all of the  
21 requirements of this Consent Agreement, as well as the revised Facility map attached hereto as  
22 Exhibit A.

23 **4. Sampling Frequency.** USA Waste shall collect and analyze or cause to be collected  
24 and analyzed samples from four (4) Qualifying Storm Events<sup>1</sup> (to the extent that such Qualifying

25 \_\_\_\_\_  
26 <sup>1</sup> "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are  
27 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
28 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 Storm Events occur), in each of the two Wet Seasons occurring during the term of this Consent  
2 Agreement (2010-2011 and 2011-2012). The storm water sample results shall be compared with the  
3 values set forth in Exhibit E, attached hereto, and incorporated herein by reference. If the results of  
4 any such samples exceed the parameter values set forth in Exhibit E, USA Waste shall comply with  
5 the “Action Memorandum” requirements set forth below.

6 **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents  
7 listed in Exhibit E by a laboratory accredited by the State of California. All samples collected from  
8 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold time” is  
9 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual  
10 constituents at or below the values specified on Exhibit E. Sampling results shall be provided to  
11 CSPA within TEN (10) business days of USA Waste’ receipt of the laboratory report from each  
12 sampling event pursuant to the Notice provisions below.

13 **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”;**  
14 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4  
15 above exceeds the evaluation levels set forth in Exhibit E, or if USA Waste fails to collect and analyze  
16 samples from four (4) storm events, as qualified in the General Permit, USA Waste shall prepare a  
17 written statement discussing the exceedance(s) and /or failure to collect and analyze samples from four  
18 (4) storm events, the possible cause and/or source of the exceedance(s), and additional measures that  
19 will be taken to address and eliminate the problem and future exceedances (“Action Memorandum”).  
20 The Action Memorandum shall be provided to CSPA not later than July 15<sup>th</sup> following the  
21 conclusion of each rainy season. Recognizing that a SWPPP is an ongoing iterative process meant  
22 to encourage innovative BMPs, such additional measures may include, but are not limited to, taking  
23 confirmation samples, further material improvements to the storm water collection and discharge  
24 system, changing the frequency of Facility sweeping, changing the type and extent of storm water  
25 filtration media or modifying other industrial activities or management practices at the Facility. Such  
26 additional measures, to the extent feasible, shall be implemented immediately and in no event later  
27 than 60 days after the due date of the Action Memorandum. Within THIRTY (30) days of  
28

1 implementation, the Facility SWPPP shall be amended to include all additional BMP measures  
2 designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum  
3 and suggest any additional pollution prevention measures it believes are appropriate; however,  
4 CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the  
5 Action Memorandum. Upon request by CSPA, USA Waste agrees to meet and confer in good faith (at  
6 the Facility, if requested by Plaintiff) regarding the contents and sufficiency of the Action  
7 Memorandum.

8           **7. Inspections During The Term Of This Agreement.** In addition to any site  
9 inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as  
10 set forth above, USA Waste shall permit representatives of CSPA to perform up to three (3) physical  
11 inspections of the Facility during the term of this Consent Agreement. These inspections shall be  
12 performed by CSPA's counsel and consultants and may include sampling, photographing, and/or  
13 videotaping. CSPA shall provide USA Waste with a copy of all sampling reports, photographs and/or  
14 video arising from such site inspections. CSPA shall provide at least forty-eight (48) hours advance  
15 notice of such physical site inspection, except that USA Waste shall have the right to deny access if  
16 circumstances would make the inspection unduly burdensome and pose significant interference with  
17 business operations or any party/attorney, or the safety of individuals. In such case, USA Waste shall  
18 specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by  
19 CSPA may proceed. USA Waste shall not make any alterations to Facility conditions during the  
20 period between receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's  
21 inspection that USA Waste would not otherwise have made but for receiving notice of CSPA's request  
22 to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any  
23 applicable laws or regulations. Nothing herein shall be construed to prevent USA Waste from  
24 continuing to implement any BMPs identified in the SWPPP during the period prior to an inspection  
25 by CSPA or at any time.

26           **8. USA Waste' Communications with Regional and State Boards.** During the term of  
27 this Consent Agreement, USA Waste shall provide CSPA with copies of all documents submitted to  
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1 the Regional Board or the State Board concerning storm water discharges from the Facility, including,  
2 but not limited to, all documents and reports submitted to the Regional Board and/or State Board as  
3 required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to  
4 the Notice provisions herein (at ¶ 24) and contemporaneously with USA Waste' submission to such  
5 agencies.

6 **9. SWPPP Amendments.** USA Waste shall provide CSPA with a copy of any  
7 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen  
8 (14) days of such amendment.

9 **II. MITIGATION, PAYMENT IN LIEU OF CIVIL PENALTIES, COMPLIANCE**  
10 **MONITORING AND FEES AND COSTS**

11 **10.** As mitigation of the Clean Water Act violations alleged in CSPA's First Amended  
12 Complaint, USA Waste agrees to pay the sum of \$30,000 within SEVEN (7) business days after the  
13 Court Approval Date to the Rose Foundation for Communities and the Environment (6008 College  
14 Avenue, Oakland, CA 94618, Attn: Tim Little) for projects to improve water quality in Comanche  
15 Creek, the Sacramento River and/or the Sacramento-San Joaquin-San Francisco Bay-River Delta. In  
16 lieu of any civil penalty assessment against USA Waste under Proposition 65, USA Waste agrees to  
17 pay the additional sum of \$10,000 to the Rose Foundation for Communities and the Environment  
18 within SEVEN (7) business days after the Court Approval Date. These additional funds shall be used  
19 to reduce exposures to toxic chemicals, and to increase consumer, worker and community awareness  
20 of the health hazards posed by toxic chemicals consistent with the statutory goals of Proposition 65.

21 **11.** USA Waste agrees to reimburse CSPA in the amount of \$32,500 to defray CSPA's  
22 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred  
23 as a result of investigating the activities at the Facility, bringing the Action and negotiating a  
24 resolution in the public interest. Such payment shall be made to the Law Offices of Andrew L.  
25 Packard Attorney-Client Trust Account within SEVEN (7) business days after the Court Approval  
26 Date.

27 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
28

1 expert, consultant and attorneys' fees and costs associated with monitoring USA Waste' compliance  
2 with this Consent Agreement, USA Waste agrees to contribute \$7,500 total to a compliance  
3 monitoring fund maintained by CSPA. Compliance monitoring activities may include, but shall not be  
4 limited to, site inspections, review of water quality sampling reports, review of annual reports,  
5 discussions with representatives of USA Waste concerning the Action Memoranda referenced above,  
6 and potential changes to compliance requirements herein, preparation for and participation in meet-  
7 and-confer sessions, water quality sampling and analysis, and compliance-related activities. Payment  
8 shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within  
9 SEVEN (7) business days of the Court Approval Date.

10 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

11 **13.** With the exception of the timelines set forth above for addressing exceedances of  
12 values specified on Exhibit E and Action Memoranda, if a dispute under this Consent Agreement  
13 arises, or either Party believes that a breach of this Consent Agreement has occurred, CSPA and USA  
14 Waste shall meet and confer within seven (7) days of receiving written notification from the other  
15 Party of a request for a meeting to determine whether a violation has occurred and to develop a  
16 mutually agreed upon plan, including implementation dates, to resolve the dispute. If CSPA and USA  
17 Waste fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven  
18 days have passed after the meet-and-confer occurred or should have occurred, either Party shall be  
19 entitled to all rights and remedies under the law, including filing a motion with the District Court of  
20 California, Eastern District, which shall retain jurisdiction over the Action for the limited purposes of  
21 enforcement of the terms of this Consent Agreement. CSPA and USA Waste shall be entitled to seek  
22 fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the  
23 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case  
24 law interpreting such provision.

25 **14. CSPA Waiver and Release.** Upon Court approval and entry of this Consent  
26 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
27 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their  
28

1 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their  
2 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other  
3 representatives (each a “Released Defendant Party”) from, and waives all claims which arise or could  
4 have arisen from or pertain to the Action, including, without limitation, all claims for injunctive relief,  
5 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others),  
6 costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action,  
7 for the alleged failure of USA Waste to comply with the Clean Water Act and Proposition 65 at the  
8 Facility, up to the Effective Date of this Consent Decree.

9           During the term of the Consent Agreement, CSPA agrees that neither CSPA, its officers,  
10 executive staff, or members of its governing board nor any organization under the control of CSPA, its  
11 officers, executive staff, or members of its governing board, will file any lawsuit against USA Waste  
12 seeking relief for alleged violations of the Clean Water Act, General Permit or Proposition 65. CSPA  
13 further agrees that, during the term of the Consent Agreement, CSPA will not support other lawsuits,  
14 by providing financial assistance, personnel time or other affirmative actions, against USA Waste that  
15 may be proposed by other groups that or individuals who would rely upon the citizen suit provision of  
16 the Clean Water Act to challenge USA Waste’s compliance with the Clean Water Act or General  
17 Permit, or rely on the private enforcement provisions of Proposition 65 to challenge USA Waste’s  
18 compliance with Proposition 65.

19           **15. Defendants’ Waiver and Release.** Defendants, on their own behalf and on behalf of  
20 those Released Defendant Parties under its control, releases CSPA (and its officers, directors,  
21 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and  
22 its agents, attorneys, and other representative) from, and waives all claims which arise or could have  
23 arisen from or pertain to the Action, including all claims for fees (including fees of attorneys, experts,  
24 and others), costs, expenses or any other sum incurred or claimed or which could have been claimed  
25 for matters associated with or related to the Action.

26           **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and  
27 Order that shall provide that:  
28

1 a. the First Amended Complaint and all claims therein shall be dismissed with  
2 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2); and

3 b. the Court shall retain and have jurisdiction over CSPA and USA Waste with  
4 respect to disputes arising under this Agreement.

5 Nothing in this Consent Agreement shall be construed as a waiver of any party's right to appeal from  
6 an order that arises from an action to enforce the terms of this Consent Agreement. The Parties agree  
7 that Defendant Mike Donohue shall be dismissed from this matter and that all obligations under this  
8 Consent Decree shall be those of USA Waste and CSPA, and not of Defendant Mike Donohue.

9 **IV. MISCELLANEOUS PROVISIONS**

10 17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged  
11 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants  
12 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,  
13 nor shall compliance with this Consent Agreement constitute or be construed as an admission by  
14 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph  
15 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under  
16 this Consent Agreement.

17 18. The Consent Agreement shall terminate on September 30, 2012.

18 19. The Consent Agreement may be executed in one or more counterparts which, taken  
19 together, shall be deemed to constitute one and the same document. An executed copy of this Consent  
20 Agreement shall be valid as an original.

21 20. In the event that any one of the provisions of this Consent Agreement is held by a court  
22 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

23 21. The language in all parts of this Consent Agreement, unless otherwise stated, shall be  
24 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed  
25 pursuant to California law, without regard to conflict of law principles.

26 22. The undersigned are authorized to execute this Consent Agreement on behalf of their  
27  
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1 respective parties and have read, understood and agreed to be bound by all of the terms and conditions  
2 of this Consent Agreement.

3       **23.** All agreements, covenants, representations and warranties, express or implied, oral or  
4 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.  
5 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other  
6 person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment,  
7 unless otherwise expressly provided for therein.

8       **24. Notices.** Any notices or documents required or provided for by this Consent  
9 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement  
10 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
11 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

12           Bill Jennings, Executive Director  
13           California Sportfishing Protection Alliance  
14           3536 Rainier Avenue  
15           Stockton, CA 95204  
16           E-mail: DeltaKeep@aol.com

17           With copies sent to:

18           Andrew L. Packard  
19           Erik M. Roper  
20           Law Offices of Andrew L. Packard  
21           100 Petaluma Boulevard North, Suite 301  
22           Petaluma, CA 94952  
23           Tel: (707) 763-7227  
24           E-mail: Andrew@packardlawoffices.com  
25           Erik@packardlawoffices.com

26           And to:

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

Any notices or documents required or provided for by this Consent Agreement or related thereto that

1 are to be provided to USA Waste pursuant to this Consent Agreement shall be sent by U.S. Mail,  
2 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
3 transmission to the email addresses listed below:

4 USA Waste of California, Inc.  
5 Attn: District Manager  
6 2569 Scott Avenue  
7 Chico, CA 95928  
8 Tel: 530.243.2562  
9 Fax: 530.345.5790

10 With copies sent to:

11 John Lynn Smith, Esq.  
12 Reed Smith, LLP  
13 101 Second Street, Suite 1800  
14 San Francisco, CA 94105  
15 Tel: 415.659.4863  
16 Fax: 415.391.8269  
17 E-mail: jlsmith@reedsmith.com

18 Andrew M. Kenefick, Esq.  
19 Waste Management Legal Department  
20 801 Second Avenue, Suite 614  
21 Seattle, WA 98104  
22 Tel: (206) 264-3062  
23 Fax: (866) 863-7961  
24 E-mail: akenefick@wm.com

25 Each Party shall promptly notify the other of any change in the above-listed contact information.

26 **25.** Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

27 **26.** Neither CSPA nor USA Waste shall be considered to be in default in the performance  
28 of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure  
event is any circumstances beyond the Party's control, including, without limitation, any act of God,  
war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event  
does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour  
storm event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden  
of establishing that it could not reasonably have been expected to avoid, and which by exercise of due  
diligence has been unable to overcome, the Force Majeure.

**27.** If for any reason the Court should decline to approve this Consent Agreement in the

1 form presented, the Parties shall use their best efforts to work together to modify the Consent  
2 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to  
3 modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall  
4 become null and void.

5 **28.** This Consent Agreement shall be deemed to have been drafted equally by the Parties,  
6 and shall not be interpreted for or against any Party on the ground that any such party drafted it.

7 **29.** This Consent Agreement and the attachments contain all of the terms and conditions  
8 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede  
9 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and  
10 communications of the Parties, whether oral or written, respecting the matters covered by this Consent  
11 Agreement. This Consent Agreement may be amended or modified only by a writing signed by CSPA  
12 and USA Waste or their authorized representatives, and then by order of the Court.

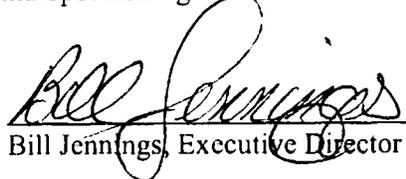
13 **30.** Except in case of an emergency but subject to the regulatory authority of any applicable  
14 governmental authority, any breach of or default under this Consent Agreement capable of being cured  
15 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,  
16 or within such other period approved in writing by the Party making such allegation, which approval  
17 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure  
18 or, if the breach or default can be cured but is not capable of being cured within such five (5) day  
19 period, has commenced and is diligently pursuing to completion such cure.

20 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for  
21 its approval and entry as an Order and Final Judgment, provided, however that, pursuant to 33 U.S.C.  
22 § 1365(c)(3), the Court shall not enter this Consent Decree until 45 days after receipt of a copy of the  
23 proposed Consent Decree by the Attorney General and the Administrator of the U.S. Environmental  
24 Protection Agency. If the Attorney General and the Administrator of the U.S. Environmental  
25 Protection Agency do not submit comments on the Consent Decree, the Parties shall notify the  
26 Court when the 45-day statutory review period has ended.

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Dated: 7 Nov. 2010

California Sportfishing Protection Alliance

By:   
Bill Jennings, Executive Director

Dated: \_\_\_\_\_

USA Waste of California, Inc.

By: \_\_\_\_\_  
Robert E. Longo  
Vice President and Assistant Secretary

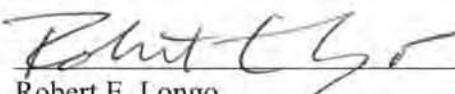
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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance  
  
By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: 11-5-10 USA Waste of California, Inc.  
  
By:   
Robert E. Longo  
Vice President and Assistant Secretary

Dated: \_\_\_\_\_ Mike Donohue  
  
By: \_\_\_\_\_  
Mike Donohue

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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_ USA Waste of California, Inc.

By: \_\_\_\_\_  
Robert E. Longo  
Vice President and Assistant Secretary

Dated: 11/5/2010 . Mike Donohue

By: Michael F. Donohue  
Mike Donohue

**EXHIBIT A – Facility Site Map**

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**EXHIBIT B – Clean Water Act Notice of Violation**

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## California Sportfishing Protection Alliance

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

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

March 4, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Mike Donohue  
District Manager  
USA Waste of California, Inc.  
2569 Scott Ave.  
Chico, CA 95928

USA Waste of California, Inc.  
c/o: C T Corporation System  
818 West Seventh St.  
Los Angeles, CA 90017

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

Dear Mr. Donohue:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the USA Waste of California, Inc. (hereafter, "USA Waste") waste transfer and recycling facility located at 2569 Scott Avenue in Chico, California ("the Facility"). The WDID identification number for the Facility is 5R04I016186. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Little Butte Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Based on publicly available documents, CSPA is informed and believes USA Waste commonly refers to, and may be formally doing business at the Facility as "North Valley Disposal" (hereafter, "NVD"). For purposes of this Notice of Violations and Intent to File Suit under the Act (hereafter, the "Notice"), unless otherwise noted, CSPA will refer to USA Waste and NVD as NVD within this Notice.

This letter addresses NVD's unlawful discharges of pollutants from the Facility to Little Butte Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the

**EXHIBIT B**

substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit”).

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

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, NVD is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against NVD under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

NVD owns and/or operates the Facility as a recycling and trucking facility in Chico, California. The Facility is primarily used as a waste transfer and recycling station; other current activities at the Facility include the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to, from and within the Facility.

On November 15, 2004, NVD submitted its notice of intent (“2004 NOI”) to comply with the terms of the General Industrial Storm Water Permit. The 2004 NOI reports that the Facility is classified solely as a local trucking facility under Standard Industrial Classification code 4212 (“Local Trucking”). The Facility collects and discharges storm water from its 3.7-acre industrial site through at least one discharge point indirectly to Little Butte Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium –

0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by NVD: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes are being discharged from the Facility are: aluminum – 0.75 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

NVD violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On May 18 and 23, 2007, the Regional Board sent NVD a letter reviewing NVD’s 2005-2006 Annual Report (“the Review Letter”). The Review Letter informed NVD that its 2005-2006 Annual Report evidenced that the Facility was discharging pollutants in excess of applicable EPA benchmarks. The Review Letter further ordered NVD to: (1) identify sources of pollutants at the Facility contributing to the exceedances; (2) review current BMPs; (3) modify existing BMPs or implement new BMPs to reduce or eliminate the discharge of pollutants in order to comply with the General Permit; (4) modify the Facility’s SWPPP and Monitoring Plan to document such changes; and (5) provide the Regional Board a response by July 1, 2007 addressing NVD’s efforts to implement the orders expressed in the Review Letter.

On June 30, 2007, NVD responded to the Review Letter indicating, among other things, that it believed that new BMPs it had implemented would reduce its discharges of iron in excess of EPA benchmarks. Notwithstanding NVD's belief in the likely effectiveness of its BMPs, based on its review of available public documents, CSPA is informed and believes that NVD substantially failed to comply with the Regional Board's orders expressed in the Review Letter to the extent that the Facility's currently employed BMPs continue to fail to reduce or eliminate the discharge of pollutants in excess of EPA benchmarks.

More recently, on December 15, 2009, the Regional Board sent NVD a letter reviewing NVD's 2008-2009 Annual Report ("the Second Review Letter"). The Second Review Letter informed NVD that its 2008-2009 Annual Report established that the Facility was discharging pollutants in excess of EPA benchmarks. Specifically, this letter states: "The levels of pollutants in your storm water samples indicate that the current BMPs implemented at your site are not sufficient to reduce pollutant concentrations below benchmark levels." The Second Review Letter ordered NVD to: (1) review previously submitted Annual Reports and identify the number of consecutive years that your facility has exceeded benchmark levels; (2) identify sources of pollutants at the Facility contributing to the exceedances; (3) review current BMPs; (4) modify existing BMPs or implement new BMPs to reduce or eliminate the discharge of pollutants in order to comply with the General Permit; (5) modify the Facility's SWPPP and Monitoring Plan to document such changes; and, (6) provide the Regional Board a response by January 10, 2010 addressing NVD's efforts to implement the orders expressed in the Second Review Letter.

On December 28, 2009, NVD responded to the Second Review Letter. Notwithstanding NVD's assertion in this response that it "modifies or adds additional BMPs as necessary," its response includes specific data to the contrary. To wit, its letter reports data from a storm water discharge sample collected on October 13, 2009 evidencing the fact that NVD continues to discharge pollutants in excess of benchmarks for, among other things, chemical oxygen demand (COD), aluminum (Al), zinc (Zn), iron (Fe) and lead (Pb). NVD's December 28, 2009 letter is entirely non-responsive as to items (1) – (6), requested by the Regional Board on the Second Review Letter. Based on its review of publicly available documents, CSPA is informed and believes that NVD continues to operate in violation of the General Permit. NVD's ongoing violations are discussed further below.

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

NVD has discharged and continues to discharge stormwater with unacceptable levels of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb) in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated

in the table of rain data attached hereto as Attachment A. NVD's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

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

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
4/8/2005	TSS	650 mg/L	100 mg/L
2/27/2006	TSS	130 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
4/8/2005	Fe	76,000 µg/L	1000 µg/L
1/10/2006	Fe	1200 µg/L	1000 µg/L
2/20/2008	Fe	2120 µg/L	1000 µg/L
10/31/2008	Fe	2610 µg/L	1000 µg/L
10/13/2009	Fe	2010 µg/L	1000 µg/L

**3. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of EPA Benchmark Value.**

Date	Parameter	Discharge	EPA Benchmark Value
4/8/2005	O&G	59 mg/L	15 mg/L

**4. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed Benchmark Value.**

Date	Parameter	Concentration in Discharge	Proposed Benchmark Value
4/08/2005	SC	280 µmhos/cm	200 µmhos/cm

**5. Discharges of Storm Water Containing Aluminum (Al) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/31/2008	Al	1.7 mg/L	0.75 mg/L
10/13/2009	Al	1.7 mg/L	0.75 mg/L

**6. Discharges of Storm Water Containing Zinc (Zn) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/31/2008	Zn	0.61 mg/L	0.117 mg/L
10/13/2009	Zn	0.35 mg/L	0.117 mg/L

**7. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/31/2008	COD	210 mg/L	120 mg/L

**8. Discharges of Storm Water Containing Lead (Pb) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/13/2009	Pb	3.01 mg/L	0.0816 mg/L

CSPA's investigation, including its review of NVD's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark Values and the Basin Plan's benchmark for pH, indicates that NVD has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Oil and Grease (O&G), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. NVD was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, NVD is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that NVD has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 4, 2005. CSPA alleges that such violations also have occurred and will occur

on other rain dates, including during every single significant rain event that has occurred since March 4, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that NVD has discharged storm water containing impermissible levels of TSS, O&G, Iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other unmonitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NVD is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 4, 2005.

**B. NVD Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon.

NVD’s 2004 NOI only designates the Facility as conforming to SIC 4212 – an SIC which does not require sampling of additional analytical parameters found in Table D of the General Permit. However, on November 2, 2000, NVD filed an NOI designating the Facility as conforming to both SIC 4212 and SIC 5093. SIC 5093 governs recycling facilities. CSPA’s investigation has revealed that the Facility continues to function as a recycling facility. NVD’s failure to accurately designate all SICs applicable to the Facility constitutes yet another violation of the Act and the General Permit. Facilities such as NVD, which are required to be designated under SIC 5093, are also required to sample for iron, lead, aluminum, copper, zinc and chemical oxygen demand. Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that NVD has failed to develop and implement an adequate Monitoring & Reporting Plan. First, NVD has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, NVD has failed to analyze its storm water samples for all additional analytical parameters required for facilities designated under SIC 5093 (i.e., iron, lead, aluminum, copper, zinc and chemical oxygen demand) during each of the past five years. Finally, CSPA is informed and believes that NVD has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NVD is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 4, 2005. These violations are set forth in greater detail below.

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

Based on its review of publicly available documents, CSPA is informed and believes that NVD has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that during the 2006-2007 wet season, NVD substantially failed to collect at least two storm water samples from the Facility's discharge point. Contrary to the assertion in NVD's 2006-2007 Annual Report that it sampled two storm events, NVD effectively sampled only one storm event. This failure to properly sample two storm events is evidenced by NVD's 2006-2007 Annual Report in its responses to Form 1 (Sampling & Analysis Results, First Storm Event). NVD's responses on this portion of the 2006-2007 Annual Report only report a result for Oil & Grease discharges.

NVD attempted to explain away its failure to properly sample two storm events during the 2006-2007 wet season by blaming the laboratory (See note on bottom of Form 1: "Broken sample bottle by lab."). However, this does not explain why NVD failed to even attempt to collect another sample prior to the expiration of the 2006-2007 wet season. It is worth noting that the lab report attached to NVD's 2006-2007 Annual Report reveals that the allegedly compromised sample collected during the first storm event on November 2, 2006, was received by the lab on December 30, 2006. Presumably if the lab broke the bottle it would have done so at some point near in time to December 30, 2006. Thus, NVD had approximately five months remaining in the 2006-2007 wet season in which to sample a discharge from a second storm event in compliance with the requirements of the General Permit and the Act. NVD's failure to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Further, CSPA notes that NVD's 2006-2007 Annual Report admits that NVD failed to collect a storm water sample from the first storm event of the wet season. Contrary to its response to Attachment Summary Item 4, NVD failed to attach any explanation for its failure to sample the first storm event of the 2006-2007 wet season. NVD's failure to sample the first qualifying storm event constitutes an additional and separate violation of the General Permit.

Continuing its practice of failing to collect the required minimum of two storm water samples from each discharge point, NVD also failed to collect two storm water samples during the 2008-2009 wet season. Based on CSPA's review of publicly available rainfall data from this region and a review of the historic rainfall monitoring station data, NVD's assertion that there were no qualifying storm events after October 31, 2008 during the 2008-2009 wet season simply strains credulity. For example, records from a nearby precipitation monitoring station indicate that on Monday, December 15, 2008, no less than 0.37 inches of rain fell less than three miles from the Facility. Further, December 15, 2008 was directly preceded by more than three days with no rain. Given the amount of precipitation recorded, coupled with the sufficient amount of dry days directly preceding it, Monday, December 15, 2008 was clearly a qualifying storm event at the Facility. As stated above, each storm season NVD failed to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by NVD. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

**2. NVD Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that NVD has failed to monitor for at least five other pollutants likely to be present in storm water discharges in significant quantities – chromium, manganese, mercury, nickel and nitrate+nitrite. NVD's failure to monitor these pollutants extends back at least until March 4, 2005. NVD's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. NVD Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since March 4, 2005.**

CSPA is informed and believes that available documents demonstrate NVD's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in

violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NVD is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since March 4, 2005.

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

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that NVD has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

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

NVD was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, NVD has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that NVD fails to implement BAT and BCT. NVD is subject to penalties for violations of the Order and the Act occurring since March 4, 2005.

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

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

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

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that NVD has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. In flagrant violation of the express wishes of the Regional Board in the communications to NVD discussed above, NVD has continuously failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. NVD has therefore been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that NVD fails to develop and implement an adequate SWPPP. NVD is subject to penalties for violations of the Order and the Act occurring since March 4, 2005.

**E. NVD Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, NVD is discharging elevated levels of total suspended solids, Iron (Fe), O&G, Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD) and Lead (Pb) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, NVD was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, NVD was aware of high levels of these pollutants prior to March 4, 2005. Likewise, NVD has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). NVD has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since March 4, 2005, and will continue to be in violation every day that NVD fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. NVD is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since March 4, 2005.

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

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

compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that NVD has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, NVD has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, NVD has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time NVD submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. NVD's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. NVD is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since March 4, 2005.

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

CSPA hereby puts Mike Donohue and USA Waste of California, Inc. 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 Mike Donohue and USA Waste of California, Inc. on notice that it intends to include those persons in this action.

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

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

### **V. Counsel.**

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

Andrew L. Packard, Esq.  
Erik Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, California 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

Notice of Violation and Intent To File Suit  
March 4, 2010  
Page 15 of 15

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

## **VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Mike Donohue and USA Waste of California, Inc. to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Mike Donohue and USA Waste of California, Inc. for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

**ATTACHMENT A**

**Notice of Intent to File Suit, NVD (Chico, CA)  
Significant Rain Events,\* March 4, 2005-March 4, 2010**

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

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

**ATTACHMENT A**

**Notice of Intent to File Suit, NVD (Chico, CA)  
Significant Rain Events,\* March 4, 2005-March 4, 2010**

Feb.	24	2009	Nov.	18	2009	Dec.	30	2009	Jan.	26	2010
Feb.	26	2009	Nov.	23	2009	Jan.	04	2010	Jan.	27	2010
Mar.	01	2009	Nov.	27	2009	Jan.	12	2010	Jan.	30	2010
Mar.	02	2009	Nov.	30	2009	Jan.	13	2010	Feb.	01	2010
Mar.	03	2009	Dec.	11	2009	Jan.	14	2010	Feb.	04	2010
Mar.	04	2009	Dec.	12	2009	Jan.	17	2010	Feb.	06	2010
Mar.	23	2009	Dec.	13	2009	Jan.	18	2010	Feb.	08	2010
April	09	2009	Dec.	14	2009	Jan.	19	2010	Feb.	09	2010
May	01	2009	Dec.	16	2009	Jan.	20	2010	Feb.	22	2010
May	02	2009	Dec.	20	2009	Jan.	21	2010	Feb.	24	2010
May	05	2009	Dec.	21	2009	Jan.	22	2010	Mar.	03	2010
Oct.	13	2009	Dec.	27	2009	Jan.	24	2010			
Oct.	14	2009	Dec.	29	2009	Jan.	25	2010			

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

**EXHIBIT C – Proposition 65 Notice of Violation**

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LAW OFFICES OF  
**ANDREW L. PACKARD**  
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

September 10, 2010

(See attached Certificate of Service)

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies and USA Waste of California, Inc.:

This office represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of California’s waters, including Comanche Creek, the San Joaquin River, the Sacramento River, and the Sacramento-San Joaquin Delta and their tributaries.

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code Section 25249.5 *et seq.* (also referred to as “Proposition 65”). This letter serves to provide you and the Violator with CSPA's notification of these violations. Pursuant to Section 25249.7(d) of the statute, CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies commence and diligently prosecute an action against these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is **USA WASTE OF CALIFORNIA, INC.** (hereinafter referred to as “the Violator”). These violations involve the discharge of lead and lead compounds, arsenic, cadmium, mercury and nickel to sources of drinking water. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from its facility located at 2569 Scott Avenue in Chico, California (“the Facility”).

The Violator is discharging lead and lead compounds, arsenic, cadmium, mercury and nickel from the Facility to designated sources of drinking water in violation of Proposition 65. The Violator is allowing storm water contaminated with lead and lead compounds, arsenic, cadmium, mercury and nickel to discharge from the Facility into City of Chico municipal storm water inlets, which then empty into Comanche Creek, thence to the Sacramento River.

Comanche Creek, and the Sacramento River are designated as sources of drinking water in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the “Basin Plan.”

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2005. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation. CSPA’s address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Andrew L. Packard  
Erik M. Roper  
Hallie Beth Albert  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Andrew@PackardLawOffices.com

Sincerely,



Andrew L. Packard  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 100 Petaluma Boulevard North, Suite 301, Petaluma, California 94952.

On September 10, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office for delivery by Certified Mail:

C T Corporation System, Agent for Service of Process  
USA Waste of California, Inc.  
818 W. 7<sup>th</sup> Street  
Los Angeles, CA 90017

Proposition 65 Enforcement Reporting  
California Attorney General's Office  
1515 Clay Street, Ste. 2000  
Oakland, CA 94612

On September 10, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** on the following parties by placing a true and correct copy thereof in a sealed envelope, and depositing it in a US Postal Service Office for delivery by First Class Mail:

The Honorable Michael L. Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Jan Scully  
Sacramento County District Attorney  
901 “G” Street  
Sacramento, CA 95814

The Honorable Robert Kochly  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553

The Honorable David W. Paulson  
Solano County District Attorney  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street, Suite 102  
Colusa, CA 95932

The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991

The Honorable Jeff W. Reisig  
Yolo County District Attorney  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

Executed on September 10, 2010, in Petaluma, California.

A handwritten signature in black ink, appearing to read "Erik Roper". The signature is written in a cursive style with a horizontal line underneath the name.

---

Erik M. Roper  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

**EXHIBIT D – Photographs and Conceptual drawing for Retention Basin**

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**NORTH VALLEY DISPOSAL DETENTION BASIN IMPROVEMENTS**

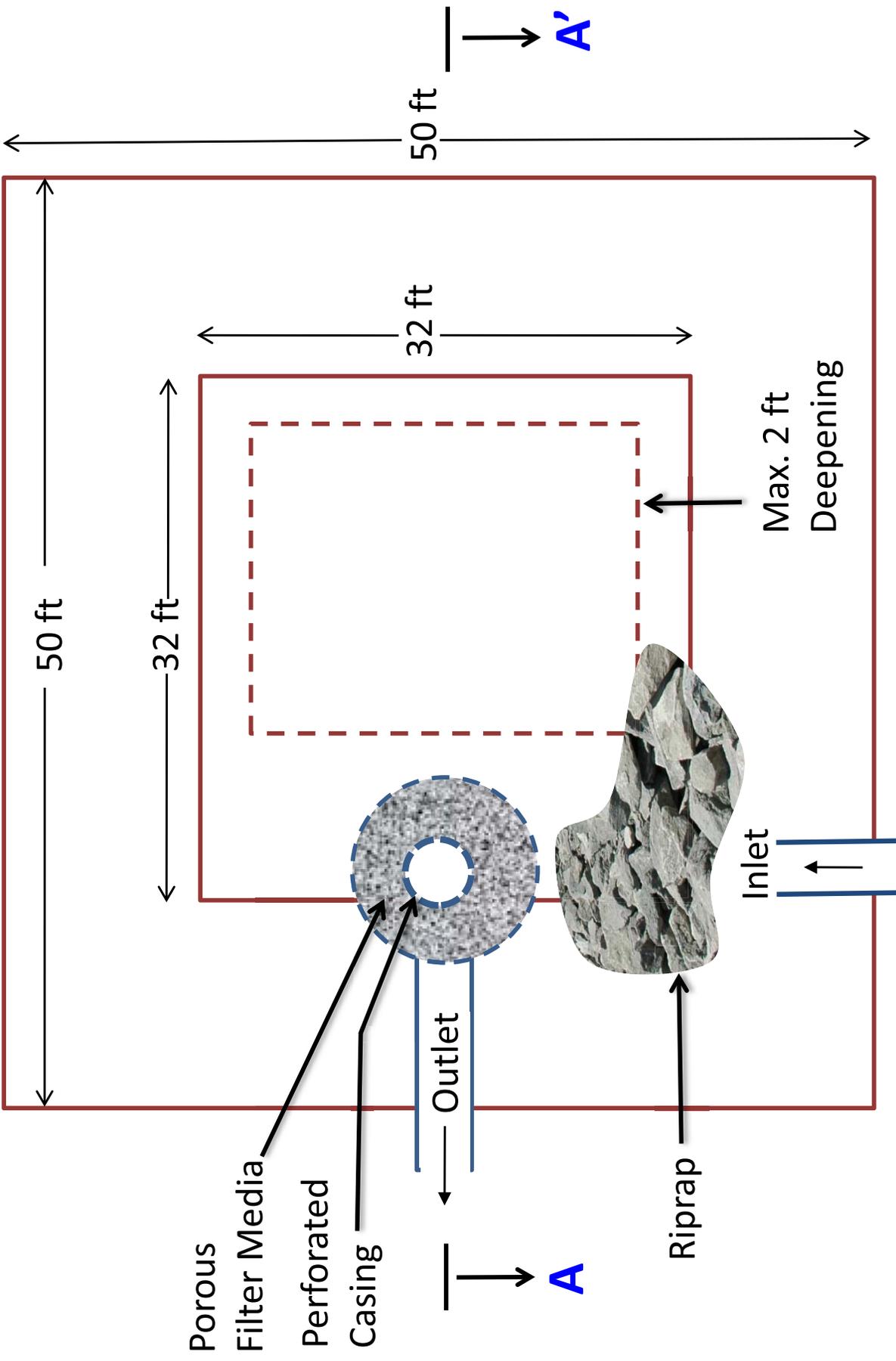
**Fall 2010**







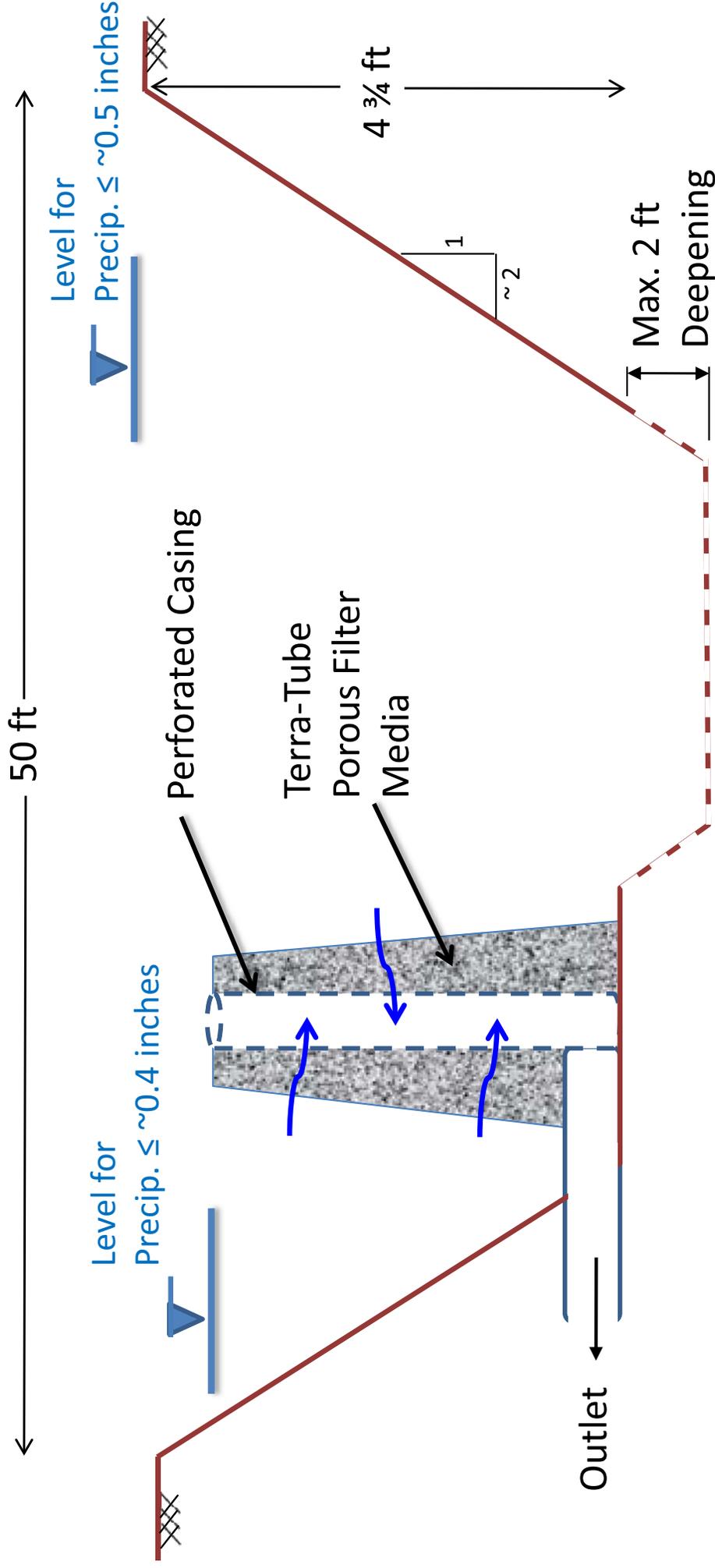
# Chico Site – Conceptual Layout (PLAN VIEW)



**NOT TO SCALE**

**EXHIBIT D**

# Chico Site – Conceptual Layout (Cross Section AA')



**NOT TO SCALE (VERTICAL SCALE IS EXAGGERATED)**

**EXHIBIT D**

**EXHIBIT E**

<b>Parameter</b>	<b>Value</b>
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Iron	1.0 mg/L
Aluminum	0.75 mg/L
Chemical Oxygen Demand	120 mg/L
Copper	0.0636 mg/L
Lead	0.0816 mg/L
Zinc	0.117 mg/L

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