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17 Attorneys for Plaintiffs
18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE and
19 STRAWBERRY CANYON STEWARDSHIP GROUP

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 CALIFORNIA SPORTFISHING
23 PROTECTION ALLIANCE, a non-profit
24 corporation; STRAWBERRY CANYON
25 STEWARDSHIP GROUP, an
26 unincorporated association,

27 Plaintiffs,

28 vs.

STEVEN CHU, in his official capacity as
Director, Lawrence Berkeley National
Laboratory; LAWRENCE BERKELEY
NATIONAL LABORATORY, a federal
agency,

Defendants.

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE and STRAWBERRY
CANYON STEWARDSHIP GROUP, by and through its counsel, hereby allege:

I. INTRODUCTION

1. This complaint seeks relief for Defendants' discharges of polluted storm water

FILED

APR 14 2008

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

ADR

Case No.

C08-01963

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

1 and non-storm water pollutants from Defendants' facility ("the Facility") into the waters of
2 the United States in violation of the Act and the State of California's "Waste Discharge
3 Requirements (WDRs) For Discharges of Storm Water Associated With Industrial Activities
4 Excluding Construction Activities," State Water Resources Control Board ("State Board")
5 Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ
6 and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System
7 ("NPDES") Permit No. CAS000001, (hereinafter "the Order" or "Permit"). Defendants'
8 violations of the discharge, treatment technology, monitoring requirements, and other
9 procedural and substantive requirements of the Permit and the Act are ongoing and
10 continuous.

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

19 3. The continuing decline in water quality in Bay area creeks and the San
20 Francisco Bay is a matter of serious public concern. The Bay and its tributaries are heavily
21 polluted water bodies. The entire Bay and all of its major tributaries, including all urban
22 creeks in the Bay area, have been identified by the State Board, the Regional Board, and
23 EPA as impaired water bodies under Section 303(d) of the Clean Water Act. 33 U.S.C. §
24 1313(d).

25 **II. JURISDICTION AND VENUE**

26 4. This is a civil suit brought under the citizen suit enforcement provisions of the
27 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or
28 "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter

1 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
2 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
3 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
4 actual controversy and further necessary relief based on such a declaration) and 33 U.S.C. §§
5 1319(b), 1365(a) (injunctive relief).

6 5. On or about January 11, 2008, Plaintiffs provided notice of Defendants'
7 violations of the Act, and of its intention to file suit against Defendants, to the Defendants;
8 the Administrator of the United States Environmental Protection Agency ("EPA"); the
9 Administrator of EPA Region IX; the Executive Director of the State Water Resources
10 Control Board ("State Board"); the Attorney General of the United States; and to the
11 Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region
12 ("Regional Board"). A true and correct copy of Plaintiffs' notice letter is attached as Exhibit
13 A, and is incorporated by reference.

14 6. More than sixty days have passed since notice was served on Defendants and
15 the State and federal agencies. Plaintiffs are informed and believe, and thereupon allege,
16 that neither the EPA nor the State of California has commenced or is diligently prosecuting a
17 court action to redress the violations alleged in this complaint.

18 7. Venue is proper in the Northern District of California pursuant to Section
19 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
20 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in
21 Oakland, California because the sources of the violations are located within Alameda
22 County, California.

23 **III. PARTIES**

24 8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
25 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
26 California with its main office in Stockton, California. CSPA has approximately 2,000
27 members who live, recreate and work in and around waters of the State of California,
28 including Strawberry Creek and the San Francisco Bay. CSPA is dedicated to the

1 preservation, protection, and defense of the environment, the wildlife and the natural
2 resources of all waters of California. To further these goals, CSPA actively seeks federal
3 and state agency implementation of the Act and other laws and, where necessary, directly
4 initiates enforcement actions on behalf of itself and its members.

5 9. Members of CSPA reside in and around the Bay and enjoy using the Bay for
6 recreation and other activities. Members of CSPA use and enjoy the waters into which
7 Defendants have caused, are causing, and will continue to cause, pollutants to be discharged.
8 Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife,
9 hike, and engage in scientific study including monitoring activities, among other things.
10 Defendants' discharges of pollutants threaten or impair each of those uses or contribute to
11 such threats and impairments.

12 10. Plaintiff STRAWBERRY CANYON STEWARDSHIP GROUP ("SCSG") is an
13 unincorporated association comprised of residents of Berkeley and nearby areas who have
14 organized themselves to address environmental and cultural threats and impacts in Strawberry
15 Canyon, including concern for the health and well-being of Strawberry Creek. SCSG's
16 members use and enjoy Strawberry Creek and the San Francisco Bay to hike, bird watch, view
17 wildlife, sail, boat, and engage in aesthetic and cultural reflection important to their well-
18 being and quality of life. Defendants' discharges of pollutants threaten or impair SCSG's
19 members use and enjoyment of Strawberry Creek and the Bay.

20 11. Thus, the interests of CSPA's and SCSG's members have been, are being, and
21 will continue to be adversely affected by Defendants' failure to comply with the Clean Water
22 Act and the Permit. The relief sought herein will redress the harms to Plaintiffs caused by
23 Defendants' activities.

24 12. Plaintiffs are informed and believe, and thereupon allege, that Defendant
25 STEVEN CHU is the Director of the Lawrence Berkeley National Laboratory, a U.S.
26 Department of Energy Laboratory, in Berkeley, California. Mr. Chu's duties include the
27 oversight of a \$521-million budget, management of a workforce of approximately 4,000, and
28 general management of the Lab including compliance with applicable environmental laws.

1 13. Plaintiffs are informed and believe, and thereupon allege, that Defendant The
2 LAWRENCE BERKELEY NATIONAL LABORATORY (hereinafter "LBNL") is a federal
3 national laboratory owned by the US Department of Energy that conducts unclassified
4 research across a wide range of scientific disciplines.

5 **IV. STATUTORY BACKGROUND**

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

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

17 16. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
18 U.S. EPA has authorized California's State Board to issue NPDES permits including general
19 NPDES permits in California.

20 17. The State Board elected to issue a statewide general permit for industrial storm
21 water discharges. The State Board issued the General Permit on or about November 19,
22 1991, modified the General Permit on or about September 17, 1992, and reissued the
23 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
24 Act, 33 U.S.C. § 1342(p).

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

28 19. The General Permit contains several prohibitions. Effluent Limitation B(3) of

1 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
2 discharges through implementation of the Best Available Technology Economically
3 Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional
4 Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include
5 both nonstructural and structural measures. General Permit, Section A(8). Discharge
6 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-
7 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
8 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to
9 any surface or ground water that adversely impact human health or the environment.
10 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that
11 cause or contribute to an exceedance of any applicable water quality standards contained in a
12 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

13 20. EPA has established Parameter Benchmark Values as guidelines for
14 determining whether a facility discharging industrial storm water has implemented the
15 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
16 Parameter Benchmark Values for the following parameters, among others: total suspended
17 solids – 100 mg/L; iron – 1.0 mg/L; magnesium – 0.0636 mg/L; zinc – 0.117 mg/L;
18 aluminum – 0.75 mg/L; nitrate + nitrite nitrogen – 0.68 mg/L; and chemical oxygen demand
19 – 120 mg/L. The California State Water Resources Control Board has proposed a
20 Benchmark Value for electrical conductance of 200 μ mhos/cm.

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

27 22. Dischargers must develop and implement a Storm Water Pollution Prevention
28 Plan ("SWPPP"). The SWPPP must describe storm water control equipment and measures

1 that comply with the BAT and BCT standards. The General Permit requires that an initial
2 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
3 among other requirements, identify and evaluate sources of pollutants associated with
4 industrial activities that may affect the quality of storm and non-storm water discharges from
5 the facility and identify and implement site-specific best management practices ("BMPs") to
6 reduce or prevent pollutants associated with industrial activities in storm water and
7 authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must
8 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
9 individuals and their responsibilities for developing and implementing the SWPPP (Section
10 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
11 pattern and nearby water bodies, the location of the storm water collection, conveyance and
12 discharge system, structural control measures, impervious areas, areas of actual and potential
13 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
14 handled and stored at the site (Section A(5)); a description of potential pollutant sources
15 including industrial processes, material handling and storage areas, dust and particulate
16 generating activities, and a description of significant spills and leaks, a list of all non-storm
17 water discharges and their sources, and a description of locations where soil erosion may
18 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
19 at the Facility and a description of the BMPs to be implemented at the Facility that will
20 reduce or prevent pollutants in storm water discharges and authorized non-storm water
21 discharges, including structural BMPs where non-structural BMPs are not effective (Section
22 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where
23 necessary (Section A(9),(10)).

24 23. The General Permit requires that "Facility operators shall investigate the
25 facility to identify all non-storm water discharges and their sources. As part of this
26 investigation, all drains (inlets and outlets) shall be evaluated to identify whether they
27 connect to the storm drain system. All non-storm water discharges shall be described. This
28 shall include the source, quantity, frequency, and characteristics of the non-storm water

1 discharges and associated drainage area.” Section A(6)(a)(v).

2 24. The General Permit authorizes non-storm water discharges providing that the
3 non-storm water discharges are in compliance with Regional Board requirements; that the
4 non-storm water discharges are in compliance with local agency ordinances and/or
5 requirements; that BMPs are included in the SWPPP to (1) prevent or reduce the contact of
6 non-storm water discharges with significant materials or equipment and (2) minimize, to the
7 extent practicable, the flow or volume of non-storm water discharges; that the non-storm
8 water discharges do not contain significant quantities of pollutants; and that the monitoring
9 program includes quarterly visual observations of each non-storm water discharge and its
10 sources to ensure that BMPs are being implemented and are effective (D. Special
11 Conditions.). Section B(3) of the General Permit requires dischargers to conduct visual
12 observations of all drainage areas for the presence of non-storm water discharges, to observe
13 the non-storm water discharges, and maintain records of such observations.

14 25. Section C(11)(d) of the General Permit’s Standard Provisions requires
15 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
16 Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water
17 controls including the preparation of an evaluation report and implementation of any
18 additional measures in the SWPPP to respond to the monitoring results and other inspection
19 activities.

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

25 27. As part of their monitoring program, dischargers must identify all storm water
26 discharge locations that produce a significant storm water discharge, evaluate the
27 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
28 measures set out in the SWPPP are adequate and properly implemented. Dischargers must

1 conduct visual observations of these discharge locations for at least one storm per month
2 during the wet season (October through May) and record their findings in their Annual
3 Report. Dischargers must also collect and analyze storm water samples from at least two
4 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall
5 collect storm water samples during the first hour of discharge from (1) the first storm event
6 of the wet season, and (2) at least one other storm event in the wet season. All storm water
7 discharge locations shall be sampled." Section B(5)(c)(i)-(iii) requires dischargers to sample
8 and analyze during the wet season for basic parameters, such as pH, total suspended solids
9 ("TSS"), electrical conductance, and total organic content ("TOC") or oil and grease
10 ("O&G"), certain industry-specific parameters, and toxic chemicals and other pollutants
11 likely to be in the storm water discharged from the facility. Dischargers must also conduct
12 dry season visual observations to identify sources of non-storm water pollution.

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

19 29. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
20 enforcement actions against any "person," including individuals, corporations, the United
21 States or any other governmental instrumentality or agency to the extent permitted by the
22 eleventh amendment to the Constitution for violations of NPDES permit requirements. 33
23 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is
24 authorized by 33 U.S.C. § 1365(a).

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

28 31. The Basin Plan includes a narrative toxicity standard which states that "[a]ll

1 waters shall be maintained free of toxic substances in concentrations that are lethal to or that
2 produce other detrimental responses in aquatic organisms.”

3 32. The Basin Plan provides that “[w]aters shall not contain suspended material in
4 concentrations that cause nuisance or adversely affect beneficial uses” and that “[w]aters
5 shall not contain biostimulatory substances in concentrations that promote aquatic growths to
6 the extent that such growths cause nuisance or adversely affect beneficial uses.”

7 33. The Basin Plan limits floating material, stating that “[w]aters shall not contain
8 floating material, including solids, liquids, foams, and scum, in concentrations that cause
9 nuisance or adversely affect beneficial uses.”

10 34. The Basin Plan dictates that “[w]aters shall be free of changes in turbidity that
11 cause nuisance or adversely affect beneficial uses.”

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

16 36. The Basin Plan establishes a Freshwater Water Quality Objective for zinc of
17 0.120 mg/L (4-day average and 1-hour average).

18 37. The Basin Plan establishes Water Quality Objectives for Municipal Supply for
19 aluminum of 1.0 mg/L, iron of 0.3 mg/L, and zinc of 5.0 mg/L.

20 38. EPA has established numeric water quality standards for priority toxic
21 pollutants, including criteria intended to protect aquatic life. For zinc, the standard is 0.120
22 mg/L (at a hardness of 100 mg/L). EPA has also established a numeric water quality
23 criterion for aluminum of 0.087 mg/L.

24 **V. STATEMENT OF FACTS**

25 39. Defendants Steven Chu and the Lawrence Berkeley National Laboratory
26 operate a federally funded research and development center, located at 1 Cyclotron Road in
27 Berkeley, California. The Facility is engaged in, *inter alia*, metal finishing, hazardous waste
28 treatment, gasoline dispensing, transportation, and car washing. The Facility or portions

1 thereof, fall within the Standard Industrial Classification ("SIC") Codes 8733, 3499, 4214,
2 4953, 5541, 4789, and 7542. The Facility covers 203 acres, the majority of which is
3 unpaved. Plaintiffs allege that there are at least 80 buildings located on the property. On
4 information and belief, Plaintiffs allege that metal finishing, hazardous waste storage and
5 treatment, gasoline dispensing, transportation, and car washing is conducted outside of these
6 buildings.

7 40. Defendants channel and collect storm water falling on the Facility through
8 various storm drains. The site-wide storm drain system discharges into the North Fork of
9 Strawberry Creek watershed on the north side of the Facility and into Strawberry Creek on
10 the south side. The North Fork of Strawberry Creek watershed is 170 acres comprised of
11 steep canyons and hillsides covered with brush, trees, and grass. The area contains, *inter*
12 *alia*, LBNL buildings, parking lots, paved areas and other improvements. The southerly and
13 easterly portions of the Facility discharge to Chicken Creek, Ten-Inch Creek, Ravine Creek,
14 and Cafeteria Creek, as well as to other tributaries, and then to the [South Fork of]
15 Strawberry Creek. The north and south forks of Strawberry Creek traverse the UC campus
16 and join at the western side of the campus near Oxford Street. These waters are then
17 directed into the City of Berkeley's Oxford and Center Streets culvert. The runoff flows
18 through the City of Berkeley's storm drainage system and empties into San Francisco Bay.

19 41. Significant industrial activities at the site take place outside and are exposed to
20 rainfall. These activities include metal finishing and storage of metallic materials; the
21 storage, handling, and disposal of waste material, including hazardous waste and
22 radionuclides; various fabrication and construction activities; gasoline dispensing; car and
23 truck washing; outside storage or handling of equipment containing chemicals; outside
24 storage or handling of materials in aboveground storage tanks; and the storage and use of
25 vehicles and equipment for materials handling. Loading and delivery of materials occurs
26 outside. Trucks enter and exit the Facility directly from and to a public road. Plaintiffs
27 allege on information and belief that some of the exposed surfaces at the Facility where
28 industrial activities occur are unpaved and sediment and other materials are disturbed as a

1 result of the storage and disposal processes. These areas are exposed to storm water and
2 storm flows due to the lack of overhead coverage, berms and other storm water controls.

3 42. Industrial machinery, heavy equipment and vehicles are operated and stored at
4 the Facility in areas exposed to storm water flows. Plaintiffs are informed and believe, and
5 thereupon allege, that such machinery and equipment leak contaminants such as oil, grease,
6 diesel fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows.

7 43. Groundwater drainage at the Facility flows through both pumped vertical and
8 free-flowing horizontal wells called hydraugers. Plaintiffs allege that discharge from the
9 majority of the hydraugers flows directly to the Facility's storm drain system.

10 44. Plaintiffs are informed and believe, and thereupon allege that the storm water
11 flows easily over the surfaces of the Facility, collecting suspended sediment, dirt, oils,
12 grease, metals and other pollutants as it flows toward the storm water drains. Storm water
13 and any pollutants contained in that storm water entering the drains flows directly to
14 Strawberry Creek or its tributaries.

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

23 46. Since at least November 6, 2003, Defendants have taken samples or arranged
24 for samples to be taken of storm water discharges at the Facility. The sample results were
25 reported in the Facility's annual reports submitted to the Regional Board. Defendants
26 certified each of those annual reports pursuant to Sections A and C of the General Permit.

27 47. Since at least November 6, 2003, the Facility has detected total suspended
28 solids, chemical oxygen demand, magnesium, nitrate + nitrite nitrogen, zinc, aluminum, iron,

1 and electrical conductance in the storm water monitoring they conducted for the Facility.
2 Plaintiffs notice letter listed out all reported instances of the Facility's monitoring of
3 representative storm water discharge samples. Levels of these pollutants detected in these
4 storm water samples by the Facility have been in excess of EPA's numeric parameter
5 benchmark values. Levels of these pollutants detected in storm water samples by the
6 Facility have been in excess of water quality standards established in the Basin Plan.

7 48. The levels of total suspended solids in storm water detected by the Facility
8 have exceeded the benchmark value for total suspended solids of 100 mg/L established by
9 EPA. For example, on October 5, 2006, the level of suspended solids measured by
10 Defendants in the Facility's storm water sample was 280 mg/L. That level of total
11 suspended solids is nearly three times the benchmark value for suspended solids established
12 by EPA.

13 49. The levels of chemical oxygen demand in storm water detected by the Facility
14 have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established
15 by EPA. For example, on October 5, 2006, the level of chemical oxygen demand measured
16 by Defendants in the Facility's storm water sample was 500 mg/L. That level of chemical
17 oxygen demand is over four times the benchmark value for chemical oxygen demand
18 established by EPA.

19 50. The levels of magnesium in storm water detected by the Facility have
20 exceeded the benchmark value for magnesium of 0.0636 mg/L established by EPA. For
21 example, on February 7, 2007, the level of magnesium measured by Defendants in the
22 Facility's storm water sample was 33 mg/L. That level of magnesium is over 518 times the
23 benchmark value for magnesium established by EPA.

24 51. The levels of nitrate + nitrite nitrogen in storm water detected by the Facility
25 have exceeded the benchmark value for nitrate + nitrite nitrogen of 0.68 mg/L established by
26 EPA. For example, on October 5, 2006, the level of nitrate + nitrite nitrogen measured by
27 Defendants in the Facility's storm water sample was 17 mg/L. That level of nitrate + nitrite
28 nitrogen is 25 times the benchmark value for nitrate + nitrite nitrogen established by EPA.

1 52. The levels of zinc in storm water detected by the Facility have exceeded the
2 benchmark value for zinc of 0.117 mg/L established by EPA. For example, on October 26,
3 2005, the level of zinc measured by Defendants in the Facility's storm water sample was
4 0.27 mg/L. That level of zinc is over twice the benchmark value for zinc established by
5 EPA.

6 53. The levels of aluminum in storm water detected by the Facility have exceeded
7 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on
8 October 5, 2006, the level of aluminum measured by Defendants in the Facility's storm
9 water sample was 3.2 mg/L. That level of aluminum is over four times the benchmark value
10 for aluminum established by EPA.

11 54. The levels of iron detected in storm water by the Facility have exceeded the
12 benchmark value for iron of 1.0 mg/L established by EPA. For example, on October 5,
13 2006, the level of iron measured by Defendants in the Facility's storm water sample was 4.1
14 mg/L. That level of iron is over four times the benchmark value for iron established by
15 EPA.

16 55. The electrical conductance levels detected in storm water by the Facility have
17 been greater than the numeric water quality standards applicable to electrical conductance in
18 California. The electrical conductance levels detected by the Facility in storm water have
19 been greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the State Board. For
20 example, on October 5, 2006, the electrical conductance level measured by Defendants in the
21 Facility's storm water sample was 850 $\mu\text{mho/cm}$. That electrical conductance level is over
22 four times the State Board's proposed benchmark value.

23 56. On information and belief, Plaintiffs allege that since at least November 6,
24 2003, Defendants have failed to implement BAT and BCT at the Facility for its discharges of
25 total suspended solids, chemical oxygen demand, magnesium, nitrate + nitrite nitrogen, zinc,
26 aluminum, iron, electrical conductance, and other pollutants. Section B(3) of the General
27 Permit requires that Defendants implement BAT for toxic and nonconventional pollutants
28 and BCT for conventional pollutants by no later than October 1, 1992. As of the date of this

1 Complaint, Defendants have failed to implement BAT and BCT.

2 57. On information and belief, Plaintiffs allege that since at least October 1, 1992,
3 Defendants have failed to implement an adequate Storm Water Pollution Prevention Plan
4 ("SWPPP") for the Facility. Plaintiffs are informed and believe, and thereupon allege, that the
5 SWPPP prepared for the Facility does not set forth site-specific best management practices
6 for the Facility that are consistent with BAT or BCT for the Facility. Plaintiffs are informed
7 and believe, and thereupon allege, that the SWPPP prepared for the Facility does not include
8 adequate structural pollutant control measures employed by the Defendants or an adequate
9 description of best management practices to be implemented at the Facility to reduce
10 pollutant discharges. According to information available to CSPA and SCSG, Defendants'
11 SWPPP has not been evaluated to ensure effectiveness and revised where necessary to
12 further reduce pollutant discharges. Plaintiffs are informed and believe, and thereupon allege,
13 that the SWPPP does not include each of the mandatory elements required by Section A of
14 the General Permit. Plaintiffs are informed and believe, and thereupon allege, that the
15 SWPPP does not contain an accurate map that clearly delineates the boundaries of the
16 Facility, the flow of storm water throughout the Facility, and the areas of soil erosion.
17 Plaintiffs are informed and believe, and thereupon allege, that the SWPPP does not contain
18 adequate BMPs to reduce or prevent pollutants associated with industrial activities in
19 authorized non-storm water discharges, to prevent or reduce the contact of non-storm water
20 discharges with significant materials or equipment, and to minimize, to the extent
21 practicable, the flow or volume of non-storm water discharges.

22 58. Information available to CSPA and SCSG indicates that as a result of these
23 practices, storm water containing excessive pollutants is being discharged during rain events
24 from the Facility directly to channels that flow into Strawberry Creek and its tributaries.
25 Strawberry Creek flows directly to the San Francisco Bay.

26 59. Strawberry Creek has been identified by the Regional Board, State Board and
27 federal EPA as impaired by pesticides. The San Francisco Bay has been identified by the
28 Regional Board, State Board and federal EPA as impaired for several pollutants, including

1 mercury and unknown toxicity.

2 60. Plaintiffs are informed and believe, and thereupon allege, that pollutants
3 discharged by the Facility in its storm water are contributing to violations of water quality
4 standards that apply to Strawberry Creek and its tributaries and the San Francisco Bay.
5 Plaintiffs are informed and believe, and thereupon allege, that Defendants are discharging
6 total suspended solids, chemical oxygen demand, magnesium, nitrate + nitrite nitrogen, zinc,
7 aluminum, iron, electrical conductance and other un-monitored pollutants that are causing or
8 contributing to exceedances of applicable water quality standards in Strawberry Creek.
9 Defendants are contributing to violations of water quality standards including, but not
10 limited to, the narrative water quality standard for toxicity, turbidity, and heavy metals.

11 61. Plaintiffs are informed and believe, and thereupon allege, that, Defendants have
12 failed and continue to fail to alter the Facility's SWPPP and site-specific BMPs consistent
13 with Section A(9) of the General Permit.

14 62. Plaintiffs are informed and believe that Defendants failed to submit to the
15 Regional Board a true and complete annual report certifying compliance with the General
16 Permit since at least November 6, 2003. Pursuant to Sections A(9)(d), B(14), and C(9), (10)
17 of the General Permit, Defendants must submit an annual report, that is signed and certified
18 by the appropriate corporate officer, outlining the Facility's storm water controls and
19 certifying compliance with the General Permit. Plaintiffs are informed and believe, and
20 thereupon allege, that Defendants have signed incomplete annual reports that purported to
21 comply with the General Permit when there was significant noncompliance at the Facility.

22 63. Information available to Plaintiffs indicates that Defendants have not fulfilled
23 the requirements set forth in the General Permit for discharges from the Facility due to the
24 continued discharge of polluted storm water. Plaintiffs are informed and believe, and
25 thereupon allege, that all of the violations alleged in this Complaint are ongoing and
26 continuing.

27 ///

28 ///

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

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

6 64. Plaintiffs re-allege and incorporate Paragraphs 1-63, as if fully set forth herein.

7 65. The General Permit's SWPPP requirements and Effluent Limitation B(3)
8 require dischargers to reduce or prevent pollutants in their storm water and non-storm water
9 discharges through implementation of BAT for toxic and nonconventional pollutants and
10 BCT for conventional pollutants. Defendants have failed to implement BAT and BCT at the
11 Facility for its discharges of storm water, non-storm water and various pollutants including
12 total suspended solids, chemical oxygen demand, magnesium, nitrate + nitrite nitrogen, zinc,
13 aluminum, iron, electrical conductance and other un-monitored pollutants in violation of
14 Effluent Limitation B(3) of the General Permit.

15 66. Each day since October 1, 1992 that Defendants have failed to develop and
16 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
17 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

18 67. Defendants have been in violation of the BAT/BCT requirements every day
19 since October 1, 1992. Defendants continue to be in violation of the BAT/BCT requirements
20 each day that it fails to develop and fully implement BAT and BCT at the Facility.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Prepare, Implement, Review, and Update**
23 **an Adequate Storm Water Pollution Prevention Plan**
24 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

25 68. Plaintiffs re-allege and incorporate Paragraphs 1-67, as if fully set forth herein.

26 69. Section A and Provision E of the General Permit requires dischargers of storm
27 water associated with industrial activity to have developed and be implementing an adequate
28 SWPPP no later than October 1, 1992 and to conduct comprehensive compliance evaluations
of the facility.

70. Defendants have failed to develop and implement an adequate SWPPP for the
Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for the

1 Facility is evidenced by, *inter alia*, Defendants' outdoor storage of various materials, without
2 appropriate best management practices; the continued exposure of significant quantities of
3 various materials to storm water flows; the continued exposure of waste resulting from the
4 operation or maintenance of vehicles at the site; the failure to either treat storm water prior to
5 discharge or to implement effective containment practices; the failure to include adequate
6 BMPs in the SWPPP to reduce or prevent pollutants associated with industrial activities in
7 authorized non-storm water discharges; the failure to include adequate BMPs or conduct the
8 requisite comprehensive site evaluation based on insufficient monitoring; and the continued
9 discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark
10 values.

11 71. Defendants have failed to update the Facility's SWPPP in response to the
12 analytical results of the Facility's storm water monitoring.

13 72. Each day since October 1, 1992 that Defendants have failed to develop,
14 implement and update an adequate SWPPP for the Facility is a separate and distinct violation
15 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

16 73. Defendants have been in violation of the SWPPP requirements every day since
17 October 1, 1992. Defendants continue to be in violation of the SWPPP requirements each day
18 that it fails to develop and fully implement an adequate SWPPP for the Facility.

19 **THIRD CAUSE OF ACTION**

20 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

21 74. Plaintiffs re-allege and incorporates Paragraphs 1-73, inclusive, as if fully set
22 forth herein.

23 75. Section B of the General Permit requires dischargers of storm water associated
24 with industrial activity to have developed and be implementing a monitoring and reporting
25 program (including, *inter alia*, sampling and analysis of discharges) no later than October 1,
26 1992.

27 76. Defendants have failed to develop and implement an adequate monitoring and
28 reporting program for the Facility.

1 77. Each day since October 1, 1992 that Defendants have failed to develop and
2 implement an adequate monitoring and reporting program for the Facility in violation of the
3 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §
4 1311(a). The absence of requisite monitoring and analytical results are ongoing and
5 continuous violations of the Act.

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

10 78. Plaintiffs re-allege and incorporates Paragraphs 1-77, inclusive, as if fully set
11 forth herein.

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

19 80. Plaintiffs are informed and believe, and thereupon allege, that since at least
20 November 6, 2003, Defendants have been discharging polluted storm water from the Facility
21 directly to channels that flow into Strawberry Creek, and then into the San Francisco Bay, in
22 violation of the Discharge Prohibition A(2) of the General Permit.

23 81. During every rain event, rainwater flows freely over exposed materials, waste
24 products, and other accumulated pollutants at the Facility, becoming contaminated with these
25 pollutants. The rainwater then flows untreated from the Facility into channels that flow into
26 Strawberry Creek and then into the San Francisco Bay.

27 82. Plaintiffs are informed and believe, and thereupon allege, that these discharges
28 of contaminated storm water are causing pollution and contamination of the waters of the
United States in violation of Discharge Prohibition A(2) of the General Permit.

83. Plaintiffs are informed and believe, and thereupon allege, that these discharges of contaminated storm water are adversely affecting human health and the environment in violation of Receiving Water Limitation C(1) of the General Permit.

84. Plaintiffs are informed and believe, and thereupon allege, that these discharges of contaminated storm water are contributing to the violation of the applicable water quality standards in a Statewide Water Quality Control Plan and/or the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

85. Every day since at least November 6, 2003, that Defendants have discharged and continues to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

FIFTH CAUSE OF ACTION

False Certification of Compliance In Annual Report (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

86. Plaintiffs re-allege and incorporate Paragraphs 1-85, as if fully set forth herein.

87. Defendants have falsely certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least June 2003.

88. Each day since at least June 5, 2003 that Defendants have falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the General Permit's certification requirement each day that it maintains its false certification of its compliance with the General Permit.

VII. RELIEF REQUESTED

Wherefore, Plaintiffs respectfully request that this Court grant the following relief:

- a. Declare Defendants to have violated and to be in violation of the Act as alleged herein;
- b. Enjoin Defendants from discharging polluted storm water from the Facility unless authorized by the Permit;
- c. Enjoin Defendants from further violating the substantive and procedural

1 requirements of the Permit;

2 d. Order Defendants to immediately implement storm water pollution control
3 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
4 pollutants in the Facility's storm water from contributing to violations of any water quality
5 standards;

6 e. Order Defendants to comply with the Permit's monitoring and reporting
7 requirements, including ordering supplemental monitoring;

8 f. Order Defendants to prepare a SWPPP consistent with the Permit's
9 requirements, including a legally sufficient monitoring program, and implement procedures to
10 regularly review and update the SWPPP;

11 g. Order Defendants to provide Plaintiff with reports documenting the quality
12 and quantity of their discharges to waters of the United States and their efforts to comply with
13 the Act and the Court's orders;

14 h. Order Defendants to take appropriate actions to restore the quality of waters
15 impaired or adversely affected by their activities;

16 i. Award Plaintiffs' costs (including reasonable investigative, attorney, witness,
17 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

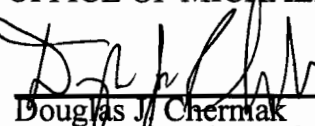
18 j. Award any such other and further relief as this Court may deem appropriate.
19

20 Dated: April 14, 2008

Respectfully submitted,

21 LAW OFFICE OF MICHAEL R. LOZEAU

22 By:



23 Douglas J. Chermak
24 Attorney for Plaintiff
25 CALIFORNIA SPORTFISHING PROTECTION
26 ALLIANCE
27
28

EXHIBIT A

California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 7, 2008

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

Dear Messrs. Chu and Thorson, Secretary Gates, and members of the Regents:

I am writing on behalf of the California Sportfishing Protection Alliance and the Strawberry Canyon Stewardship Group (collectively "CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at the Lawrence Berkeley National Lab located at 1 Cyclotron Road in Berkeley, California ("LBNL" or "Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Sacramento-San Joaquin River Delta ("the Delta"), San Francisco Bay and other California waters. The Strawberry Canyon Stewardship Group is an association comprised of residents of Berkeley and nearby areas who use and enjoy Strawberry Creek and the San Francisco Bay. This letter is being sent to you as the responsible owners, officers, or operators of the LBNL (all recipients are hereinafter collectively referred to as "LBNL").

This letter addresses LBNL's unlawful discharge of pollutants from the Facility to waters of the United States. The Facility discharges storm water associated with its industrial activity directly to Strawberry Creek, which in turn flows through the City of Berkeley's storm drain system and then into the San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board"), Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the State Board and California Regional Water Quality Control Board ("Regional Board") is 2-011002421. The Facility is violating the substantive and procedural requirements of the General Permit.

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

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, LBNL is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Director Steven Chu, LBNL, the individual Regents, and Secretary Gates under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On April 1, 1992, LBNL filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). LBNL

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certified that the Facility is classified under SIC codes 8733 ("noncommercial research organizations), 3499 ("fabricated metal products"), and 4214 ("local trucking without storage"). According to the Facility's Storm Water Monitoring Program, it also conducts activities under SIC codes 4953 ("hazardous waste treatment and storage"), 5541 ("gasoline dispensing"), 4789 ("transportation"), and 7542 ("car washing"). According to LBNL's NOI, the Facility collects and discharges storm water from its 203-acre industrial site which flows into San Francisco Bay. The Facility discharges the storm water from three storm drain outlets.

The San Francisco Bay Regional Water Quality Control Board (the "Regional Board" or "Board") has 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.swrcb.ca.gov/rwqcb2/basinplan.htm>. The beneficial uses of the Bay region's waters include among others contact and non-contact recreation, 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, . . . , camping, boating, . . . , sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at 2.1.16.

The Regional Board has established water quality standards for San Francisco Bay and its tributaries. 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 to or that produce significant alterations in population or community ecology or receiving water biota." *Id.* at 3.3.8. The Basin Plan establishes a dissolved oxygen standard of 5.0 mg/L for waters downstream from the Carquinez Bridge. *Id.* at 3.3.5. It limits floating material, stating that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.6. The Basin Plan establishes a Marine Water Quality Objective for zinc of .081 mg/L (4-day average) and .090 mg/L (1-hour average). *Id.* at Table 3-3. The Basin Plan establishes a Freshwater Water Quality Objective for zinc of 0.120 mg/L (4-day average and 1-hour average). *Id.* at Table 3-4.

The U.S. Environmental Protection Agency ("EPA") has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The EPA has established the following benchmarks for pollutants discharged by LBNL: aluminum – 0.75 mg/L; magnesium – 0.0636 mg/L; zinc – 0.117 mg/L; chemical oxygen demand ("COD") – 120 mg/L; total suspended solids ("TSS") – 100 mg/L; iron – 1 mg/L; and nitrate + nitrite nitrogen ("N+N") – 0.68 mg/L. The State Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

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II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

LBNL has 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.

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 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.

LBNL has discharged and continues to discharge storm water with unacceptable levels of TSS, COD, specific conductivity, N+N, iron, aluminum, magnesium, zinc and other pollutants in violation of the General Permit. LBNL's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit:

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Date	Parameter	Concentration	Benchmark	Outfall
2/7/2007	Magnesium	29 mg/L	0.0636 mg/L	STW 2
2/7/2007	Nitrate + Nitrite	3.7 mg/L	0.68 mg/L	STW 2
2/7/2007	Specific Conductivity	560 µmho/cm	200 µmho/cm (proposed)	STW 2
2/7/2007	Magnesium	33 mg/L	0.0636 mg/L	STW 4
2/7/2007	Nitrate + Nitrite	0.77 mg/L	0.68 mg/L	STW 4
2/7/2007	Specific Conductivity	600 µmho/cm	200 µmho/cm (proposed)	STW 4
2/7/2007	Magnesium	1.7 mg/L	0.0636 mg/L	STW 5
2/7/2007	Zinc	0.13 mg/L	0.117 mg/L	STW 5
2/7/2007	Nitrate + Nitrite	5 mg/L	0.68 mg/L	STW 5
10/5/2006	Aluminum	3.2 mg/L	0.75 mg/L	STW 4
10/5/2006	Iron	4.1 mg/L	0.0636 mg/L	STW 4
10/5/2006	Magnesium	40 mg/L	0.0636 mg/L	STW 4
10/5/2006	Nitrate + Nitrite	17 mg/L	0.68 mg/L	STW 4
10/5/2006	Chemical Oxygen Demand	500 mg/L	120 mg/L	STW 4
10/5/2006	Specific Conductivity	850 µmho/cm	200 µmho/cm (proposed)	STW 4
10/5/2006	Aluminum	1.7 mg/L	0.75 mg/L	STW 5
10/5/2006	Iron	2.3 mg/L	1.0 mg/L	STW 5
10/5/2006	Magnesium	3.6 mg/L	0.0636 mg/L	STW 5
10/5/2006	Zinc	0.18 mg/L	0.117 mg/L	STW 5
10/5/2006	Nitrate + Nitrite	5.7 mg/L	0.68 mg/L	STW 5
10/5/2006	Total Suspended Solids	280 mg/L	100 mg/L	STW 5
10/4/2006	Magnesium	26 mg/L	0.0636 mg/L	STW 2
10/4/2006	Nitrate + Nitrite	4 mg/L	0.68 mg/L	STW 2
10/4/2006	Specific Conductivity	610 µmho/cm	200 µmho/cm (proposed)	STW 2
11/4/2005	Magnesium	19 mg/L	0.0636 mg/L	STW 2
11/4/2005	Nitrate + Nitrite	3.1 mg/L	0.68 mg/L	STW 2
11/4/2005	Specific Conductivity	480 µmho/cm	200 µmho/cm (proposed)	STW 2
11/4/2005	Aluminum	2.1 mg/L	0.75 mg/L	STW 4
11/4/2005	Iron	2.7 mg/L	1.0 mg/L	STW 4
11/4/2005	Magnesium	5 mg/L	0.0636 mg/L	STW 4
11/4/2005	Nitrate + Nitrite	3.6 mg/L	0.68 mg/L	STW 4
11/4/2005	Total Suspended Solids	170 mg/L	100 mg/L	STW 4

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11/4/2005	Aluminum	8.3 mg/L	0.75 mg/L	STW 5
11/4/2005	Iron	12 mg/L	1.0 mg/L	STW 5
11/4/2005	Magnesium	6.3 mg/L	0.0636 mg/L	STW 5
11/4/2005	Zinc	0.15 mg/L	0.117 mg/L	STW 5
11/4/2005	Nitrate + Nitrite	4.2 mg/L	0.68 mg/L	STW 5
11/4/2005	Chemical Oxygen Demand	250 mg/L	120 mg/L	STW 5
11/4/2005	Total Suspended Solids	290 mg/L	100 mg/L	STW 5
10/26/2005	Magnesium	29 mg/L	0.0636 mg/L	STW 2
10/26/2005	Nitrate + Nitrite	2 mg/L	0.68 mg/L	STW 2
10/26/2005	Specific Conductivity	590 μ mho/cm	200 μ mho/cm (proposed)	STW 2
10/26/2005	Iron	1.3 mg/L	1.0 mg/L	STW 4
10/26/2005	Magnesium	5.4 mg/L	0.0636 mg/L	STW 4
10/26/2005	Zinc	0.27 mg/L	0.117 mg/L	STW 4
10/26/2005	Nitrate + Nitrite	3.7 mg/L	0.68 mg/L	STW 4
10/26/2005	Iron	2.2 mg/L	1.0 mg/L	STW 5
10/26/2005	Magnesium	3.3 mg/L	0.0636 mg/L	STW 5
10/26/2005	Nitrate + Nitrite	3.2 mg/L	0.68 mg/L	STW 5
2/26/2005	Magnesium	17 mg/L	0.0636 mg/L	STW 2
2/26/2005	Nitrate + Nitrite	3.7 mg/L	0.68 mg/L	STW 2
2/26/2005	Specific Conductivity	460 μ mho/cm	200 μ mho/cm (proposed)	STW 2
2/26/2005	Aluminum	2.8 mg/L	0.75 mg/L	STW 4
2/26/2005	Iron	2.9 mg/L	1.0 mg/L	STW 4
2/26/2005	Magnesium	2.3 mg/L	0.0636 mg/L	STW 4
2/26/2005	Aluminum	4.3 mg/L	0.75 mg/L	STW 5
2/26/2005	Iron	4.7 mg/L	1.0 mg/L	STW 5
2/26/2005	Magnesium	38 mg/L	0.0636 mg/L	STW 5
2/26/2005	Nitrate + Nitrite	13 mg/L	0.68 mg/L	STW 5
2/26/2005	Specific Conductivity	840 μ mho/cm	200 μ mho/cm (proposed)	STW 5
2/25/2004	Aluminum	0.78 mg/L	0.75 mg/L	STW 2
2/25/2004	Magnesium	13 mg/L	0.0636 mg/L	STW 2
2/25/2004	Nitrate + Nitrite	0.63 mg/L	0.68 mg/L	STW 2
2/25/2004	Specific Conductivity	324 μ mho/cm	200 μ mho/cm (proposed)	STW 2
2/25/2004	Aluminum	12 mg/L	0.75 mg/L	STW 4
2/25/2004	Iron	13 mg/L	1.0 mg/L	STW 4
2/25/2004	Magnesium	6.8 mg/L	0.0636 mg/L	STW 4
2/25/2004	Total Suspended Solids	420 mg/L	100 mg/L	STW 4

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2/25/2004	Aluminum	4.5 mg/L	0.75 mg/L	STW 5
2/25/2004	Iron	4.9 mg/L	1.0 mg/L	STW 5
2/25/2004	Magnesium	4.7 mg/L	0.0636 mg/L	STW 5
11/6/2003	Magnesium	15 mg/L	0.0636 mg/L	STW 2
11/6/2003	Nitrate + Nitrite	0.92 mg/L	0.68 mg/L	STW 2
11/6/2003	Specific Conductivity	381 µmho/cm	200 µmho/cm (proposed)	STW 2
11/6/2003	Magnesium	21 mg/L	0.0636 mg/L	STW 4
11/6/2003	Specific Conductivity	530 µmho/cm	200 µmho/cm (proposed)	STW 4
11/6/2003	Aluminum	21 mg/L	0.75 mg/L	STW 5
11/6/2003	Iron	24 mg/L	1.0 mg/L	STW 5
11/6/2003	Magnesium	9.1 mg/L	0.0636 mg/L	STW 5
11/6/2003	Total Suspended Solids	450 mg/L	100 mg/L	STW 5
2/12/2003	Magnesium	3.6 mg/L	0.0636 mg/L	STW 2
2/12/2003	Nitrate + Nitrite	0.96 mg/L	0.68 mg/L	STW 2
2/12/2003	Magnesium	4.9 mg/L	0.0636 mg/L	STW 4
2/12/2003	Aluminum	1.2 mg/L	0.75 mg/L	STW 5
2/12/2003	Iron	1.5 mg/L	1.0 mg/L	STW 5
2/12/2003	Magnesium	4.1 mg/L	0.0636 mg/L	STW 5
11/7/2002	Iron	1/1 mg/L	1.0 mg/L	STW 2
11/7/2002	Magnesium	4.4 mg/L	0.0636 mg/L	STW 2
11/7/2002	Nitrate + Nitrite	0.73 mg/L	0.68 mg/L	STW 2
11/7/2002	Aluminum	3.2 mg/L	0.75 mg/L	STW 4
11/7/2002	Iron	4.8 mg/L	1.0 mg/L	STW 4
11/7/2002	Magnesium	15 mg/L	0.0636 mg/L	STW 4
11/7/2002	Zinc	0.84 mg/L	0.117 mg/L	STW 4
11/7/2002	Nitrate + Nitrite	3.3 mg/L	0.68 mg/L	STW 4
11/7/2002	Chemical Oxygen Demand	365 mg/L	120 mg/L	STW 4
11/7/2002	Specific Conductivity	411 µmho/cm	200 µmho/cm (proposed)	STW 4
11/7/2002	Total Suspended Solids	150 mg/L	100 mg/L	STW 4
11/7/2002	Magnesium	1.9 mg/L	0.0636 mg/L	STW 5

CSPA's investigation, including its review of LBNL's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmarks, indicates that LBNL has not implemented BAT and BCT at the Facility for its discharges of TSS, COD, specific conductivity, N+N, iron, aluminum, magnesium, zinc and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. LBNL was required to have implemented BAT and BCT by no later than

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October 1, 1992. Thus, LBNL 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 LBNL has violated and continues to violate Effluent Limitation B(3) of the General Permit each and every day that the Facility fails to install the requisite BAT or BCT pollution controls. CSPA further alleges that LBNL has violated Effluent Limitation B(3) Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) on each of the dates identified above.

CSPA also alleges that violations have occurred and will occur on other rain dates, including during every significant rain event that has occurred since January 7, 2003, and that will occur at the Facility subsequent to the date of this Notice of Violations and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that LBNL has discharged storm water containing impermissible levels of TSS, COD, specific conductivity, N+N, iron, aluminum, magnesium, and zinc in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each day that LBNL has failed to implement BAT and BCT constitutes a separate violation of the General Permit and the Act. Each discharge of storm water to each storm drain at or adjacent to the Facility containing any of these pollutants constitutes a separate 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, LBNL is subject to penalties for violations of the General Permit and the Act since January 7, 2003.

B. Failure 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 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

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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 LBNL's Annual Reports and other storm water-related documents indicate that LBNL has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. LBNL has failed to adequately evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. LBNL has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least January 7, 2003, and will continue to be in violation every day that LBNL fails to develop and implement an effective SWPPP. LBNL is subject to penalties for violations of the Order and the Act occurring since January 7, 2003.

C. Failure to File True and Correct Annual Reports.

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

For at least the last five years, LBNL and its agents, Regina Lackner and Ron Pauer, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, LBNL, Regina Lackner, and Ron Pauer have violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time LBNL or its agent failed to submit a complete or correct report and every time LBNL or its agents falsely purported to comply with the Act.

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IV. Persons Responsible for the Violations.

CSPA puts LBNL, Director Steven Chu, the individual Regents, and Secretary Gates 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 Director Steven Chu, LBNL, the individual Regents, and Secretary Gates on notice that it intends to include those subsequently identified persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

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

Lesley Emmington Jones
Strawberry Canyon Stewardship Group
195 The Uplands
Berkeley, CA 94705
Tel. (510) 652-2255

VI. Counsel.

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

Michael R. Lozeau
Douglas J. Chermak
Law Office of Michael R. Lozeau
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
mrlozeau@lozeaulaw.com

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

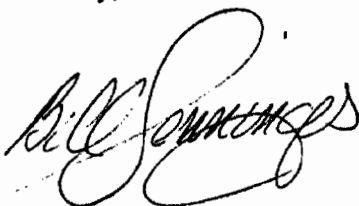
VII. Injunctive Relief

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. Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

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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 LBNL and its agents for future violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

cc: Charles F. Robinson, General Counsel of the Regents
Nancy M. Ware, General Counsel of the Lab
Elizabeth Gunther, Office of the General Counsel

SERVICE LIST

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

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

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

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

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

ATTACHMENT A
Rain Dates, LBNL, Berkeley, CA

January	09	2003
January	10	2003
January	12	2003
January	13	2003
January	14	2003
January	21	2003
January	22	2003
January	23	2003
January	24	2003
February	12	2003
February	13	2003
February	15	2003
February	16	2003
February	19	2003
February	25	2003
February	26	2003
February	26	2003
March	13	2003
March	14	2003
March	15	2003
March	16	2003
March	19	2003
March	22	2003
March	23	2003
March	26	2003
April	02	2003
April	03	2003
April	07	2003
April	12	2003
April	13	2003
April	16	2003
April	21	2003
April	22	2003
April	23	2003
April	24	2003
April	25	2003
April	27	2003
April	28	2003
April	29	2003
May	02	2003
May	03	2003
May	04	2003
May	06	2003

May	08	2003
September	10	2003
October	31	2003
November	02	2003
November	03	2003
November	06	2003
November	07	2003
November	08	2003
November	14	2003
November	15	2003
November	16	2003
November	30	2003
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December	04	2003
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January	01	2004
January	02	2004
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January	07	2004
January	08	2004
January	09	2004
January	14	2004
January	23	2004
January	24	2004
January	26	2004
January	27	2004
January	30	2004
February	01	2004

February	02	2004
February	03	2004
February	06	2004
February	15	2004
February	16	2004
February	17	2004
February	18	2004
February	20	2004
February	21	2004
February	22	2004
February	24	2004
February	25	2004
February	26	2004
February	27	2004
March	02	2004
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March	27	2004
April	16	2004
April	18	2004
April	19	2004
April	20	2004
April	21	2004
May	28	2004
July	30	2004
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September	19	2004
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October	25	2004
November	03	2004
November	04	2004
November	09	2004
November	10	2004
November	11	2004
November	12	2004
November	27	2004
December	06	2004
December	07	2004
December	08	2004
December	10	2004

ATTACHMENT A
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December	26	2004
December	27	2004
December	28	2004
December	29	2004
December	30	2004
December	31	2004
January	01	2005
January	02	2005
January	05	2005
January	06	2005
January	07	2005
January	08	2005
January	09	2005
January	10	2005
January	11	2005
January	25	2005
January	26	2005
January	27	2005
January	28	2005
February	06	2005
February	07	2005
February	11	2005
February	14	2005
February	15	2005
February	16	2005
February	17	2005
February	18	2005
February	19	2005
February	20	2005
February	21	2005
February	26	2005
February	27	2005
February	28	2005
March	01	2005
March	02	2005
March	03	2005
March	04	2005
March	18	2005
March	19	2005
March	21	2005
March	22	2005
March	23	2005
March	27	2005
March	28	2005

March	29	2005
April	03	2005
April	07	2005
April	08	2005
April	22	2005
April	27	2005
April	28	2005
May	04	2005
May	05	2005
May	08	2005
May	09	2005
May	18	2005
May	19	2005
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June	09	2005
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December	19	2005
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December	30	2005

December	31	2005
January	01	2006
January	02	2006
January	03	2006
January	04	2006
January	06	2006
January	07	2006
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January	14	2006
January	17	2006
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March	11	2006
March	12	2006
March	13	2006
March	14	2006
March	16	2006
March	17	2006
March	20	2006
March	21	2006
March	24	2006
March	25	2006
March	27	2006

ATTACHMENT A
Rain Dates, LBNL, Berkeley, CA

March	28	2006
March	29	2006
March	30	2006
March	31	2006
April	01	2006
April	02	2006
April	03	2006
April	04	2006
April	05	2006
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April	14	2007
April	19	2007
April	20	2007

April	21	2007
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May	03	2007
May	04	2007
July	18	2007
September	22	2007
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December	19	2007
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January	03	2008
January	04	2008
January	05	2008
January	06	2008