April 24, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Olam West Coast, Inc.
1350 Pacheco Pass Hwy
Gilroy, CA 95020

Rick Harker
Olam West Coast, Inc.
205 E. River Park Circle, Suite 310
Fresno, CA 93720

Patrick Nuck, Plant Manager
Olam West Coast, Inc.
205 E. River Park Circle, Suite 310
Fresno, CA 93720

Olam West Coast, Inc.
CSC – Lawyers Incorporation Service
Agent For Service of Process
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833

Olam West Coast, Inc.
7060 N. Marks Ave
Fresno, CA 93721

Matt Nymeyer
Olam West Coast, Inc.
205 E. River Park Circle, Suite 310
Fresno, CA 93720

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

Dear Messrs. Harker, Nuck and Nymeyer:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at Olam West Coast, Inc.'s ("Olam")bottling facility located at 1350 Pacheco Pass Hwy, in Gilroy, California ("the Facility"). The WDID number for the Facility is 3 43I022766. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Llagas Creek, the Pajaro River, and the Monterey Bay. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Rick Harker, Patrick Nuck, Matt Nymeyer and Olam West Coast, Inc. shall hereinafter be collectively referred to as "Olam."

This letter addresses Olam's unlawful discharges of pollutants from the Facility to Llagas Creek, which then conveys that storm water into the Pajaro River, which ultimately flows into Monterey Bay. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "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, 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, Rick Harker, Patrick Nuck, Matt Nymeyer and Olam West Coast, Inc. are 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 Rick Harker, Patrick Nuck, Matt Nymeyer, and Olam West Coast, Inc. 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 Permit. These violations are described more fully below.

I. Background.

The Facility is located at 1350 Pacheco Pass Hwy in the city of Gilroy. The Facility falls under Standard Industrial Classification ("SIC") Code 2034 ("Food Dehydration"). CSPA notes that Olam has reported in publicly available documents that industrial activities at the 46-acre Facility include manufacturing and wholesale distribution of onion, and garlic products. The facility contains indoor and outdoor storage areas, loading docks, maintenance areas, aboveground storage tanks, a hazardous materials storage are, chemical storage areas, scrap storage areas, and production, laboratory, warehouse, and office buildings. Olam collects and discharges storm water from the Facility through at least four (4) discharge points into Llagas Creek, which then conveys that storm water into the Pajaro River, which ultimately flows into Monterey Bay. Llagas Creek, the Pajaro River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for Llagas Creek, the Pajaro River, and Monterey Bay in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean Waters of California" ("Ocean Plan"). The Ocean Plan "sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of

beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives." *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels ("MCLs") for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: aluminum – 1.0 mg/L; arsenic - 0.05 mg/L; lead - 0.05 mg/L; and mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for mercury - 0.002 mg/L; lead – 0.015 mg/L; chromium – 0.1 mg/L; and, copper – 1.3 mg/L. The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for aluminum - 0.05 mg/L to 0.2 mg/L, and for zinc - 5.0 mg/L. *See* http://www.epa.gov/safewater/mcl.html. Finally, the California Department of Health Services has 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 mg/L (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule ("CTR"), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 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 identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.[1] Discharges of listed pollutants into an impaired surface water may be deemed a "contribution" to an exceedance of the 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.,*

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[1] *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

Inc., 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was "subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead" under the CTR).

The General 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 Olam: oil & grease – 15 mg/L; and total suspended solids – 100.0 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: pH – 6.0 – 9.0 s.u.; total organic carbon – 110 mg/L.

II. Olam Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutants by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a "point source" under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). "Navigable waters" means "the waters of the United States." 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

Llagas Creek, the Pajaro River, and Monterey Bay are waters of the United States. Accordingly, Olam's discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Olam has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day that there has been or will be any measurable discharge of storm water from the Facility since May 12, 1997. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Olam is subject to penalties for violations of the Act since April 24, 2009.

III. Pollutant Discharges in Violation of the NPDES Permit.

Olam 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 such as the General Permit. 33 U.S.C. § 1342. 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, Oil & Grease ("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.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

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.

Based on its review of available public documents, CSPA is informed and believes: (1) that Olam continues to discharge pollutants in excess of benchmarks and (2) that Olam has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. Olam's ongoing violations are discussed further below.

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

Olam has discharged and continues to discharge storm water with unacceptable levels of Total Suspended Solids (TSS), Oil and Grease (O&G) and Specific Conductance (SC) in violation of the General 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. Olam's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water 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. Discharge of Storm Water Containing Oil & Grease (O&G) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
11/5/2011	Discharge Point 4	O&G	33.3 mg/l	15 mg/l
11/5/2012	West Plant	O&G	33.3	15 mg/l

2. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
11/22/2010	Discharge 2	TSS	1400 mg/l	100 mg/l
11/5/2011	Discharge 4	TSS	372 mg/l	100 mg/l
2/6/20012	Discharge 1	TSS	103 mg/l	100 mg/l
2/6/2012	Discharge 2	TSS	157 mg/l	100 mg/l
10/10/2012	East Plant	TSS	274 mg/l	100 mg/l

10/10/2012	South Plant	TSS	350 mg/l	100 mg/l
10/10/2012	West Plant	TSS	192 mg/l	100 mg/l
11/5/2012	West Plant	TSS	372 mg/l	100 mg/l

3. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
1/22/2010	Discharge Point 1	SC	240 µmhos/cm	200 µmhos/cm
10/10/2012	South Plant	SC	204 µmhos/cm	200 µmhos/cm

CSPA's investigation, including its review of Olam'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 benchmark levels for specific conductivity, indicates that Olam has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease, and Specific Conductance (SC), in violation of Effluent Limitation B(3) of the General Permit. Olam was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Olam is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Olam has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 24, 2009. 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 April 24, 2009, 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 Olam has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), and Oil and Grease (O&G) and Specific Conductance (SC) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT 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, Olam is subject to penalties for violations of the General Permit and the Act since April 24, 2009.

B. Olam 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 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. Section B(5)(c)(ii) of the General Permit further 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." Section B(10) of the General Permit provides that "Facility operators shall explain how the Facility's monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2."

Based on its investigation, CSPA is informed and believes that Olam has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that Olam has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during at the past three Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that Olam has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past three Wet Seasons. Third, based on its review of publicly available documents, CSPA is informed and believes that for the past three Wet Seasons, Olam has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility, including lead. Lastly, while Olam reports that the Facility has four (4) discharge points, it appears the Facility has consistently failed to report sampling results for all such discharge points.

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, Olam is subject to penalties for violations of the General Permit and the Act since April 24, 2009. These violations are set forth in greater detail below:

1. Olam Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events In Each of the Last Three Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that Olam has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past three Wet Seasons, as required by the General Permit. For example, CSPA notes that the Annual Report filed by Olam for the Facility for the 2010-2011 Wet Season reported that Olam analyzed samples of storm water discharged during two qualifying storm events that season. However, upon closer scrutiny it turns out that both samples were not taken during a qualifying storm event within the meaning of the General Permit (discussed further below). Similarly, in the 2011-2012 Annual Report, Olam sampled from two storm events that were not qualifying storm events. Furthermore, in the 2012-2013 Annual Report, Olam failed to sample from two qualifying storm events for that season, as required by the General Permit.

Olam reported in its Annual Reports for the 2011-2012 and 2012-2013 Wet Seasons that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first such event during those two Wet Seasons. For example, Olam reported in its 2011-2012 Annual Report that it sampled the first qualifying storm event of the Wet Season, but Olam's first sample is from November 5, 2011. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2011-2012 Wet Season occurred as early as Monday, October 5, 2011, when 0.6" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

These failures to adequately monitor storm water discharges constitute separate and ongoing violations of the General Permit and the Act.

2. Olam Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in Olam's annual reports for four of the last five Wet Seasons, CSPA is informed and believes that Olam has failed to comply with this requirement of the General Permit.

Specifically, Olam failed to conduct monthly visual observations of discharges from qualifying storm events for most months during the past three Wet Seasons. Instead, Olam either completely failed to document visual observations at all or

documented its visual observations of storm water that discharged during non-qualifying storm events, for most months during the entire past three Wet Seasons (discussed further below). However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that Olam could have observed.

For example, Olam reported in its 2010-2011 Annual Report that it observed a qualifying storm event on Monday, October 29, 2010. However, CSPA is informed and believes that this could not possibly be true because only 0.02 inches of rain fell on the Facility on that day. Further, Olam reported in its 2010-2011 Annual Report that it failed to conduct observations for the first two months of the Wet Season. Olam's failure to conduct this required monthly Wet Season visual monitoring extends back to at least April 24, 2009. Olam's failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. Olam Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 1, 2009.

CSPA is informed and believes that publicly available documents demonstrate Olam's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2010-2011 Annual Report Olam reported having collected samples of storm water discharged during two qualifying storm events, neither of the two storm events sampled was a qualifying storm event within the meaning of the General Permit. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on November 22, 2010 was not a qualifying storm event. Specifically, Olam sampled a rain event on November 22, 2010, when the prior day had seen 0.11" fall at the Facility. Thus, the November 21, 2010 storm event rendered any storm occurring for three days afterwards non-qualifying. Similarly, Olam sampled a rain event on December 20, 2010 that produced .04" of rainfall on the Facility. However, 1.89" of rain fell on the facility on December 18, 2010. Thus, the December 18th storm event rendered any storm occurring for three days afterwards non-qualifying. Therefore, Olam failed to implement an adequate Monitoring Reporting Plan.

Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City of Watsonville is subject to penalties for these violations of the General Permit and the Act since April 24, 2009.

C. Olam Has Failed to Implement BAT and 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). CSPA's investigation indicates that Olam has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G) and Specific Conductance (SC) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, Olam 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 limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Olam 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 or treatment boxes), and/or prevent storm water discharge altogether. Olam has failed to adequately implement such measures.

Olam was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Olam 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 it fails to implement BAT and BCT. Olam is subject to penalties for violations of the General Permit and the Act occurring since April 24, 2009.

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

Section A(1) and Provision E(2) of the General 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 Water Quality Order No. 97-03-DWQ 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 9, 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 must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit,

Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). 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 publicly available documents regarding conditions at the Facility indicate that Olam has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Olam has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Olam has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Olam is subject to penalties for violations of the General Permit and the Act occurring since April 24, 2009.

E. Olam 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, Olam is discharging elevated levels of Total Suspended Solids (TSS), Oil and Grease (O&G) and Specific Conductance (SC) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Olam 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, Olam was aware of high levels of these pollutants prior to April 24, 2009. Likewise, Olam has generally failed to file reports describing its non-compliance with the General Permit in violation of Section C(11)(d). Olam has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since April 24, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Olam is subject to penalties for violations of the General Permit and the Act occurring since April 24, 2009.

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

Section B(14) of the General 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 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 Olam has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, Olam reported in two Annual Reports filed for the past three Wet Seasons (i.e., 2010-2011, 2011-2012, and 2012-2013) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this is incorrect.

Further, Olam failed to sample from qualifying storm events in six out of six storm water samples collected during the last three Wet Seasons. For example, in 2010-2011, Olam sampled from a storm event on November 22, 2010 that was not a qualifying storm event. Further, in the 2012-2013 Annual Report, Olam reported that it sampled a first flush event on December 10, 2012. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on

December 10, 2012 was not a first flush event because 0.15 inches of rain fell on the facility on October 22, 2012.

Further, Olam failed to comply with the monthly visual observations of storm water discharges requirement for two of the past three Annual Reports filed for the Facility. In the 2010-2011 Annual Report, Olam reported that it observed discharge from a qualifying storm event on January 27, 2011. However, based on publicly available rainfall data, CSPA is informed and believes that this cannot possibly be true because no rain fell on the Facility on that day. Moreover, in the 2011-2012 Annual Report, Olam reported that it observed discharge from a qualifying storm event on April 19, 2012. However, based on publicly available rainfall data, CSPA is informed and believes that this is also incorrect because no rain fell on the Facility on that day.

These are only a few examples of how Olam has failed to file completely true and accurate reports. As indicated above, Olam has failed to comply with the Permit and the Act consistently for the past three years; therefore, Olam has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Olam submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past three years. Olam's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Olam is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since April 24, 2009.

IV. Persons Responsible for the Violations.

CSPA Rick Harker, Patrick Nuck, Matt Nymeyer and Olam West Coast, 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 Rick Harker, Patrick Nuck, Matt Nymeyer and Olam West Coast, Inc. on formal notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

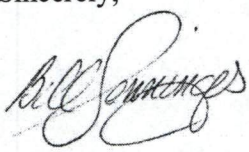
Andrew L. Packard
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Email: Andrew@PackardLawOffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Rick Harker, Patrick Nuck, Matt Nymeyer and Olam West Coast, Inc. to a penalty of up to $37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Rick Harker, Patrick Nuck, Matt Nymeyer, and Olam West Coast, Inc. and their agents 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

Gina McCarthy, 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

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

Kenneth A. Harris, Jr., Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

ATTACHMENT A
Notice of Intent to File Suit, Olam
Significant Rain Events,* April 24, 2009 – April 24, 2014

May 1 2009
Oct 13 2009
Oct 14 2009
Dec 10 2009
Dec 11 2009
Dec 12 2009
Dec 13 2009
Dec 26 2009
Dec 27 2009
Dec 28 2009
Jan 12 2010
Jan 13 2010
Jan 17 2010
Jan 18 2010
Jan 19 2010
Jan 20 2010
Jan 21 2010
Jan 22 2010
Jan 26 2010
Jan 29 2010
Feb 4 2010
Feb 6 2010
Feb 9 2010
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Mar 2 2010
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Feb 8 2014
Feb 9 2014
Feb 26 2014
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Feb 28 2014
Mar 1 2014
Mar 3 2014
Mar 26 2014
Mar 29 2014
Mar 31 2014
Apr 1 2014
Apr 4 2014

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