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12 ALTERNATIVES TO TOXICS

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CALIFORNIANS FOR ALTERNATIVES
15 TO TOXICS, a non-profit corporation,

16 Plaintiff,

17 v.

18 REICHARDT DUCK FARM, INC., and
19 JOHN REICHARDT,

20 Defendants.

Case No: 3:22-CV-09065-AGT

[PROPOSED] CONSENT DECREE

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

21 **WHEREAS**, Plaintiff Californians for Alternatives to Toxics (hereinafter “CAT”) is a
22 non-profit public benefit corporation organized under the laws of California, dedicated to the
23 preservation, protection, and defense of the environment, wildlife, and natural resources of
24 California’s waters, and based in Arcata, California;

25 **WHEREAS**, Defendants REICHARDT DUCK FARM, INC., and JOHN
26 REICHARDT (“Defendants”) own and/or operate a 373-acre duck processing facility in
27 Petaluma, California (hereinafter referred to as the “Facility”);
28

1 **WHEREAS**, Defendants’ primary industrial activity at the Facility is the raising and
2 processing of ducks, and the storage of various industrial materials, including composting activities
3 (the industrial activities at the Facility fall under Standard Industrial Classification Code 2015
4 (“Poultry Slaughtering and Processing”));

5 **WHEREAS**, a site map of the Facility is attached hereto as **Exhibit A**, and incorporated
6 herein by reference;

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

8 **WHEREAS**, CAT alleges that the Defendants’ Facility collects and discharges storm water
9 into an unnamed creek, and alleges that it drains to Laguna Lake, discharges to Chileno Creek, a
10 tributary to Walker Creek, and ultimately discharges to Tomales Bay and the Pacific Ocean;

11 **WHEREAS**, storm water discharges associated with industrial activity are regulated
12 pursuant to the National Pollutant Discharge Elimination System (“NPDES”), General Permit
13 No. CAS000001, State Water Resources Control Board (“State Board”) Water Quality Order
14 No. 14-57-DWQ, as amended by Water Quality Order 20XX-XXXX-DWQ, issued pursuant to
15 Section 402(p) of the Clean Water Act (“Act”), 33 U.S.C. §1342(p), (hereinafter “General
16 Permit”);

17 **WHEREAS**, on October 21, 2022 Plaintiff provided notice of Defendants’ alleged
18 violations of the Act (“Clean Water Act Notice Letter”), and of its intention to file suit against
19 Defendants to the Administrator of the United States Environmental Protection Agency (“EPA”);
20 the Administrator of EPA Region IX; the U.S. Attorney General; the Executive Director of the
21 State Board; the Executive Officer of the Regional Water Quality Control Board, North Coast
22 Regional Board; and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a true and
23 correct copy of CAT’s Clean Water Act Notice Letter is attached hereto as **Exhibit B** and
24 incorporated herein by reference);

25 **WHEREAS**, on December 22, 2022, CAT filed a complaint against Defendants in the
26 United States District Court, Northern District of California (this matter is hereinafter referred to as
27 “the Action”);

28 **WHEREAS**, on March 17, 2023 Plaintiff provided supplemental notice of Defendants’

1 alleged violations of the Act (“Supplemental Notice Letter”), and of its intention to file suit against
2 Defendants to the Administrator of the EPA; the Administrator of EPA Region IX; the U.S.
3 Attorney General; the Executive Director of the State Board; the Executive Officer of the Regional
4 Water Quality Control Board, San Francisco Bay Regional Board (“Regional Board”); and to
5 Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a true and correct copy of CAT’s
6 Supplemental Notice Letter is attached hereto as **Exhibit C** and incorporated herein by reference);

7 **WHEREAS**, on May 17, 2023, CAT filed an Amended Complaint pursuant to the Parties’
8 stipulation;

9 **WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter as to
10 all entities and persons named in the Clean Water Act Notice Letters without litigation and enter
11 into this Decree;

12 **WHEREAS**, the parties agree that Defendants’ entering into this Consent Decree
13 (“Decree”) is not any admission of liability by Defendants regarding the claims made by Plaintiff
14 in the Action, and compliance with this Decree shall neither be deemed to be in compliance with
15 the General Permit or the Clean Water Act, nor shall it be deemed any admission of non-
16 compliance with either the General Permit or the Clean Water Act;

17 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Clean Water
18 Act Notice Letters and maintain that they have complied at all times with the provisions of the
19 General Permit and the Clean Water Act;

20 **WHEREAS**, within five (5) calendar days of mutual execution, this Decree shall be
21 submitted to the United States Department of Justice for the 45-day statutory review period,
22 pursuant to 33 U.S.C. § 1365(c);

23 **AND WHEREAS**, within ten (10) calendar days of expiration of the statutory review
24 period, or the earlier receipt of non-objection from the United States Department of Justice,
25 Plaintiff shall file with the Court a Request for Entry of Consent Decree (the date of entry of the
26 Consent Decree shall be referred to herein as the “Court Entry Date”).
27
28

1 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES,**
2 **AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

3 For the purposes of this Decree, the Parties agree that:

- 4 (a) the Court has jurisdiction over the subject matter of this action pursuant to Section
5 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);
- 6 (b) venue is appropriate in the United States District Court for the Northern District of
7 California pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. §
8 1365(c)(1), because the Facility at which the alleged violations took place is located
9 within this District;
- 10 (c) the Complaint states claims upon which relief may be granted against Defendants
11 pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365;
- 12 (d) Plaintiff has standing to bring this action; and,
- 13 (e) the Court shall retain jurisdiction over this matter for purposes of interpreting, modifying,
14 or enforcing the terms of this Decree for the life of the Decree, or as long thereafter as is
15 necessary for the Court to resolve any motion to enforce this Decree.

16 **I. COMMITMENTS OF DEFENDANTS**

17 1. **Compliance with General Permit and the Clean Water Act.** Throughout the term of
18 this Decree, Defendants shall comply with all the requirements of the General Permit and the Clean
19 Water Act, subject to any defenses available under the law.

20 2. **Implementation of Specific Storm Water Best Management Practices.** Unless
21 otherwise indicated below, on or before **November 15, 2023**, Defendants shall complete the
22 implementation and incorporation into the Facility’s Storm Water Pollution Prevention Plan
23 (“SWPPP”) of the following storm water source control measures and Best Management Practices
24 (“BMPs”) at the Facility:

25 (a) **Mandatory Minimum Best Management Practices.** Defendants shall implement all
26 mandatory minimum BMPs set forth in Section X.H of the General Permit.

27 (b) **Facility Site Map Improvements.** Defendants shall develop a Facility site map that
28 complies with all of the requirements of Section X.E.1-3 of the General Permit, including the

1 description and location of all industrial operations and buildings, storm water and wastewater flow
2 paths, manure storage areas, and vehicular traffic sufficient to enable an accurate estimation of
3 retention requirements for the Facility.

4 (c) **Comprehensive Assessment of the Facility’s Wastewater Generation & Storage**
5 **Capacities.** Defendants shall provide to Plaintiff a comprehensive written assessment of the
6 Facility’s wastewater generation and storage capacities including but not limited to measurements
7 and calculations (not estimates) of the Facility’s three (3) main storage ponds (Ponds A, B and C),
8 as well as the six (6) ponds within the Facility north of Middle Two Rock Road. This data shall be
9 used by Defendants to inform Defendants’ SWPPP, Waste Management Plan, Nutrient
10 Management Plan and Monitoring and Reporting Plan (as further described below).

11 (d) **Waste Management Plan (“WMP”).** On or before **January 1, 2024**, Defendants shall
12 provide to Plaintiff a draft a site-specific Waste Management Plan (“WMP”), for review and
13 comment. The WMP shall comply with the technical standards specified in Attachment C of the
14 *General Waste Discharge Requirements for Confined Animal Facilities within the San Francisco*
15 *Bay Region*, including but not limited to California Code of Regulations, Title 27, Sections
16 22562(a), which states: “Confined animal facilities shall be designed and constructed to retain all
17 facility wastewater generated, together with all precipitation on, and drainage through, manured
18 areas during a 25-year, 24-hour storm.” Plaintiff shall provide its comments and responses to the
19 draft WMP to Defendants. There is no deadline for Plaintiff to provide such comments and
20 responses. The parties shall meet and confer within 30 days of Defendants’ receipt of Plaintiff’s
21 comments and responses to resolve any concerns regarding the sufficiency of the draft WMP,
22 which meet and confer process may include, if the parties agree, participation of the Magistrate
23 Judge in a conference between the Parties, and such meet and confer shall be completed within 30
24 days of Defendants’ receipt of Plaintiff’s comments and responses unless the Parties mutually
25 agree otherwise. If the meet and confer process does not resolve the dispute, then either Party may
26 request the Court to resolve the dispute through a motion to enforce this Consent Decree. The
27 Final WMP shall be completed within 60 days of the latest of the following: (1) Defendants’
28 receipt of Plaintiff’s comments and responses; (2) completion of the 30-day meet and confer

1 process, if invoked; or (3) the Court’s resolution of any motion to enforce this Consent Decree. If,
2 however, the comments received from Plaintiff or necessary third-party generated information
3 received after the execution of the Consent Decree, and not known to Defendants before the
4 execution of the Consent Decree, are such that Defendants cannot reasonably complete the Final
5 WMP within 60 days, then the parties shall promptly meet and confer, as provided above,
6 regarding additional time for Defendants to complete the Final WMP. “Necessary third-party
7 generated information” in the preceding sentence shall mean new, directly-measured, or collected
8 data representative of activities at the facility required from third parties for the preparation of the
9 WMP in accordance with this Consent Decree. “Third parties” in the preceding sentence shall be
10 limited to Natural Resources Conservation Service, Sonoma County, PG&E, chemists, soil
11 engineers, waste water engineers, geologists, and laboratories. If the meet and confer regarding
12 additional time does not resolve the dispute, then either Party may request the Court to resolve the
13 dispute and provide a deadline by which Defendants shall complete the Final WMP.

14 (e) **Nutrient Management Plan (“NMP”).** On or before **January 1, 2024**, Defendants shall
15 provide to Plaintiff a draft Nutrient Management Plan (“NMP”) for review and comment. The
16 NMP shall comply with the minimum requirements in Attachment D of the *General Waste*
17 *Discharge Requirements for Confined Animal Facilities within the San Francisco Bay Region*.
18 Plaintiff shall provide its comments and responses to the draft NMP to Defendants. There is no
19 deadline for Plaintiff to provide such comments and responses. The Parties shall meet and confer
20 within 30 days of Defendants’ receipt of Plaintiff’s comments and responses to resolve any
21 concerns regarding the sufficiency of the draft NMP, which meet and confer process may include,
22 if the parties agree, participation of the Magistrate Judge in a conference between the Parties, and
23 such meet and confer shall be completed within 30 days of Defendants’ receipt of Plaintiff’s
24 comments and responses unless the Parties mutually agree otherwise. If the meet and confer
25 process does not resolve the dispute, then either Party may request the Court to resolve the dispute
26 through a motion to enforce this Consent Decree. The Final NMP shall be completed within 60
27 days of the latest of the following: (1) Defendants’ receipt of Plaintiff’s comments and responses;
28 (2) completion of the 30-day meet and confer process, if invoked; or (3) the Court’s resolution of

1 any motion to enforce this Consent Decree. If, however, the comments received from Plaintiff or
2 necessary third-party generated information received after the execution of the Consent Decree,
3 and not known to Defendants before the execution of the Consent Decree are such that Defendants
4 cannot reasonably complete the Final NMP within 60 days, then the parties shall promptly meet
5 and confer, as provided above, regarding additional time for Defendants to complete the Final
6 NMP. “Necessary third-party generated information” in the preceding sentence shall mean new,
7 directly-measured, or collected data representative of activities at the facility required from third
8 parties for the preparation of the NMP in accordance with this Consent Decree. “Third parties” in
9 the preceding sentence shall be limited to Natural Resources Conservation Service, Sonoma
10 County, PG&E, chemists, soil engineers, waste water engineers, geologists, and laboratories. If the
11 meet and confer regarding additional time does not resolve the dispute, then either party may
12 request the Court to resolve the dispute and provide a deadline by which Defendants shall complete
13 the Final NMP.

14 Consistent with Attachment D of the *General Waste Discharge Requirements for*
15 *Confined Animal Facilities within the San Francisco Bay Region*, Defendants shall implement
16 measures to protect surface waters. All wastewater discharges to land, such as spray irrigation,
17 must be conducted during non-rainy or non-saturated conditions, must not result in runoff to
18 surface waters, and must infiltrate completely within 72 hours after application. For the purposes
19 of this agreement, Defendants shall not apply wastewater to land during the months of January,
20 February or March.

21 (f) **Monitoring and Reporting Plan for Land Application Areas (“MRP”)**. On or before
22 **January 1, 2024**, Defendants shall provide to Plaintiff a draft Monitoring and Reporting Plan
23 (“MRP”) for review and comment. The MRP shall comply with the minimum requirements in
24 Attachment A of the *General Waste Discharge Requirements for Confined Animal Facilities within*
25 *the San Francisco Bay Region*. Plaintiff shall provide its comments and responses to the draft
26 MRP to Defendants. There is no deadline for Plaintiff to provide such comments and responses.
27 The parties shall meet and confer within 30 days of Defendants’ receipt of Plaintiff’s comments
28 and responses to resolve any concerns regarding the sufficiency of the MRP which meet and confer

1 process may include, if the parties agree, participation of the Magistrate Judge in a conference
2 between the parties, and such meet and confer shall be completed within 30 days of Defendants’
3 receipt of Plaintiff’s comments and responses unless the parties mutually agree otherwise. If the
4 meet and confer process does not resolve the dispute, then either party may request the Court to
5 resolve the dispute through a motion to enforce this Consent Decree. The Final MRP shall be
6 completed within 60 days of the latest of the following: (1) Defendants’ receipt of Plaintiff’s
7 comments and responses; (2) completion of the 30-day meet and confer process, if invoked; or (3)
8 the Court’s resolution of any motion to enforce this Consent Decree. If, however, the comments
9 received from Plaintiff or necessary third-party generated information received after the execution
10 of the Consent Decree, and not known to Defendants before the execution of the Consent Decree,
11 are such that Defendants cannot reasonably complete the Final MRP within 60 days, then the
12 parties shall promptly meet and confer, as provided above, regarding additional time for
13 Defendants to complete the Final MRP. “Necessary third-party generated information” in the
14 preceding sentence shall mean new, directly-measured, or collected data representative of activities
15 at the facility required from third parties for the preparation of the MRP in accordance with this
16 Consent Decree. “Third parties” in the preceding sentence shall be limited to Natural Resources
17 Conservation Service, Sonoma County, PG&E, chemists, soil engineers, waste water engineers,
18 geologists, and laboratories. If the meet and confer process regarding additional time does not
19 resolve the dispute, then either party may request the Court to resolve the dispute and provide a
20 deadline by which Defendants shall complete the Final MRP.

21 Under the MRP, Defendants shall sample storm water discharges from land application
22 areas to surface water through means detailed in the MRP; groundwater well monitoring shall be
23 sampled through the means detailed in the MRP. The analytical results for those samples shall
24 inform water quality conditions and management practices.

25 (g) **IGP Monitoring Implementation Plan (“IGP-MIP”).** To better characterize the
26 sources of nutrient and bacteria loading from portions of the site, sampling must occur at
27 representative discharge points, consistent with Section XI.B of the Industrial General Permit. The
28 IGP-MIP in the SWPPP shall identify sampling locations for discharges including, but not limited

1 to, roof discharges, runoff of stormwater or non-stormwater discharges from the slaughterhouse,
2 and the ‘rainwater catch pond/ sediment basin. On or before **December 1, 2023**, Defendants shall
3 provide to Plaintiff a draft IGP-MIP for Plaintiff’s review and comment. The IGP-MIP shall
4 comply with the requirements of Sections X.I and XI.A-C of the Industrial General Permit.
5 Plaintiff shall provide its comments and responses to the draft IGP-MIP to Defendants. There is no
6 deadline for Plaintiff to provide such comments and responses. The parties shall meet and confer
7 within 30 days of Defendants’ receipt of Plaintiff’s comments and responses to resolve any
8 concerns regarding the sufficiency of the IGP-MIP which meet and confer process may include, if
9 the parties agree, participation of the Magistrate Judge in a conference between the parties, and
10 such meet and confer shall be completed within 30 days of Defendants’ receipt of Plaintiff’s
11 comments and responses unless the parties mutually agree otherwise. If the meet and confer
12 process does not resolve the dispute, then either party may request the Court to resolve the dispute
13 through a motion enforce this Consent Decree. The Final IGP-MIP shall be completed within 60
14 days of the latest of the following: (1) Defendants’ receipt of Plaintiff’s comments and responses;
15 (2) completion of the 30-day meet and confer process, if invoked; or (3) the Court’s resolution of
16 any motion to enforce this Consent Decree. If, however, the comments received from Plaintiff or
17 necessary third-party generated information received after the execution of the Consent Decree,
18 and not known to Defendants before the execution of the Consent Decree are such that Defendants
19 cannot reasonably complete the Final IGP-MIP within 60 days, then the parties shall promptly
20 meet and confer, as provided above, regarding additional time for Defendants to complete the Final
21 IGP-MIP. “Necessary third-party generated information” in the preceding sentence shall mean
22 new, directly-measured, or collected data representative of activities at the facility required from
23 third parties for the preparation of the IGP-MIP in accordance with this Consent Decree. “Third
24 parties” in the preceding sentence shall be limited to Natural Resources Conservation Service,
25 Sonoma County, PG&E, chemists, soil engineers, waste water engineers, geologists, and
26 laboratories. If the meet and confer process regarding additional time does not resolve the dispute,
27 then the parties may request the Court to resolve the dispute and provide a deadline by which
28 Defendants shall complete the Final IGP-MIP.

1 (h) **Compliance Oversight.** On or before **November 15, 2023**, Defendants shall provide to
2 Plaintiff the revised Facility Site Map, and assessment required under Paragraphs I.2 (b) and (c)
3 above (the “Planning Documents”) for review. In the event that Plaintiff believes any of the
4 Planning Documents are incomplete or do not otherwise meet the requirements of this Consent
5 Decree, the Parties shall promptly meet and confer pursuant to the meet and confer processes
6 provided in Section I, subsections (d), (e), (f) and (g).

7 (i) **General Permit Discharge Prohibitions.** On or before **January 1, 2024**, Defendants
8 shall undertake any Facility improvements required to manage all process water flow, and flows of
9 storm water contacting manured areas, that are likely to accumulate up to and during a 25-year, 24-
10 hour storm event.

11 (j) **Waste Management Standards.** On or before **October 15, 2023**, Defendants shall
12 undertake all measures required to eliminate and prevent the discharge of wastewater or
13 unauthorized discharge of storm water as described in the IGP from the Facility Production Area to
14 the unnamed creek. Defendants shall be prohibited from applying waste water to land owned,
15 leased or otherwise controlled by them until they have implemented legally sufficient WDRs, a
16 legally sufficient WMP, a legally sufficient NMP and a legally sufficient MRP.

17 (k) **Increased Employee Training.** Defendants shall increase training for Defendants’ Storm
18 Water Pollution Prevention Team (“SWPPT”), including holding one training meeting in January
19 and one training meeting in October of each year. Defendants will incorporate the holding of these
20 twice-annual meetings in its new SWPPP. Defendants shall target training on identifying a
21 Qualifying Storm Event (“QSE”), undertaking visual monitoring, and logging and properly
22 reporting data in the Facility’s SWPPP, Annual Report and the State’s on-line reporting system
23 (“SMARTS”). Defendants shall record these meetings with the date, materials covered, written
24 agenda, and a list of attendees for each, and shall retain these records with each Facility’s SWPPP.
25 Defendants shall have at least one member of the SWPPT, that meets the certification
26 qualifications, be formally certified as a Qualified Industrial Storm Water Practitioner (“QISP”);

27 (l) **Rain Data.** Defendants shall install and maintain an automated rain gauge at the Facility;
28 the Parties may also use publicly-available rain data to resolve any disputes under this Decree.

1 (m) **Groundwater Monitoring.** The Parties disagree about whether Defendants' land
2 application of wastewater over the past sixty-five years has been conducted at agronomic rates, and
3 whether these practices have impacted groundwater at or downstream of the Facility. For the
4 purposes of compromise, Defendants agree to incorporate into the MRP the requirement that
5 Defendants monitor groundwater for Nitrate and Total Coliform Bacteria consistent with the
6 minimum requirements in Attachment A of the *General Waste Discharge Requirements for*
7 *Confined Animal Facilities within the San Francisco Bay Region*. To that end, Defendants shall
8 install eight (8) individual boreholes for the purposes of groundwater monitoring of the first water
9 table encountered, which boreholes shall be permitted by the County of Sonoma, shall comply with
10 the requirements for monitoring wells provided in California Department of Water Resources
11 Standard Bulletin 74-90, and shall be drilled by a California C-57 licensed contractor. Four will be
12 placed immediately down-gradient of the wastewater treatment storage Ponds A, B, and C; four
13 farther down-gradient; or at other locations to be mutually determined by the parties, to sample for
14 the constituents above. The parties understand that, for a variety of reasons, boreholes may not
15 always function as intended, and that in such event, if any borehole location fails to serve the
16 purposes of this Consent Decree, a replacement location will be mutually determined by the
17 parties, promptly. These eight boreholes shall remain fully operative for the full Term of this
18 Consent Decree.

19 (n) **Flow Metering and Moisture Measuring.** For the Term of this Consent Decree,
20 Defendants shall ensure that all application of the Facility's wastewater to land, whether part of the
21 Facility or off-site, is measured by flow meters. Any application to land shall be followed by daily
22 moisture measurements using a portable moisture meter at multiple depths in each area of
23 irrigation. The NMP also shall define moisture levels for comparison to field readings that will
24 indicate if a field is reaching saturation, and shall identify corrective actions if field saturation is
25 reached. All application areas shall be equipped with at least two (2) moisture sensor stations, each
26 of which shall include a data logger with sensors at 1-foot, 2-foot and 3-foot depths. These
27 moisture readings shall be considered against projected evapotranspiration and anticipated crop
28 needs, and application recommendations shall be made accordingly, for each field weekly. The

1 sensor system shall be outfitted with an alarm function to immediately notify Defendants if the
2 moisture level in the third foot sensor reaches field capacity. If the moisture level in the third foot
3 sensor reaches field capacity, then all application of wastewater to that field shall cease until
4 remediated. Defendants agree to incorporate flow metering of irrigation water for the purpose of
5 documenting irrigation water applied to specific fields. Defendants also agree to incorporate soil
6 moisture data collection into the NMP as appropriate for site-specific conditions to be developed
7 during the NMP process.

8 (o) **Soil Testing to Ensure Safe Wastewater Application Practices.** Defendants shall
9 conduct soil testing and the NMP shall evaluate the following criteria to ensure safe wastewater
10 application practices: (i) wastewater application rates at the Facility shall be based on residual soil
11 nitrogen and phosphorous levels to ensure that the Facility’s wastewater is applied in agronomic
12 quantities and rates as defined herein; (ii) for all lands to which the Facility’s wastewater is applied
13 (whether owned or leased, or whether part of the Facility or off-site, on nearby properties)
14 Defendants shall conduct annual Summer soil sampling to determine (a) the average nitrate-
15 nitrogen plus ammonium-nitrogen concentrations in each of the top two feet of the soil column;
16 and (b) the average available phosphorous concentrations in each of the top two feet of the soil
17 column; (iii) on or before September 1st of each year, Defendants shall provide this sampling data
18 to Plaintiff; (iv) in the event that this sampling indicates average nitrate-nitrogen plus ammonium-
19 nitrogen concentrations in the top two feet of the soil column above 15 mg N/kg (the “Nitrate-
20 Nitrogen plus Ammonium-Nitrogen Action Level”), OR average available phosphorous
21 concentrations in the top two feet of the soil column above 300 mg P/kg ppm (the “Phosphorous
22 Action Level”); and (v) the Parties shall meet and confer under the meet-and-confer provisions
23 herein in subsections 2(d), 2(e), 2(f), 2(g) and 2(h), above to agree upon all additional measures
24 required to address high concentrations and reduce them to concentrations below the two Action
25 Levels in the NMP. In the event that any fields exceed either of the two Action Levels for two
26 consecutive years, land application of wastewater to these fields shall cease until further soil testing
27 demonstrates concentrations below the two Action Levels. The NMP for these fields shall be
28 modified to reduce these concentrations to below the two Action Levels. The Parties understand

1 that these two Action Levels reflect a settlement compromise intended to achieve significant
2 reduction of ongoing impacts and may not represent the scientific standards that may be needed to
3 provide full, long-term environmental remediation and protection.

4 3. **SWPPP Amendments.** On or before **November 15, 2023**, Defendants shall amend the
5 Facility SWPPP to incorporate all of the relevant requirements of this Decree and the General
6 Permit. These revisions shall reflect all then-current site conditions and practices and identify
7 potential contaminants of concern, identify the location of all pervious and impervious areas, drop
8 inlets, BMPs, and storm water conveyance and direction. These revisions shall also provide for
9 required data logging; and required weekly monitoring and maintenance of all Facility collection
10 and discharge points during the Wet Season; and the twice-annual storm water management
11 training for Facility employees referenced above.

12 4. **Sampling Frequency.** For the 2023-2024, 2024-2025 and 2025-2026 reporting years
13 ending June 30th (2024, 2025 and 2026), Defendants shall collect and analyze samples at the
14 Facility from three (3) Qualifying Storm Events (“QSEs”) within the first half of each reporting
15 year (July 1 to December 31), and three (3) QSEs within the second half of each reporting year
16 (January 1 to June 30). The storm water sample results shall be compared with the values set
17 forth in Exhibit D, attached hereto, and incorporated herein by reference. If the results of any
18 such samples exceed the parameter values set forth in **Exhibit D**, Defendants shall comply with
19 the “Action Memorandum” requirements set forth below.

20 5. **Sampling Parameters.** All six (6) samples in each reporting year shall be analyzed for
21 each of the constituents listed in **Exhibit D**, including TMDLs, as applicable, by a laboratory
22 accredited by the State of California. All samples collected from the Facility shall be delivered to
23 the laboratory as soon as possible to ensure that sample “hold time” is not exceeded. Analytical
24 methods used by the laboratory shall comply with General Permit requirements in regard to both
25 test method and detection limit. See General Permit, Table 2, at 43. Sampling results shall be
26 provided to CAT within ten (10) days of Defendants’ receipt of the laboratory report from each
27 sampling event, pursuant to the Notice provisions below.
28

1 6. **“Action Memorandum” Trigger; CAT’s Review of “Action Memorandum”; Meet-**
2 **and-Confer.** If any sample taken during the two (2) reporting years referenced in Paragraph 4
3 above exceeds the Evaluation Levels set forth in Exhibit D , or if Defendants fail to collect and
4 analyze samples from six (6) QSEs, then Defendants shall prepare a written statement discussing
5 the exceedance(s) and/or failure to collect and analyze samples from six (6) storm events, the
6 possible cause and/or source of the exceedance(s), and any additional measures that will be taken
7 to address and eliminate future exceedances and/or failures to collect required samples (“Action
8 Memorandum”).

9 The Action Memorandum shall be provided to CAT not later than July 15 following the
10 conclusion of each reporting year, on July 15, 2024, July 15, 2025 and July 15, 2026. Such
11 additional BMPs may include, but are not limited to, further feasible material improvements to
12 the storm water collection and discharge system, changing the type and frequency of Facility
13 sweeping, changing the type and extent of storm water filtration media or modifying other
14 industrial activities or management practices at the Facility as feasible. Such additional measures,
15 to the extent feasible, shall be implemented immediately and in no event later than sixty (60) days
16 after the due date of the Action Memorandum. Within thirty (30) days of implementing BMP
17 modifications, the Facility SWPPP shall be amended to include all additional BMP measures
18 designated in the Action Memorandum. CAT may review and comment on an Action
19 Memorandum and suggest any additional pollution prevention measures it believes are
20 appropriate; however, CAT’s failure to do so shall not be deemed to constitute agreement with
21 the proposals set forth in the Action Memorandum. Upon request by CAT, Defendants agree to
22 meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the contents and
23 sufficiency of the Action Memorandum.

24 7. **Inspections During the Term of this Decree.** Subject to any limitations imposed on-
25 site inspections by any Court order(s) herein, and in addition to any site inspections conducted as
26 part of the settlement process and the meet-and-confer process concerning an Action
27 Memorandum as set forth above, or any site visits to implement the terms of this agreement, such
28 as the groundwater monitoring plan implementation, CAT may perform up to four (4) physical

1 inspections of the Facility during the term of this Decree. These inspections would be performed
2 by CAT's counsel and consultants in accordance with all court restrictions imposed in the
3 Discovery Order issued on May 1, 2023 (Docket No. 35), or any other orders of the Court herein
4 and may include sampling, photographing, and/or videotaping. Those restrictions are as follows:
5 Defendants shall provide CAT with a copy of all sampling reports, photographs and/or video
6 taken by Defendants and/or their representatives during the inspections. CAT shall provide at
7 least seventy-two (72) hours' advance notice of such physical inspection, and Defendants shall
8 have the right to deny access if circumstances would make the inspection unduly burdensome and
9 pose significant interference with business operations or any party/attorney, or the safety of
10 individuals. In such case, Defendants shall specify at least three (3) dates within the two (2)
11 weeks thereafter upon which a physical inspection by CAT may proceed. Defendants shall not
12 make any alterations to Facility conditions during the period between receiving CAT's initial
13 seventy-two (72) hour advance notice and the start of CAT's inspection that Defendants would
14 not otherwise have made but for receiving notice of CAT's request to conduct a physical
15 inspection of the Facility, excepting any actions taken in compliance with any applicable laws or
16 regulations. Nothing herein shall be construed to prevent Defendants from continuing to
17 implement any BMPs identified in the SWPPP or any WDRs during the period prior to an
18 inspection by CAT or at any time.

19 **8. Communications to/from Regional and State Water Boards.** During the term of this
20 Decree, Defendants shall provide CAT with courtesy copies of all documents submitted to, or
21 received from, the Regional Water Board or the State Water Board concerning storm water
22 discharges from the Facilities, including, but not limited to, all documents and reports submitted
23 to the Regional Water Board and/or State Water Board as required by the current General Permit.
24 Such documents and reports shall be provided to CAT via email pursuant to the Notice provisions
25 set forth below and contemporaneously with Defendants' submission(s) to, or, receipt from, such
26 agencies.

1 9. **SWPPP Amendments.** Pursuant to the Notice provisions set forth below, Defendants
2 shall provide CAT with a copy of any amendments to the Facility SWPPP made during the term
3 of the Decree within fourteen (14) days of such amendment.

4 **II. MITIGATION, COMPLIANCE MONITORING, AND FEES AND COSTS**

5 10. **Environmental Mitigation Project.** As mitigation to address any potential harms from
6 the Clean Water Act violations alleged in the Action, Defendants agree to pay the sum of
7 \$250,000 to the Rose Foundation for Communities and the Environment for projects to improve
8 water quality in the impacted watersheds. Such mitigation payment shall be remitted directly to
9 the Rose Foundation at: Rose Foundation, Attn: Tim Little, 201 4th Street, Suite 102, Oakland,
10 CA 94607-4369 within ten (10) days after the Court Entry Date.

11 11. **Compliance Monitoring Funding.** To defray CAT’s reasonable investigative, expert,
12 consultant and attorneys’ fees and costs associated with monitoring Defendants’ compliance with
13 this Decree, Defendants agree to pay the sum of \$70,000 to a compliance monitoring fund
14 maintained by counsel for CAT as described below. Payment shall be made payable to the “Law
15 Offices of Andrew L. Packard Attorney Client Trust Account” and remitted to Plaintiff’s counsel
16 by ACH or wire transfer within ten (10) days after the Court Entry Date.

17 On the date one year from Court Entry Date, and each year thereafter, Plaintiff’s counsel
18 shall submit an annual statement to Defendants summarizing their hours spent on compliance
19 monitoring activities and costs. Plaintiff shall only withdraw from the compliance monitoring
20 fund an amount for the time and costs that Plaintiff actually incurred pursuant to this Consent
21 Decree. If there is a balance remaining after the Termination Date, Plaintiff shall so indicate on
22 the final annual statement and shall remit such unused balance to Defendants.

23 Compliance monitoring activities may include, but shall not be limited to, site
24 inspections, review of water quality sampling reports, review of annual reports, and discussions
25 with Defendants concerning the ERA reporting requirements of the General Permit as specifically
26 set forth herein. Compliance monitoring funds shall not be used to pay attorneys’ fees and costs
27 associated with negotiating any amendments to this Decree; the recovery of any such fees or costs
28 shall be addressed in the amendment to this Decree.

1 12. **Reimbursement of Fees & Costs.** Defendants agree to reimburse CAT in the amount
2 to be decided upon Plaintiff’s application to the Court, which shall be filed after the submission of
3 this Consent Decree to the United States Department of Justice for review pursuant to 33 U.S.C.
4 § 1365(c) and the entry of this Consent Decree by this Court.

5 **III. DISPUTE RESOLUTION, ENFORCEMENT, WAIVERS AND RELEASES**

6 13. Unless as provided in Section I.2, subsections (d), (e), (f), (g), (h) and (o), if a dispute
7 under this Decree arises, or either Party believes that a breach of this Decree has occurred, the
8 Parties shall meet and confer within seven (7) days of receiving written notification from the
9 other Party of a request for a meeting to determine whether a breach has occurred and to develop
10 a mutually agreed upon plan, including implementation dates, to resolve the dispute, which meet
11 and confer process may include, if the parties agree, participation of the Magistrate Judge in a
12 conference between the parties. If the Parties fail to meet and confer, or the meet-and-confer does
13 not resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred
14 or should have occurred, either Party shall be entitled to all rights and remedies under the law,
15 including filing a motion with the United States District Court of California, Northern District,
16 which shall retain jurisdiction over the Action until the Termination Date for the limited purposes
17 of enforcement of the terms of this Decree. The Parties shall be entitled to seek fees and costs
18 incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions
19 set forth in the then-applicable federal Clean Water Act and Rule 11 of the Federal Rules of Civil
20 Procedure, and applicable case law interpreting such provisions.

21 14. **CAT’s Waiver and Release.** Upon the Court Entry Date of this Decree, CAT, on its
22 own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers,
23 agents, attorneys, representatives, and employees, releases Defendants and its officers, directors,
24 employees, shareholders, parents, subsidiaries, and affiliates, and each of its predecessors,
25 successors and assigns, and each of their agents, attorneys, consultants, and other representatives
26 (each a “Released Defendant Party”) from, and waives all claims arising from or pertaining to the
27 Notice Letters and this Action, including, without limitation, all claims for injunctive relief,
28 damages, penalties, fines, sanctions, mitigation (excluding all fees of attorneys, experts, and

1 others, and costs per Section II above), or any other sum incurred or claimed or which could have
2 been claimed under the Clean Water Act in this Action, for the alleged failure of Defendants to
3 comply with the Clean Water Act at the Facility, up to the Court Entry Date.

4 **15. Defendants' Waiver and Release.** Upon the Court Entry Date of this Decree
5 Defendants, on their own behalf and on behalf of any Released Defendant Party under its control,
6 release CAT (and its officers, directors, employees, members, parents, subsidiaries, and affiliates,
7 and each of their successors and assigns, and its agents, attorneys, and other representative) from,
8 and waives all claims which arise from or pertain to the Action, including all claims for fees
9 (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or
10 timely claimed or which could have been timely claimed for matters associated with or related to
11 the Action.

12 **IV. MISCELLANEOUS PROVISIONS**

13 **16.** The Parties enter into this Decree for the purpose of avoiding prolonged and costly
14 litigation of the Clean Water Act claims in the Action. Nothing in this Decree shall be construed
15 as, and Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of
16 law, or violation of law, nor shall compliance with this Decree constitute or be construed as an
17 admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, nor
18 deemed to be compliance with the General Permit or the Clean Water Act. However, this
19 paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the
20 Parties under this Decree.

21 **17.** The Decree shall be effective upon mutual execution by all Parties. The Decree shall
22 terminate on the "Termination Date," which shall be **November 1, 2026**.

23 **18.** The Decree may be executed in one or more counterparts which, taken together, shall be
24 deemed to constitute one and the same document. An executed copy of this Decree shall be valid
25 as an original.

26 **19.** In the event that any one of the provisions of this Decree is held by a court to be
27 unenforceable, the validity of the enforceable provisions shall not be adversely affected.
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1 20. The language in all parts of this Decree, unless otherwise stated, shall be construed
2 according to its plain and ordinary meaning. This Decree shall be construed pursuant to the law
3 of the United States, without regard to choice of law principles.

4 21. The undersigned are authorized to execute this Decree on behalf of their respective
5 Parties and have read, understood and agreed to be bound by all of the terms and conditions of
6 this Decree.

7 22. All agreements, covenants, representations and warranties, express or implied, oral or
8 written, of the Parties concerning the subject matter of this Decree are contained herein. This
9 Decree and its attachments are made for the sole benefit of the Parties, and no other person or
10 entity shall have any rights or remedies under or by reason of this Decree, unless otherwise
11 expressly provided for therein.

12 23. **Notices.** Any notices or documents required or provided for by this Decree or related
13 thereto that are to be provided to CAT pursuant to this Decree shall be sent by electronic mail
14 transmission to the email addresses listed below:

15 Patricia Clary, Executive Director
16 E-mail: patty@alt2tox.org

17 With copies sent to:
18 William Verick
19 Email: wverick@igc.org

20 And to:
21 Andrew L. Packard
22 E-mail: andrew@packardlawoffices.com

23 And
24 William Carlon
25 E-mail: wncarlon@packardlawoffices.com

26 Any notices or documents required or provided for by this Decree or related thereto that are to be
27 provided to Defendants pursuant to this Decree shall be sent by electronic mail transmission to
28 the email addresses listed below:

John Reichardt
Email: john.reichardt@gmail.com

With copies sent to:

1 Diane G. Kindermann
2 Email: dkindermann@aklandlaw.com

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

4 24. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

5 25. If for any reason the Court should decline to approve this Decree in the form presented,
6 the Parties shall use their best efforts to work together to modify the Decree within thirty (30)
7 days so that it is acceptable to the Court. If the Parties are unable to modify this Decree in a
8 mutually acceptable manner, this Decree shall become null and void.

9 26. This Decree shall be deemed to have been drafted equally by the Parties, and shall not
10 be interpreted for or against any Settling Party on the ground that any such party drafted it.

11 27. This Decree and the attachments contain all of the terms and conditions agreed upon by
12 the Parties relating to the matters covered by the Decree, and supersede any and all prior and
13 contemporaneous agreements, negotiations, correspondence, understandings, and
14 communications of the Parties, whether oral or written, respecting the matters covered by this
15 Decree. This Decree may be amended or modified only by a writing signed by the Parties or their
16 authorized representatives. Any amendments to this Decree shall be subject to the United States
17 Department of Justice's 45-day statutory review as set forth in 33 U.S.C. § 1365(c).

18 The Parties hereto enter into this Decree and respectfully submit it to the Court for its
19 entry.

20 APPROVED AS TO CONTENT:

21 Dated: _____, 2023

CALIFORNIANS FOR ALTERNATIVES TO
TOXICS

22 By: _____
23 Patricia Clary, Executive Director

24 Dated: _____, 2023

REICHARDT DUCK FARM, INC.

25 By: _____
26 John Reichardt, General Manager

27 Dated: _____, 2023

JOHN REICHARDT

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By: _____
JOHN REICHARDT

APPROVED AS TO FORM:

Dated: _____, 2023

LAW OFFICES OF ANDREW L. PACKARD

By: _____
Andrew L. Packard
Attorneys for Plaintiff
CALIFORNIANS FOR ALTERNATIVES TO
TOXICS

Dated: _____, 2023

ABBOTT & KINDERMANN, INC.

By: _____
Diane G. Kindermann
Attorney for Defendants
REICHARDT DUCK FARM and JOHN
REICHARDT

Good cause appearing, IT IS SO ORDERED.

Dated: _____, 2023

By: _____
Hon. Magistrate Judge Alex G. Tse
Unites Stated District Court
Northern District of California

EXHIBIT A – Facility Site Map

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Drainage Area 005

Drainage Area 006

Richard Duck Farm

Drainage Area 007

Drainage Area 003

Drainage Area 001

Middle 2 Rock Rd

Purvins Rd

Middle 2

Success Rd

WW Ponds

New Sample Point 2021

Clary Ranch Wines

Former Sample Point

EXHIBIT B – CWA Notice of Violation and Intent to Sue Letter

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LAW OFFICES OF
ANDREW L. PACKARD

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952
PHONE (707) 782-4060 FAX (707) 782-4062
INFO@PACKARDLAWOFFICES.COM

October 21, 2022

VIA CERTIFIED MAIL

John Reichardt
Reichardt Duck Farm
3770 Middle Two Rock Road
Petaluma, CA 94952

John Reichardt
185 Mystic Mountain Drive
Sparks, NV 89441

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE
FEDERAL WATER POLLUTION CONTROL ACT (“CLEAN WATER ACT”)
(33 U.S.C. §§ 1251 *et seq.*)**

Dear John Reichardt:

This firm represents Californians for Alternatives to Toxics (“CATs”) in regard to violations of the Clean Water Act (“the Act”) occurring at Reichardt Duck Farm Inc.’s (“RDF”) duck farm located at 3770 Middle Two Rock Road, in Petaluma, California (“Facility”). This letter is being sent to you as the responsible owner and operator of the enterprise, and as the registered agent for this entity. Unless otherwise noted, John Reichardt and Reichardt Duck Farm Inc. shall hereinafter be collectively referred to as “RDF.” The purpose of this letter is to provide RDF with notice of the violations of the Industrial General Permit occurring at the Petaluma Facility, including, but not limited to, noncompliant discharges of polluted storm water associated with industrial activities from the Facility into local surface waters.

RDF is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 14-57-DWQ (“General Permit” or “Permit”).¹

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 RDF to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$59,973

¹ RDF submitted a Notice of Intent (“NOI”) to comply with the General Permit for the Petaluma Facility on or about January 26, 2015. The Facility was assigned the Waste Discharge Identification (“WDID”) Number 249I014770.

per day per violation for all Clean Water Act violations occurring after November 2, 2015.

In addition to civil penalties, CATs 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.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CATs intends to file suit under Section 505(a) of the Act in federal court against RDF for violations of the Clean Water Act and the Permit.

I. Background.

A. Californians for Alternatives to Toxics

CATs is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which RDF discharges polluted storm water. Members of CATs enjoy the waters that the Facility discharges into, including Laguna Lake, Chileno Creek, Walker Creek, Tomales Bay and the Pacific Ocean ("Impacted Waters"). Members of CATs use and enjoy the Impacted Waters for fishing, estuarine habitat and the rare, threatened and endangered species it supports, the wildlife habitat, marine habitat, and other designated beneficial uses. The discharge of pollutants from the Facility into the Impacted Waters impairs each of these uses. Further, discharges of polluted storm water from the Facility are ongoing and continuous. Thus, the interests of CATs' members have been, are being, and will continue to be adversely affected by RDF's failure to comply with the Clean Water Act and the General Permit.

B. The Clean Water Act.

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Bay Keeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env'tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act's permitting scheme). The discharge of pollutants not specifically allowed by a

NPDES permit is illegal. *Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California’s intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b). Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California’s State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342.

C. California’s General Permit for Storm Water Discharges Associated with Industrial Activities

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply (“NOI”). General Permit, Standard Condition XXI.A. These facilities must file their NOIs before the initiation of industrial operations. *Id.*

Facilities covered by the General Permit include concentrated animal feeding operations (“CAFO”). *Id.* at Attachment A. To be considered a CAFO, a facility must first be defined as an animal feeding operation (“AFO”) and meet the criteria established in the CAFO regulation. An AFO is an agricultural operation where animals are kept and raised in confined situations where the following conditions are met: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and, (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1). A CAFO is an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of 40 C.F.R. § 122.23. An operation that confines ducks is considered a Large CAFO if the above conditions are met, and there are at least 30,000 ducks (if the AFO uses other than a liquid manure handling system) or 5,000 ducks (if the AFO uses a liquid manure handling system). 40 C.F.R. § 122.23(b)(4)(xii) and (xiii).

Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA.

The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan (“SWPPP”) requirements; and (3) self-monitoring and reporting requirements.

D. RDF’s Petaluma Facility

Information available to CATs indicates that RDF’s industrial activities at the approximately 373-acre Facility include, but are not limited to: operations associated with a

concentrated animal feeding operation related to the raising and slaughtering of ducks. Based on public reporting in the press about the Facility, CATs is informed, and on that basis, believes that the Facility contains approximately 200,000 to 300,000 ducks at any time, and therefore meets the definition of a Large CAFO. Consequently, the Facility is required to maintain coverage under the General Permit.

The Facility includes rows of houses in which ducks are confined, wastewater processing, storage, and disposal facilities, dry litter and manure processing, storage, and disposal facilities, a fueling station, a shop and a network of roads that provide connectivity between the various industrial areas. The industrial activities at the Facility fall under Standard Industrial Classification (“SIC”) Code 2015 (“Poultry Slaughtering and Processing”).

RDF collects and discharges storm water associated with industrial activities at the Facility through at least eight (8) discharge points into an unnamed creek, which drains to Laguna Lake. Laguna Lake discharges to Chileno Creek, which is a tributary to Walker Creek, which ultimately discharges to Tomales Bay and the Pacific Ocean. The Impacted Waters are waters of the United States within the meaning of the Clean Water Act.

The Tomales Bay watershed in western Marin County is one of the major estuaries on the west coast of the United States. It has a diverse ecosystem and several notable tributaries, including Lagunitas Creek, which has one of the few remaining viable coho salmon runs in central California. *Water Quality Control Plan for the San Francisco Bay Basin* (“Basin Plan”) Section 4.1.3.3. The Water Board identified Tomales Bay as an area where commercial shellfishery is threatened and authorized the formation of a technical advisory committee to investigate and develop a remediation strategy. California Regional Water Quality Control Board San Francisco Bay Region Resolution 94-018. On February 8, 2007, the U.S. EPA approved the Total Maximum Daily Load (“TMDL”) for pathogens in the Tomales Bay and the Basin Plan has been amended to incorporate the TMDL along with an implementation plan to achieve the TMDL. Basin Plan Section 7.3.1. “The overall goal of the Tomales Bay Watershed Pathogens Total Maximum Daily Load (TMDL) is to ensure protection of water contact recreational uses and Bay shellfish harvesting, thereby minimizing human exposure to disease-causing pathogens.” *Id.*

According to the 2018 303(d) List of Impaired Water Bodies, Tomales Bay and its tributaries, including Walker Creek, downstream of the Facility are impaired for: Mercury, Nutrients, Sedimentation/Siltation, and Pathogens.² Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife.

² 2018 Integrated Report – All Assessed Waters, *available at* <https://gispublic.waterboards.ca.gov/portal/apps/webappviewer/index.html?id=e2def63ccef54eedbee4ad726ab1552c> (last accessed September 20, 2022).

The areas of industrial activity at the Facility are sources of pollutants. The General Permit requires RDF to analyze storm water samples for TSS, pH, and Oil and Grease. General Permit, Section XI.B.6. The General Permit also requires facilities to analyze storm water samples for pollutants that are likely to be present in a particular facility's discharge, and any additional applicable industrial parameters related to receiving waters with 303(d) listed impairments. *Id.* Given that the Facility generates a significant amount of manure from ducks, nutrients and pathogens are pollutants that are likely to be present in the Facility's storm water discharges, and because they are related to the receiving waters 303(d) listed impairment, RDF is required to analyze their storm water samples for those pollutants.

II. RDF's Violations of the Act and Permit.

Based on its review of available public documents, CATs is informed and believes that RDF, through its operation of the Facility, is in ongoing violation of both the substantive and procedural requirements of the CWA and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, RDF is subject to penalties for violations of the Act since October 21, 2017.

A. RDF Discharges Storm Water Containing Pollutants in Violation of the General Permit's Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.

RDF's storm water sampling results provide conclusive evidence of RDF's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations at its Facility. 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).

1. Applicable Water Quality Standards.

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board's Basin Plan or statewide water quality control plans and policies. General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management

practices (“BMPs”) in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The Basin Plan sets forth water quality standards and prohibitions applicable to RDF’s storm water discharges from its Facility. The Basin Plan identifies present and potential beneficial uses for the Impacted Waters, which include shellfish harvesting (SHELL), warm freshwater habitat (WARM), wildlife habitat (WILD), water contact recreation (REC-1), noncontact water recreation (REC-2), cold freshwater habitat (COLD), fish migration (MIGR), preservation of rare and endangered species (RARE), commercial, and sport fishing (COMM), navigation (NAV), marine habitat (MAR), and fish spawning (SPWN).

2. Applicable Effluent Limitations.

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable (“BAT”) for toxic and nonconventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F. Supp. 2d 914, 920, 923 (C.D. Cal 2009); General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by RDF: Total Suspended Solids – 100 mg/L; Oil & Grease – 15.0 mg/L; pH – 6.0-9.0 s.u., Nitrate plus Nitrite Nitrogen – 0.68 mg/L, and Phosphorus – 2.0 mg/L.

3. RDF’s Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

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

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
11/29/2018	Unnamed Creek	TSS	400	100

b. Discharge of Storm Water Containing Nitrite and Nitrate at Concentrations in Excess of Applicable EPA Benchmark Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/13/2021	C Pond Creek	N+N	0.77 (Nitrite); 13 (Nitrate)	0.68
12/27/2021	C Pond Creek	N+N	11 (Nitrate)	0.68
1/4/2022	C Pond Creek	N+N	10 (Nitrate)	0.68
3/10/2021	C Pond Creek	N+N	120 (Nitrate)	0.68
1/27/2021	C Pond Creek	N+N	20 (Nitrate)	0.68
12/23/2019	Unnamed Creek	N+N	18 (Nitrate)	0.68
12/2/2019	Unnamed Creek	N+N	0.79 (Nitrite); 11 (Nitrate)	0.68
1/25/2018	Unnamed Creek	N+N	30 (Nitrate)	0.68
11/29/2018	Unnamed Creek	N+N	13 (Nitrate)	0.68
1/7/2019	Unnamed Creek	N+N	13 (Nitrate)	0.68
2/4/2019	Unnamed Creek	N+N	3.5 (Nitrate)	0.68

c. Discharge of Storm Water Containing Phosphorus (P) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
12/13/2021	C Pond Creek	P	3.7	2.00
12/27/2021	C Pond Creek	P	3.1	2.00
1/4/2022	C Pond Creek	P	2.7	2.00
1/27/2021	C Pond Creek	P	3.7	2.00
12/23/2019	Unnamed Creek	P	2.8	2.00
11/29/2018	Unnamed Creek	P	2.9	2.00

d. Discharge of Storm Water Containing pH at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (s.u.)	EPA Benchmark Value (s.u.)
3/10/2021	C Pond Creek	pH	2.71	Greater than 6.0, less than 9.0

e. RDF 's Sample Results Are Evidence of Violations of the General Permit

RDF's sample results demonstrate violations of the Permit's discharge prohibitions, receiving water limitations and effluent limitations set forth above. CATs is informed and believes that RDF has known that its storm water contains pollutants at levels exceeding General Permit standards since at least October 21, 2017.

CATs alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CATs alleges that RDF has discharged storm water containing impermissible levels of TSS, N+N, P, and pH in violation of the General Permit. General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B. CATs further alleges that RDF violates the Basin Plan's water quality objectives each time it discharges storm water with *E. coli* and fecal coliforms in excess of the water quality standards set therein.

4. RDF Has Failed to Implement BAT and BCT

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* General Permit, Sections V, X.H.1-2.

RDF has failed to implement and maintain the minimum BMPs required by the General Permit as evidenced by the exceedances identified above. Specifically, RDF has failed to comply with the following: good housekeeping requirements, preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. Permit, Section X.H.1(a-g).

RDF has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. General Permit, Sections X.H.2.

Each day that RDF have failed to develop and implement BAT and BCT at 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). RDF has been in violation of the BAT and BCT requirements at its Facility every day since at least October 21, 2017.

5. RDF Has Failed to Comply with the Monitoring Requirements of the General Permit.

The General Permit requires dischargers to implement a Monitoring Implementation Plan. General Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids (“TSS”) and oil and grease (“O&G”), certain industry-specific parameters set forth in Table 2 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. General Permit, Section XI.B.6. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. General Permit, Section XI.B.11.

RDF has failed to develop and implement an adequate Monitoring Implementation Plan for its Facility, and has thus violated the monitoring requirements of the General Permit. For example, RDF has failed to monitor for every potential pollutant that is likely to be present at its Facility, including nutrients and pathogens. In addition, RDF has failed to collect the required number of samples for each reporting period. RDF has also failed to monitor every discharge location of storm water associated with industrial activities at its Facility. Each day that RDF has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct violation of the Act and Permit. RDF has been in violation of the Monitoring requirements every day since at least October 21, 2017.

6. RDF Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

The General Permit requires dischargers to develop and implement a site-specific SWPPP. General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board’s Storm Water Multiple Application and Report Tracking System (“SMARTS”) their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3)

months in the reporting year. General Permit, Section X.B.

CATs' investigation indicates that RDF has been operating with an inadequately developed and implemented SWPPP in violation of General Permit requirements. RDF has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous continuing effluent limitation violations.

Each day RDF failed to develop and implement an adequate SWPPP at its Facility is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section X of the General Permit. RDF has been in violation of these requirements at its Facility every day since at least October 21, 2017.

7. RDF Has Failed to Submit Timely, True and Correct Reports.

Section XVI of the Permit requires dischargers to submit an Annual Report by July 15th of each reporting year to the Regional Board. The Annual Report must be signed and certified by a discharger's Legally Responsible Person, or Duly Authorized Representative. General Permit, Sections XVI.A, XXI.K. The Annual Report must include a compliance checklist, certifying compliance with the General Permit and an explanation of any non-compliance. General Permit, Section XVI.B.

CATs' investigations indicate that RDF has submitted incomplete Annual Reports and purported to comply with the Permit despite significant noncompliance at its Facility. Each day RDF failed to submit timely, true and correct reports is a separate violation of the Clean Water Act. RDF has been in violation of these requirements at its Facility every day since at least October 21, 2017.

III. Persons Responsible for the Violations.

CATs puts RDF on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CATs puts RDF on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Patricia Clary, Executive Director
Californians for Alternatives to Toxics
600 F Street, Suite 3 #911
Eureka, CA 95521
(707) 834-4833

V. Counsel.

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

Andrew L. Packard
William N. Carlon
Law Offices of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, CA 94952
(707) 782-4060
andrew@packardlawoffices.com
wncarlon@packardlawoffices.com

VI. Conclusion

CATs 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 CWA against RDF 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,



William N. Carlon
Law Offices of Andrew L. Packard
Counsel for CALIFORNIANS FOR
ALTERNATIVES TO TOXICS

SERVICE LIST

VIA CERTIFIED MAIL

Michael Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Martha Guzman, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Merrick B. Garland, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Matthias St. John, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard Suite A
Santa Rosa, CA 95403

ATTACHMENT A
Notice of Intent to File Suit, Reichardt Duck Farm
Significant Rain Events,* October 20, 2017 – October 21, 2022

October 20, 2017	November 29, 2018	March 23, 2019	April 5, 2020
November 4, 2017	November 30, 2018	March 25, 2019	April 6, 2020
November 9, 2017	December 1, 2018	March 26, 2019	April 7, 2020
November 10, 2017	December 5, 2018	March 27, 2019	May 12, 2020
November 11, 2017	December 15, 2018	March 28, 2019	May 14, 2020
November 14, 2017	December 17, 2018	March 29, 2019	May 17, 2020
November 15, 2017	December 19, 2018	April 5, 2019	May 18, 2020
November 16, 2017	December 21, 2018	April 6, 2019	November 14, 2020
November 17, 2017	December 24, 2018	April 16, 2019	November 18, 2020
November 26, 2017	December 25, 2018	May 16, 2019	December 12, 2020
November 27, 2017	January 5, 2019	May 17, 2019	December 13, 2020
January 5, 2018	January 6, 2019	May 19, 2019	December 14, 2020
January 6, 2018	January 7, 2019	May 20, 2019	December 17, 2020
January 8, 2018	January 9, 2019	November 27, 2019	December 26, 2020
January 9, 2018	January 10, 2019	December 1, 2019	December 31, 2020
January 19, 2018	January 12, 2019	December 2, 2019	January 2, 2021
January 22, 2018	January 15, 2019	December 4, 2019	January 5, 2021
January 25, 2018	January 16, 2019	December 5, 2019	January 7, 2021
January 26, 2018	January 17, 2019	December 7, 2019	January 8, 2021
February 26, 2018	January 18, 2019	December 8, 2019	January 23, 2021
March 1, 2018	January 20, 2019	December 11, 2019	January 25, 2021
March 2, 2018	January 21, 2019	December 12, 2019	January 27, 2021
March 3, 2018	January 31, 2019	December 18, 2019	January 28, 2021
March 8, 2018	February 2, 2019	December 19, 2019	January 29, 2021
March 13, 2018	February 3, 2019	December 22, 2019	February 2, 2021
March 14, 2018	February 4, 2019	December 25, 2019	February 12, 2021
March 15, 2018	February 5, 2019	December 30, 2019	February 15, 2021
March 16, 2018	February 9, 2019	January 8, 2020	February 19, 2021
March 21, 2018	February 10, 2019	January 9, 2020	March 6, 2021
March 22, 2018	February 13, 2019	January 14, 2020	March 9, 2021
April 6, 2018	February 14, 2019	January 16, 2020	March 10, 2021
April 7, 2018	February 15, 2019	January 17, 2020	March 15, 2021
April 12, 2018	February 16, 2019	January 22, 2020	March 19, 2021
April 16, 2018	February 26, 2019	January 26, 2020	April 26, 2021
April 17, 2018	February 27, 2019	January 29, 2020	September 19, 2021
October 2, 2018	March 2, 2019	March 7, 2020	October 18, 2021
October 3, 2018	March 6, 2019	March 14, 2020	October 20, 2021
November 22, 2018	March 7, 2019	March 15, 2020	October 21, 2021
November 23, 2018	March 10, 2019	March 25, 2020	October 22, 2021
November 24, 2018	March 20, 2019	March 29, 2020	October 24, 2021
November 28, 2018	March 21, 2019	March 30, 2020	October 25, 2021

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

ATTACHMENT A
Notice of Intent to File Suit, Reichardt Duck Farm
Significant Rain Events,* October 20, 2017 – October 21, 2022

November 2, 2021
November 4, 2021
November 9, 2021
December 12, 2021
December 13, 2021
December 14, 2021
December 16, 2021
December 22, 2021
December 23, 2021
December 24, 2021
December 25, 2021
December 26, 2021
December 27, 2021
December 29, 2021
January 4, 2022
January 7, 2022
March 4, 2022
March 15, 2022
March 28, 2022
April 11, 2022
April 15, 2022
April 16, 2022
April 19, 2022
April 21, 2022
April 22, 2022
June 5, 2022
June 6, 2022
September 18, 2022
September 19, 2022

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

EXHIBIT C – Supplemental CWA Notice of Violation and Intent to Sue Letter

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LAW OFFICES OF
ANDREW L. PACKARD
245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952
PHONE (707) 782-4060 FAX (707) 782-4062
INFO@PACKARDLAWOFFICES.COM

March 17, 2023

VIA CERTIFIED MAIL

John Reichardt
Reichardt Duck Farm
3770 Middle Two Rock Road
Petaluma, CA 94952

John Reichardt
185 Mystic Mountain Drive
Sparks, NV 89441

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE
FEDERAL WATER POLLUTION CONTROL ACT (“CLEAN WATER ACT”)
(33 U.S.C. §§ 1251 *et seq.*)**

Dear John Reichardt:

This firm represents Californians for Alternatives to Toxics (“CATs”) in regard to violations of the Clean Water Act (“the Act”) occurring at Reichardt Duck Farm Inc.’s (“RDF”) duck farm located at 3770 Middle Two Rock Road, near Petaluma, California (“Facility”). This letter is being sent to you as the responsible owner and operator of the enterprise, and as the registered agent for this entity. Unless otherwise noted, John Reichardt and Reichardt Duck Farm Inc. shall hereinafter be collectively referred to as “RDF.” The purpose of this letter is to provide RDF with notice of the violations of the Clean Water Act occurring at the Petaluma Facility, including, but not limited to, unpermitted discharges of liquid manure and waste water from the Facility into local surface waters.

RDF is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

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 RDF to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$64,618 per day per violation for all Clean Water Act violations occurring after November 2, 2015.

In addition to civil penalties, CATs 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.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer

must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CATs intends to file suit under Section 505(a) of the Act in federal court against RDF for violations of the Clean Water Act.

I. Background.

A. Californians for Alternatives to Toxics

CATs is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which RDF discharges polluted storm water. Members of CATs enjoy the waters that the Facility discharges into, including Laguna Lake, Chileno Creek, Walker Creek, Tomales Bay and the Pacific Ocean (“Impacted Waters”). Members of CATs use and enjoy the Impacted Waters for fishing, estuarine habitat and the rare, threatened and endangered species it supports, the wildlife habitat, marine habitat, and other designated beneficial uses. The discharge of pollutants from the Facility into the Impacted Waters impairs each of these uses. Further, discharges of polluted storm water from the Facility are ongoing and continuous. Thus, the interests of CATs’ members have been, are being, and will continue to be adversely affected by RDF’s failure to comply with the Clean Water Act and the General Permit.

B. The Clean Water Act.

Congress enacted the CWA in 1972 in order to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco Bay Keeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act’s permitting scheme). The discharge of pollutants not specifically allowed by a NPDES permit is illegal. *Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California’s intent to implement its own NPDES permit program). Concentrated animal feeding operations (“CAFO”), are point sources under the Clean Water Act. 33 U.S.C. § 1362(14). As such, a CAFO is prohibited from discharging pollutants into waters of the United States under normal operating conditions and may only discharge in the event of a 25-year, 24-hour storm event if that CAFO has coverage under and complies with a general or individual NPDES

permit. 33 U.S.C. § 1311(a). To be considered a CAFO, a facility must first be defined as an animal feeding operation (“AFO”) and meet the criteria established in the CAFO regulation. An AFO is an agricultural operation where animals are kept and raised in confined situations where the following conditions are met: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and, (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1). A CAFO is an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of 40 C.F.R. § 122.23. An operation that confines ducks is considered a Large CAFO if the above conditions are met, and there are at least 30,000 ducks (if the AFO uses other than a liquid manure handling system¹) or 5,000 ducks (if the AFO uses a liquid manure handling system). 40 C.F.R. § 122.23(b)(4)(xii) and (xiii).

The San Francisco Bay Regional Water Quality Control Board (“Regional Board”) administers the waste discharge permit program for confined animal facilities in Region 2, which includes Sonoma County and is the region in which RDF is located. The Regional Board issued the General Waste Discharge Requirements for Confined Animal Facilities Within the San Francisco Bay Region, Order No. R2-2016-0031 (“General Order”). However, the General Order is not a NPDES permit, and any CAFO who discharges or proposes to discharge pollutants to the waters of the United States are required to obtain permit coverage under a NPDES permit, and are not required to seek coverage under the General Order. Accordingly, discharges from any CAFO in Region 2 should be covered under an individual NPDES permit.

Once regulated by a NPDES permit, permittees must comply with all terms and conditions of that permit. Permittees who violate the terms of any applicable permit are subject to citizen enforcement actions, and citizens may bring suit against a party discharging pollutants into waters of the United States without a permit. *See, e.g., Headwaters, Inc. v. Talent Irrigation Dist.*, 243 F.3d 526 (9th Cir. 2001). The Clean Water Act authorizes citizens to file suit against any person alleged to be in violation of an effluent standard or limitation. 33 U.S.C. § 1365(a)(1). An “effluent standard or limitation” includes a “permit or condition thereof issued under section 1342.” 33 U.S.C. § 1365(f)(6).

According to publicly-available records, RDF lacks coverage under a general or individual CAFO NPDES permit. RDF’s coverage under the General Industrial Permit – the subject of CAT’s previous Notice of Violation – does not authorize the discharge of pollutants

¹ An AFO is considered to have a liquid-manure handling system if it uses pits, lagoons, flush systems (usually combined with lagoons), or holding ponds, or has systems such as continuous overflow watering, where the water comes into contact with manure and litter. In addition, operations that stack or pile manure in areas exposed to precipitation are considered to have liquid-manure handling systems. Duck operations are considered to use a liquid-manure handling system if (1) the ducks are raised outside with swimming areas or ponds or with a stream running through an open lot, or (2) the ducks are raised in confinement buildings where fresh or recycled water is used to flush the manure to a lagoon, pond, or other storage structure. NDPEs Permit Writers’ Manual for CAFOs, Chapter 2.2.4.

from the CAFO manure and wastewater management system, and explicitly prohibits the discharge of unauthorized non-storm water.

C. RDF's Petaluma Facility

Information available to CATs indicates that RDF's industrial activities at the approximately 373-acre Facility include, but are not limited to: operations associated with a concentrated animal feeding operation related to the raising and slaughtering of ducks. Based on public reporting in the press about the Facility, CATs is informed, and on that basis, believes that the Facility contains approximately 200,000 to 300,000 ducks at any time. CATs is informed, and on that basis, believes that the Facility uses a liquid-manure handling system.

The Facility includes rows of houses in which ducks are confined, wastewater processing, storage, and disposal facilities, dry litter and manure processing, storage, and disposal areas, a fueling station, a shop and a network of roads that provide connectivity between the various industrial areas.

RDF flushes the duck houses into a series of lagoons, pits, and/or holding ponds. RDF stacks and piles manure and litter in areas exposed to precipitation. An unnamed creek runs through RDF's Facility. The unnamed creek is a tributary to Laguna Lake, which discharges to Chileno Creek, which is a tributary to Walker Creek, which ultimately discharges to Tomales Bay and the Pacific Ocean ("Impacted Waters"). The Impacted Waters are waters of the United States within the meaning of the Clean Water Act.

The Tomales Bay watershed in western Marin County is one of the major estuaries on the west coast of the United States. It has a diverse ecosystem and several notable tributaries, including Lagunitas Creek, which has one of the few remaining viable coho salmon runs in central California. *Water Quality Control Plan for the San Francisco Bay Basin* ("Basin Plan") Section 4.1.3.3. The Water Board identified Tomales Bay as an area where commercial shellfishery is threatened and authorized the formation of a technical advisory committee to investigate and develop a remediation strategy. California Regional Water Quality Control Board San Francisco Bay Region Resolution 94-018. On February 8, 2007, the U.S. EPA approved the Total Maximum Daily Load ("TMDL") for pathogens in the Tomales Bay and the Basin Plan has been amended to incorporate the TMDL along with an implementation plan to achieve the TMDL. Basin Plan Section 7.3.1. "The overall goal of the Tomales Bay Watershed Pathogens Total Maximum Daily Load (TMDL) is to ensure protection of water contact recreational uses and Bay shellfish harvesting, thereby minimizing human exposure to disease-causing pathogens." *Id.*

According to the 2020-2022 303(d) List of Impaired Water Bodies, Tomales Bay and its tributaries, including Walker Creek, downstream of the Facility are impaired for: Mercury,

Nutrients, Sedimentation/Siltation, and Pathogens.² Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife.

II. RDF's Violations of the Act.

CATs is informed and believes that RDF, through its operation of the Facility, is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, RDF is subject to penalties for violations of the Act since March 17, 2018.

A. RDF Discharges Pollutants from Its CAFO to Surface Waters Without a Permit.

RDF's duck farm qualifies as a Large CAFO because the operation confines at least 5,000³ ducks for more than 45 days each year, and the areas within which the animals are confined (duck houses) do not sustain any crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Furthermore, RDF utilizes a liquid manure handling system.

RDF's improper manure management and storage practices are causing unpermitted discharges of liquid and solid animal waste. Upon information and belief, RDF sprays liquid manure on its crop fields immediately preceding, during, and immediately after precipitation events. Applications are also made in quantities that exceed any notion of an "agronomic rate." RDF applies liquid manure to its fields in such quantities and under such conditions that cause the liquid manure to run off the fields via swales, drainages, ditches, and/or other discrete conveyances into surface waters adjacent to the fields. CATs is informed and believes that RDF sprays liquid manure on fields that are saturated and located on hillsides that drain to in-field watercourses that drain to local surface waters.

RDF's manure storage ponds are undersized and the duck houses are in such disrepair that the Facility is unable to retain the 25-year, 24-hour storm event. Thus, RDF disposes of liquid manure from its lagoons in anticipation of storm events in order to maintain freeboard, and not for agricultural purposes.

² 2020-2022 Integrated Report – All Assessed Waters, *available at* <https://gispublic.waterboards.ca.gov/portal/apps/webappviewer/index.html?id=e2def63ccef54eedbee4ad726ab1552c> (last accessed March 16, 2023).

³ CATs is informed and believes that RDF confines well over 30,000 ducks, approximately 100,000 at any given time, and would qualify as a Large CAFO under either 40 C.F.R. § 122.23(b)(4)(xii) or (xiii).

The pollutants that have been, are being, and will continue to be discharged include facility waste water, process water, wash water, liquid and solid animal wastes, debris, sediment, chemicals, and deceased ducks or parts thereof. Animal waste contains, among other pathogens and pollutants, fecal coliform and *E. coli* bacteria, nitrogen, phosphorus, suspended solids, and pharmaceuticals.

Discharges of liquid and solid animal waste, wastewater, process water, wash water, debris, sediment, deceased ducks or parts thereof, fuel and chemicals resulting from RDF's improper manure application and storage practices, and improper operational practices, as described above, have occurred and continue to occur regularly, each time RDF sprays liquid manure on its fields before, during, and after Significant Rain Events.⁴ In addition to the recurring discharges described above, upon information and belief, unpermitted discharges resulting from the improper manure management and storage practices described above have occurred on at least the following specific dates:

- March 12, 2023
- March 13, 2023
- March 15, 2023
- March 16, 2023
- March 17, 2023

III. Persons Responsible for the Violations.

CATs puts RDF on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CATs puts RDF on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Patricia Clary, Executive Director
Californians for Alternatives to Toxics
600 F Street, Suite 3 #911
Eureka, CA 95521
(707) 834-4833

⁴ Significant Rain Events are identified in Attachment 1 to this letter.

V. Counsel.

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

Andrew L. Packard
William N. Carlon
Law Offices of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, CA 94952
(707) 782-4060
andrew@packardlawoffices.com
wncarlon@packardlawoffices.com

VI. Conclusion

CATs 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 CWA against RDF 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,



William N. Carlon
Law Offices of Andrew L. Packard
Counsel for CALIFORNIANS FOR
ALTERNATIVES TO TOXICS

SERVICE LIST

VIA CERTIFIED MAIL

Michael Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Martha Guzman, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Merrick B. Garland, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Eileen White, Executive Officer
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT 1
Notice of Intent to File Suit, Reichardt Duck Farm
Significant Rain Events,* March 17, 2018 – March 17, 2023

March 21, 2018	February 10, 2019	January 9, 2020	March 6, 2021
March 22, 2018	February 13, 2019	January 14, 2020	March 9, 2021
April 6, 2018	February 14, 2019	January 16, 2020	March 10, 2021
April 7, 2018	February 15, 2019	January 17, 2020	March 15, 2021
April 12, 2018	February 16, 2019	January 22, 2020	March 19, 2021
April 16, 2018	February 26, 2019	January 26, 2020	April 26, 2021
April 17, 2018	February 27, 2019	January 29, 2020	September 19, 2021
October 2, 2018	March 2, 2019	March 7, 2020	October 18, 2021
October 3, 2018	March 6, 2019	March 14, 2020	October 20, 2021
November 22, 2018	March 7, 2019	March 15, 2020	October 21, 2021
November 23, 2018	March 10, 2019	March 25, 2020	October 22, 2021
November 24, 2018	March 20, 2019	March 29, 2020	October 24, 2021
November 28, 2018	March 21, 2019	March 30, 2020	October 25, 2021
November 29, 2018	March 23, 2019	April 5, 2020	November 2, 2021
November 30, 2018	March 25, 2019	April 6, 2020	November 4, 2021
December 1, 2018	March 26, 2019	April 7, 2020	November 9, 2021
December 5, 2018	March 27, 2019	May 12, 2020	December 12, 2021
December 15, 2018	March 28, 2019	May 14, 2020	December 13, 2021
December 17, 2018	March 29, 2019	May 17, 2020	December 14, 2021
December 19, 2018	April 5, 2019	May 18, 2020	December 16, 2021
December 21, 2018	April 6, 2019	November 14, 2020	December 22, 2021
December 24, 2018	April 16, 2019	November 18, 2020	December 23, 2021
December 25, 2018	May 16, 2019	December 12, 2020	December 24, 2021
January 5, 2019	May 17, 2019	December 13, 2020	December 25, 2021
January 6, 2019	May 19, 2019	December 14, 2020	December 26, 2021
January 7, 2019	May 20, 2019	December 17, 2020	December 27, 2021
January 9, 2019	November 27, 2019	December 26, 2020	December 29, 2021
January 10, 2019	December 1, 2019	December 31, 2020	January 4, 2022
January 12, 2019	December 2, 2019	January 2, 2021	January 7, 2022
January 15, 2019	December 4, 2019	January 5, 2021	March 4, 2022
January 16, 2019	December 5, 2019	January 7, 2021	March 15, 2022
January 17, 2019	December 7, 2019	January 8, 2021	March 28, 2022
January 18, 2019	December 8, 2019	January 23, 2021	April 11, 2022
January 20, 2019	December 11, 2019	January 25, 2021	April 15, 2022
January 21, 2019	December 12, 2019	January 27, 2021	April 16, 2022
January 31, 2019	December 18, 2019	January 28, 2021	April 19, 2022
February 2, 2019	December 19, 2019	January 29, 2021	April 21, 2022
February 3, 2019	December 22, 2019	February 2, 2021	April 22, 2022
February 4, 2019	December 25, 2019	February 12, 2021	June 5, 2022
February 5, 2019	December 30, 2019	February 15, 2021	June 6, 2022
February 9, 2019	January 8, 2020	February 19, 2021	September 18, 2022

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

ATTACHMENT 1
Notice of Intent to File Suit, Reichardt Duck Farm
Significant Rain Events,* March 17, 2018 – March 17, 2023

September 19, 2022	March 1, 2023
November 2, 2022	March 5, 2023
November 7, 2022	March 6, 2023
November 8, 2022	March 8, 2023
November 9, 2022	March 10, 2023
December 1, 2022	March 12, 2023
December 4, 2022	March 13, 2023
December 5, 2022	March 14, 2023
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January 19, 2023	
February 3, 2023	
February 5, 2023	
February 11, 2023	
February 24, 2023	
February 25, 2023	
February 27, 2023	
February 28, 2023	

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

EXHIBIT D

Parameter	Test Method	Reporting Units	Evaluation Level	Instantaneous Maximum NAL, if Applicable
pH	See Section XI.C.2 of the General Permit	pH units	N/A	Less than 6.0 Greater than 9.0
Total Suspended Solids	SM 2540-D	mg/L	100	400
Oil & Grease	EPA 1664A	mg/L	15	25
nitrate + nitrite as N (N + N)	SM 4500-NO3-E	mg/L as N	0.68	_____
Ammonia as N	SM 4500-NH3 B+C or E	mg/L	2.14	_____
Biological Oxygen Demand	SM 5210B	mg/L	30	_____
Total phosphorous	SM 4500-P B+E	mg/L as P	2.0	_____
Fecal coliform	SM 9221	MPN/100 mL	200	_____
<i>E. coli</i>	SM 9223(b)	MPN/100 mL	320	_____
Total Kjeldahl Nitrogen	SM 4500-N org C, using colorimetric detection	mg/L	1	

SM – Standard Methods for the Examination of Water and Wastewater, 18th edition

EPA – U.S. EPA test methods