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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 05 2012

John A. Clarke, Executive Officer/Clerk
BY Ishaylia Chambers Deputy
Ishaylia Chambers

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. the Department of Toxic Substances
Control,

Case No.

BC496757

Plaintiff,

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

v.

FILTER RECYCLING SERVICES, INC., a
California Corporation; JON L. BENNETT,
JR., an Individual; and DOES 1 through 10,
inclusive,

Defendants.

1 The People of the State of California, ex rel. the Department of Toxic Substances Control
2 (“the Department”), alleges as follows:

3 **STATEMENT OF THE CASE**

4 1. The Department seeks civil penalties from and injunctive relief against Filter
5 Recycling Services, Inc. (“FRS”) and Jon L. Bennett, Jr. (“Bennett”) for past and continuing
6 violations of the California Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the
7 California Health and Safety Code, sections 25100 *et seq.* (“HWCL”) and the implementing
8 regulations, California Code of Regulations, Title 22, Chapter 30, Division 4.

9 **PLAINTIFF**

10 2. The Department is a public agency of the State of California organized and
11 existing under and pursuant to sections 58000 *et seq.* of the Health and Safety Code. The
12 Department is the state agency responsible for the administration of the HWCL.

13 3. Pursuant to sections 25181 and 25182 of the California Health and Safety Code,
14 the Attorney General of the State of California is authorized, at the request of the Department, to
15 commence an action in the name of the People for civil penalties and injunctive relief under the
16 HWCL. The Department has asked the Attorney General to apply to this Court for an injunction
17 enjoining FRS, Bennett, and any and all other defendants named herein from continuing
18 violations of the HWCL.

19 **DEFENDANTS**

20 4. Defendant FRS is, and at all times relevant here was, a California corporation with
21 its headquarters in Rialto, California. FRS owns and operates a hazardous waste management
22 facility located at 180 W. Monte Avenue in Rialto, California (the “Facility”). The Facility is a
23 hazardous waste management facility pursuant to California Health and Safety Code section
24 25117.1.

25 5. Defendant Bennett is, and at all times relevant here was, an individual who is an
26 owner and/or operator of FRS. The Department is informed and believes that Bennett is, and at
27 all times relevant here was, the president of FRS.
28

1 STATUTORY AND REGULATORY BACKGROUND

2 11. The State of California has enacted a comprehensive, “cradle to grave” statutory
3 and regulatory framework for the generation, handling, treatment, transport, and disposal of
4 hazardous wastes. The framework contained in the HWCL and its implementing regulations,
5 which are found at California Code of Regulations, title 22, sections 66260.1 *et seq.*, specifies
6 requirements for the registration, tracking, storage, treatment, and disposal of hazardous waste to
7 protect the public and the environment from the risks posed by the improper management of
8 hazardous wastes.

9 12. The HWCL is the California analog of the federal Resource Conservation and
10 Recovery Act, 42 U.S.C. sections 6901 *et seq.* (“RCRA”). Pursuant to state and federal law, the
11 Department administers the HWCL in lieu of federal administration of RCRA in California. (See
12 Health and Saf. Code § 25101(d).)

13 13. The HWCL provides that an owner or operator of a hazardous waste management
14 facility may not “accept, treat, store, or dispose of a hazardous waste at the facility, area, or site,
15 unless the owner or operator holds a hazardous waste facilities permit or other grant of
16 authorization from the Department to use and operate the facility, area, or site” (See Health
17 & Saf. Code § 25201(a).)

18 14. In California, the Department has authority to issue permits to hazardous waste
19 management facilities. (See Health & Saf. Code § 25200.)

20 15. The HWCL authorizes the Court to issue civil penalties under two distinct and
21 alternative provisions. Section 25189 of the Health and Safety Code creates liability for any
22 negligent or intentional violation of the HWCL. Section 25189.2 is a strict liability provision,
23 which creates liability for any violation of the HWCL. A person may not be held liable for civil
24 penalties imposed under section 25189 and section 25189.2 for the same act. (Health and Saf.
25 Code § 25189.2(d).)

26 16. Sections 25181 and 25184 of the HWCL authorize and direct the Court to enjoin
27 any ongoing or potential violation of the HWCL.
28

1 17. Section 25181 of the Health and Safety Code authorizes the Court to grant “a
2 permanent or temporary injunction, restraining order, or other order” when the Attorney General,
3 at the request of the Department, applies for an order enjoining violations of the HWCL or of any
4 rule or requirement issued thereunder, and the Department shows that the person against whom
5 the order is sought has engaged in, is engaged in, or is about to engage in any acts or practices
6 which constitute or will constitute a violation of any such provision.

7 18. Health and Safety Code section 25184 provides that in civil actions brought
8 pursuant to the HWCL in which an injunction or temporary restraining order is sought:

9 it shall not be necessary to allege or prove at any stage of the proceeding that
10 irreparable damage will occur should the temporary restraining order, preliminary
11 injunction, or permanent injunction not be issued; or that the remedy at law is
12 inadequate, and the temporary restraining order, preliminary injunction, or
13 permanent injunction shall issue without such allegations and without such proof.

13 FACTUAL BACKGROUND

14 PERMITTING HISTORY

15 19. On or about October 23, 2006, the Department issued FRS a Series A Standardized
16 Permit, effective January 21, 2002 (the “FRS Permit” or “Facility Permit”).

17 20. Under the Facility Permit, FRS is authorized by the Department to accept and
18 manage a variety of non-RCRA hazardous wastes at the Facility, including used automobile oil
19 filters, empty aerosol cans, and certain liquid and solid non-RCRA wastes, as well as certain other
20 RCRA-exempt wastes.

21 21. Special Condition 15 of the Facility Permit states that FRS “is only authorized to
22 transfer, store or treat the hazardous wastestreams requiring a permit and specified by common
23 name in Part III of this Permit, which have been manifested under the California Waste Code
24 specified for that wastestream in Part III of this Permit.” The Facility Permit further states that
25 “any transfer, storage, and treatment of hazardous wastes not specifically authorized in Part II or
26 not listed in Part III of this Standardized Permit is strictly prohibited.” (Facility Permit, Part I,
27 section 6(b).)
28

1 Investigation and assessing penalties. (Docket HWCA 2009-1956.) In early 2011, the parties
2 waived the 90-day hearing requirement on the 2010 Enforcement Order.

3 28. On June 29-30 and July 1-2, 2009, the Department conducted a Compliance
4 Evaluation Inspection at the Facility ("2009 Inspection"). Based on the 2009 Inspection, the
5 Department cited FRS for additional violations of the HWCL and the implementing regulations.

6 29. On September 28-29 and October 5, 2009, the Department conducted a Follow-Up
7 Inspection at the Facility ("2009 Follow-Up Inspection") and cited FRS for additional violations
8 of the HWCL and the implementing regulations, as well as the Stipulation.

9 30. On April 9-11, 16-17, 19-20, and 23, 2012, the Department conducted a further
10 Follow-Up Inspection at the Facility ("2012 Inspection"). Based on the 2012 Inspection, the
11 Department cited FRS for additional violations of the HWCL and the implementing regulations,
12 as well as the Stipulation. In addition, the Department cited FRS on the basis that many of the
13 violations first noted during the 2009 Inspection and/or the 2009 Follow-Up Inspection were
14 ongoing.

15 31. To date, some of the violations at the FRS Facility are continuing. The
16 Department has determined that unless enjoined and restrained by this Court, the Defendants will
17 continue to engage in acts and practices violating the HWCL and the implementing regulations,
18 as well as the Stipulation.

19 32. The Department has requested that the Attorney General apply to the Superior
20 Court for an injunction enjoining the Defendants from continuing these violations.

21 **FIRST CAUSE OF ACTION**

22 **(HWCL - Unauthorized Handling and Storage of Hazardous Waste Streams)**

23 **(Health & Safety Code §§ 25202(a) & 25201.6; Cal. Code Regs., tit. 22, § 66270.30)**

24 **(Against All Defendants)**

25 33. Paragraphs 1 through 32 are realleged as if fully set forth herein.

26 34. The owner and/or operator of a hazardous waste management facility is prohibited
27 from handling wastes not specified in the hazardous waste permit or handling wastes in a manner
28 not specified in the permit. (Health & Saf. Code § 25200(a); Cal. Code Regs., tit. 22, § 66270.30.)

1 35. The Facility Permit authorizes FRS to accept only non-RCRA or RCRA-exempt
2 wastes. (Health and Saf. Code § 25201.6.)

3 36. Special Condition 15 of the Facility Permit states that FRS “is only authorized to
4 transfer, store or treat the hazardous wastestreams requiring a permit and specified by common
5 name in Part III of this Permit, which have been manifested under the California Waste Code
6 specified for that wastestream in Part III of this Permit.” The Facility Permit further states that
7 “any transfer, storage, and treatment of hazardous wastes not specifically authorized in Part II or
8 not listed in Part III of this Standardized Permit is strictly prohibited.” (Facility Permit, Part I,
9 section 6(b).)

10 37. The Department is informed and believes and thereon alleges that, on numerous
11 occasions beginning on or before September 2007 and continuing to the present, Defendants
12 transferred, handled and/or stored hazardous waste streams at the Facility in violation of the
13 Facility Permit, including, but not limited to:

- 14 (a) RCRA hazardous waste;
- 15 (b) Hazardous waste consisting of water contaminated with gasoline;
- 16 (c) Hazardous waste consisting of water contaminated with benzene;
- 17 (d) Solid corrosive hazardous waste;
- 18 (e) Hazardous waste consisting of pesticides; and/or
- 19 (f) Hazardous waste consisting of pharmaceutical wastes.

20 38. The Department further is informed and believes that, on various occasions
21 between 2007 and the present, Defendants handled hazardous wastes in violation of the Facility
22 Permit in that Defendants routinely emptied bulk containers of solid hazardous wastes directly
23 onto the ground in the Facility’s receiving area prior to transferring these wastes into another bulk
24 container for shipment off-site.

25 39. Defendants have violated and continue to violate sections 25202(a) and 25201.6 of
26 the HWCL and its implementing regulations in that FRS has accepted, and continues to accept,
27 handle, and store hazardous waste streams not authorized in the Facility Permit and/or in a
28 manner not authorized by the Facility Permit.

1 **SECOND CAUSE OF ACTION**

2 **(HWCL - Unauthorized Storage of Hazardous Waste)**

3 **(Health & Saf. Code §§ 25201 & 25202(a); Cal. Code Regs, Tit. 22, §§ 66270.30 &**
4 **66264.176)**

5 **(Against All Defendants)**

6 40. Paragraphs 1 through 39 are realleged as if fully set forth herein.

7 41. An owner and/or operator of a hazardous waste management facility is prohibited
8 from storing hazardous waste in locations not authorized by the HWCL or the facility's hazardous
9 waste permit. (See Health & Saf. Code § 25201(a).)

10 42. The FRS Permit specifies the boundaries of the permitted Facility. (See Facility
11 Permit, Part I, Paragraph 2.) FRS is authorized to store hazardous waste only within the
12 permitted boundary of the Facility, and certain waste streams can only be stored in designated
13 areas of the Facility. (See Facility Permit, Part I, Paragraph 2; see also Health & Saf. Code §§
14 25201, 25202(a); Cal. Code Regs., tit .22, § 66270.30.)

15 43. An owner and/or operator of a hazardous waste management facility is required to
16 ensure that containers holding ignitable or reactive waste are located at least 50 feet from the
17 facility's property line. (See Cal. Code Regs., tit. 22, § 66264.176.)

18 44. The Department is informed and believes and thereon alleges that on various
19 occasions between September 2007 and the present, Defendants stored hazardous waste in tank
20 trailers at locations outside the boundaries of the Facility and in areas not authorized by the
21 Facility Permit.

22 45. The Department also is informed and believes and thereon alleges that on various
23 occasions between September 2007 and the present, Defendants stored ignitable hazardous waste
24 in tank trailers at locations outside of the authorized ignitable waste storage area, and within 50
25 feet of the Facility property line.

26 46. The Department further is informed and believes and thereon alleges that on
27 numerous occasions in October 2008, Defendants stored hazardous waste consisting of water with
28 benzene in unauthorized areas of the Facility.

1 **FOURTH CAUSE OF ACTION**

2 **(HWCL - Inadequate Testing of Incoming Hazardous Wastes and/or Failure to Comply**
3 **with Waste Analysis Plan)**

4 **(Health & Safety Code § 25202(a); Cal. Code Regs., tit. 22, §§ 66264.13 & 66270.30(a)).**

5 **(Against All Defendants)**

6 53. Paragraphs 1 through 52 are realleged as if fully set forth herein.

7 54. The owner and/or operator of a hazardous waste management facility is required to
8 “inspect and, if necessary, analyze” each incoming shipment of hazardous waste. (Cal. Code
9 Regs., tit 22, § 66264.13).

10 55. The Facility Permit includes a Waste Analysis Plan (“WAP”), which describes the
11 methods, protocol, and analysis used by FRS to accept, treat, and recover waste material at the
12 Facility. The WAP also provides that generator profiles must be updated at least annually, and
13 must correctly identify the proper shipping name of the waste to be shipped to FRS.

14 56. The Department is informed and believes and thereon alleges that on numerous
15 occasions beginning on or before September 2007 and continuing to the present, Defendants did
16 not adequately inspect and/or analyze incoming shipments of hazardous waste, including but not
17 limited to the failure to properly analyze samples of hazardous waste consisting of water
18 contaminated with gasoline for pH, sediments, organics, and flashpoint.

19 57. The Department also is informed and believes and thereon alleges that on
20 numerous occasions beginning on or before September 2007 and continuing to the present,
21 Defendants did not ensure that hazardous waste consisting of water contaminated with gasoline
22 was properly manifested, note any discrepancies, and reject such waste or attempt to resolve such
23 discrepancies with the generator or transporter, as required by the HWCL and its implementing
24 regulations and the WAP.

25 58. The Department is informed and believes that on numerous occasions between
26 2007 and the present, Defendants have failed to ensure that the profiles submitted by hazardous
27 waste generators sending waste to FRS are updated at least annually and are correct. The
28 Department further is informed and believes that Defendants have, on numerous occasions

1 between 2007 and the present, approved generator profiles with improper or incorrect proper
2 shipping names.

3 59. Defendants have violated and continue to violate section 25202 of the HWCL and
4 its implementing regulations, as well as the WAP, in that Defendants did not adequately inspect
5 and analyze incoming shipments of hazardous waste, did not ensure that the hazardous waste they
6 received matched the waste as described on the generator profiles approved by FRS, and did not
7 ensure that they generator profiles approved by FRS are updated annually and are correct.

8 **FIFTH CAUSE OF ACTION**

9 **(HWCL - Failure to Prepare Hazardous Waste Manifests)**

10 **(Health & Saf. Code §§ 25202(a), 25160(b)(1) & 25189.2;**

11 **Cal. Code Regs., tit. 22, §§ 66262.11, 66262.20(a), 66262.23(a), 66264.71(c), & 66270.30)**

12 **(Against All Defendants)**

13 60. Paragraphs 1 through 59 are realleged as if fully set forth herein.

14 61. The HWCL provides that any person generating hazardous waste that is
15 transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or
16 any combination thereof, is required to complete a manifest prior to the time the waste is
17 transported, or offered for transportation. (Health & Saf. Code § 25160(b)(1); Cal. Code Regs., tit.
18 22, § 66262.20(a).)

19 62. A manifest must contain information about the generator and transporter of a
20 hazardous waste, as well as the proper shipping name, hazard class or division, identification
21 number, and packing group of the waste itself and the number and type of containers shipped.
22 (Cal. Code Regs., tit. 22, Ch. 12, App. 1.)

23 63. The Department is informed and believes and thereon alleges that, beginning in or
24 about September 2007 and continuing to the present, Defendants failed to properly prepare
25 manifests for loads of RCRA hazardous waste shipped from the Facility, including describing
26 characteristically ignitable RCRA hazardous waste liquids as non-RCRA hazardous waste liquids
27 and describing hazardous waste containing nickel as non-hazardous waste.

28

1 **SEVENTH CAUSE OF ACTION**

2 **(HWCL - Failure to File Un-Manifested Waste Report)**

3 **(Health & Saf. Code § 25202(a); Cal. Code Regs., tit. 22, §§ 66270.30(a), 66264.76(a))**

4 **(Against All Defendants)**

5 69. Paragraphs 1 through 68 are realleged as if fully set forth herein.

6 70. The owner and/or operator of a hazardous waste management facility that accepts
7 hazardous waste for treatment, storage, or disposal without an accompanying manifest is required
8 to prepare and submit to the Department an un-manifested waste report. (See Cal. Code Regs., tit.
9 22, § 66264.76.)

10 71. The Department is informed and believes and thereon alleges that, at various times
11 between September 2007 and the present, Defendants failed to prepare and submit un-manifested
12 waste reports for hazardous waste received at the Facility without manifests.

13 72. Defendants have violated and continue to violate the HWCL and its implementing
14 regulations, including but not limited to California Code of Regulations, title 22, section
15 66274.76, in that FRS has failed to submit un-manifested waste reports to the Department.

16 **EIGHTH CAUSE OF ACTION**

17 **(HWCL - Failure to Send Signed Manifests to Generator)**

18 **(Health & Saf. Code § 25202(a); Cal. Code Regs., tit. 22, §§ 66264.71(a)(2)(D) & 66270.30)**

19 **(Against All Defendants)**

20 73. Paragraphs 1 through 72 are realleged as if fully set forth herein.

21 74. The owner and/or operator of a hazardous waste management facility that receives
22 a hazardous waste shipment accompanied by a manifest is required to sign and date the manifest,
23 note any discrepancies in the manifest, immediately provide one copy of the manifest to the
24 transporter, send copies of the manifest to the generator within 30 days, retain a copy of the
25 manifest at the facility, and submit a copy of each manifest to the Department. (See Cal. Code
26 Regs., tit. 22, § 66264.71.)

27 75. The Department is informed and believes and thereon alleges that on numerous
28 occasions between September 2007 and the present, Defendants failed to provide signed copies of

1 hazardous waste manifests to the generators within 30 days of receiving hazardous waste
2 shipments.

3 76. Defendants have violated and continue to violate the HWCL and its implementing
4 regulations, including but not limited to California Code of Regulations, title 22, section
5 66264.71, in that Defendants failed to send signed copies of hazardous waste manifests to the
6 generators.

7 **NINTH CAUSE OF ACTION**

8 **(HWCL - Use of Unregistered Transporter)**

9 **(Health & Saf. Code §§ 25202(a) & 25163; Cal. Code Regs., tit. 22, § 66270.30)**

10 **(Against All Defendants)**

11 77. Paragraphs 1 through 76 are realleged as if fully set forth herein.

12 78. The HWCL provides that it is unlawful for a person to transfer custody of a
13 hazardous waste to a transporter who does not have a registration issued by the Department.
14 (Health & Saf. Code § 25163.)

15 79. The Department is informed and believes that, at various times between September
16 2007 and the present, FRS transferred custody of a hazardous waste to a transporter that did not
17 hold a valid registration issued by the Department. By way of example only, the Department is
18 informed and believes that between approximately January 2010 and August 2011, FRS used a
19 transporter, A&G Enterprises, EPA ID # CAL000336075, whose registration expired on
20 September 30, 2009, to transport at least 35 shipments of non-RCRA Hazardous Waste Solid
21 (Soil) under profile C355 to an out of state facility, the South Yuma County Landfill in Arizona.

22 80. Defendants have violated and continue to violate the HWCL and its implementing
23 regulations in that FRS has transferred custody of hazardous waste to an unregistered transporter
24 for shipment offsite.

25 ///

26 ///

27 ///

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1 **TENTH CAUSE OF ACTION**

2 **(HWCL – Failure to Minimize the Release of Hazardous Waste or Hazardous Waste**
3 **Constituents)**

4 **(Health & Saf. Code § 25202(a); Cal. Code Regs., tit. 22, §§ 66270.30 & 66264.31)**

5 **(Against All Defendants)**

6 81. Paragraphs 1 through 80 are realleged as if fully set forth herein.

7 82. The owner and/or operator of a hazardous waste management facility is required to
8 operate the facility in such a manner as to minimize the possibility of a release of hazardous waste
9 or hazardous waste constituents to air, soil, or surface water. (Cal. Code Regs., tit. 22, §
10 66264.31.)

11 83. As noted in Paragraph 38, above, the Department is informed and believes that, on
12 various occasions between 2007 and the present, Defendants routinely emptied bulk containers of
13 solid hazardous wastes, including but not limited to roll-off bins and end dump trailers, directly
14 onto the ground in the Facility's receiving area prior to transferring these wastes into another bulk
15 container for shipment off-site.

16 84. The Department further is informed and believes that Defendants failed to take
17 precautions to minimize the possibility of a release of hazardous waste or hazardous waste
18 constituents to air, soil, or surface water when it engaged in this activity.

19 85. Defendants have violated and continue to violate the HWCL and its implementing
20 regulations, including but not limited to California Code of Regulations, title 22, section
21 66264.31, in that Defendants failed to minimize the possibility of a release of hazardous waste
22 and hazardous waste constituents to air, soil, or surface water when it emptied bulk containers of
23 solid hazardous wastes onto the ground in the Facility's receiving area.

24 **ELEVENTH CAUSE OF ACTION**

25 **(Failure to Comply with Judgment & Stipulation for Entry of Judgment)**

26 **(Against All Defendants)**

27 86. Paragraphs 1 through 85 are realleged as if fully set forth herein.

28

1 87. Health and Safety Code section 25188 authorizes civil penalties for violations of
2 an order issued pursuant to the HWCL.

3 88. As described in Paragraph 23 above, the Department filed a civil complaint against
4 FRS and Bennett, among other defendants, on February 16, 2001. On September 13, 2004, the
5 Department, FRS, and Bennett, among other parties, entered into the Stipulation to resolve the
6 claims in that action. The Court entered Judgment pursuant to the Stipulation on October 27,
7 2004.

8 89. The Judgment specifically states: "it is hereby ordered that ... Defendants shall
9 comply with the provisions of Section 7 of the Stipulation."

10 90. Section 7 of the Stipulation establishes numerous "Compliance Conditions," and
11 states that defendants "shall comply with each of the following provisions."

12 91. The Department is informed and believes and thereon alleges that, at numerous
13 times between September 2007 and the present, FRS and Bennett have violated the Compliance
14 Conditions set forth in Section 7 of the Stipulation, including but not limited to as follows:

15 (a) Section 7.1 of the Stipulation states: "FRS shall comply with the California
16 Code of Regulations and with all provisions of its September 27, 1997 waste analysis plan or any
17 authorized revision of that plan." As noted in Paragraphs 53 through 59 above, the Department is
18 informed and believes that FRS has violated the Facility's WAP on various occasions between
19 September 2007 and the present.

20 (b) Section 7.2.1 states: "FRS shall not engage in any activities for which the
21 United States Environmental Protection Agency, pursuant to 42 U.S.C. Section 6925, requires the
22 owner or operator to obtain a permit for treatment, storage, or disposal of hazardous waste." As
23 alleged in Paragraphs 33 through 39 above, the Department is informed and believes that FRS has
24 accepted RCRA hazardous waste at the Facility, in violation of the Stipulation, the HWCL and its
25 implementing regulations, and the Facility Permit.

26 92. Defendants have violated and continue to violate the Stipulation and the Judgment
27 by their actions between 2007 and the present, in violation of section 25188 of the HWCL and its
28 implementing regulations.

REQUEST FOR RELIEF

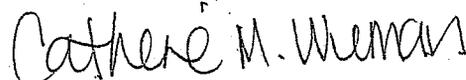
The Department requests that the Court grant relief as follows:

1. Enter judgment that FRS, Bennett, and Does 1-10 have violated the HWCL as described in the First through Eleventh Causes of Action;
2. Enter judgment that FRS, Bennett, and Does 1-10 are liable for civil penalties for those violations as authorized by Health and Safety Code section 25189 or, in the alternative, by Health and Safety Code section 25189.2, according to proof;
3. Enter judgment that FRS, Bennett, and Does 1-10 are liable for civil penalties for those violations as authorized by Health and Safety Code section 25188, according to proof;
4. Enter temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders requiring FRS, Bennett, and Does 1-10 to comply with the applicable permits, the HWCL, and/or the regulations adopted thereunder;
5. Grant the Department its costs of suit herein; and
6. Grant such other and further relief as the Court deems just and proper.

Dated: December 5, 2012

Respectfully Submitted,

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