

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GALVESTON BAYKEEPER, a Texas not for profit corporation,)

Plaintiff,)

vs.)

D.B. WESTERN, INC. – TEXAS, an Oregon Corporation; **D.B. WESTERN, INC.**, an Oregon Corporation; **DENNIS BEETHAM**, an individual; **STEVE BEETHAM**, an individual; **AND MICHAEL BOCKSNICK**, an individual,)

Defendants.)

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1311, 1365)

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief, the imposition of civil penalties, and recovery of litigation expenses under the citizen suit provision of the Federal Water Pollution Control Act, more commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.* The Galveston Baykeeper (“Baykeeper” or “Plaintiff”) brings this citizen suit under § 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), against D.B. Western, Inc.-Texas; D.B. Western, Inc.; Dennis Beetham, Steve Beetham, and Michael Bocksnick (collectively referred to as “D.B. Western” or “Defendants”) for past and continuing violations of the CWA.

2. Defendants own and/or operate an organic chemical productions facility located at 12511 Strang Road east of the Texas New Orleans Railroad, approximately 3,000 feet northwest of the intersection of State Highway 225 and State Highway 146 in the City of La Porte in Harris County, Texas (the "Facility").
3. The Facility discharges a spectrum of pollutants through an outfall into the San Jacinto Bay, which is Segment No. 2427 of the State's bays and estuaries system and is at the mouth of the San Jacinto River adjoining Upper Galveston Bay. At this point, the San Jacinto River is tidally-influenced, so discharges at this point alter water quality both upstream and downstream of this point.
4. Defendants have at times discharged wastewater that is more basic than bleach and more acidic than battery acid.
5. Discharges of pollutants are only authorized under the CWA if they meet the specific effluent limitations contained in D.B. Western's National Pollutant Discharge Elimination System Permit under the CWA. In Texas, these permits are actually issued by the State, and the one for D.B. Western is known as Texas Pollutant Discharge Elimination System Permit ("TPDES Permit"), TPDES No. WQ0004301000 [EPA I.D. No. TX0122335]. The permit was issued by the Texas Commission on Environmental Quality ("TCEQ") pursuant to state and federal law and regulations.
6. Legally required Discharge Monitoring Reports ("DMRs") submitted by D.B. Western to the TCEQ on a monthly basis pursuant to its TPDES Permit plainly acknowledge that the Facility has repeatedly and consistently violated and is continuing to violate the requirements of its TPDES permit and the CWA.
7. These violations began on or before November of 2007 and have continued since that time despite several ineffective enforcement attempts by TCEQ.
8. D.B. Western has: (a) discharged and continues to discharge pollutants that exceed the permitted effluent limits for pH and chemical oxygen demand ("COD") contained in D.B.

Western's TPDES permit; (b) failed to accurately report the results of sampling data on monthly DMRs., (c) failed to timely report violations of discharges that exceed effluent limitations by more than 40%; (d) failed to properly operate and maintain systems of collection, treatment and disposal; and (e) failed to submit complete and accurate monitoring reports by the 20th day of the following month.

9. These actions are in violation of the CWA, its implementing regulations and the terms of the TPDES Permit.
10. Defendants' CWA violations are ongoing as of the date of this Complaint.
11. Plaintiff seeks declaratory and injunctive relief and the imposition of civil penalties resulting from these violations. Plaintiff also seeks an award of attorney fees and costs pursuant to 33 U.S.C. § 1365(d).

JURISDICTION AND VENUE

12. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). This Court has subject matter jurisdiction over the claims specified in this Complaint under 33 U.S.C. § 1365(a). The relief requested is authorized by 33 U.S.C. §§ 1319(d) and 1365(a). An actual, justiciable controversy exists between Plaintiff and Defendants. The requested relief is proper under 28 U.S.C. § 2201 and 28 U.S.C. § 2202.
13. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Plaintiff notified Defendants of Defendants' violations of the CWA and of Plaintiff's intent to sue under the CWA by letter dated and postmarked February 6, 2012 ("Notice Letter"). A copy of the Notice Letter is attached to this Complaint as Exhibit 1. The allegations in the Notice Letter are incorporated herein by this reference. Plaintiff notified the Defendants, Defendants' Registered agents, the Administrator of the United States Environmental Protection Agency ("EPA"), the Administrator of EPA Region 6 and the Executive

Director of TCEQ of its intent to sue Defendants by mailing copies of the Notice Letter to these officials on February 6, 2012. All of the Defendants' received the Notice Letter.

14. More than sixty days have passed since Plaintiff served and each Defendant received the Notice Letter. Neither the EPA nor TCEQ has commenced and diligently prosecuted an action that would preclude this action under either 33 U.S.C. § 1319(g)(6) or 1365(b)(1)(B).
15. The source of all violations complained of and the Facility are located in La Porte, Texas which is within the Southern District of Texas. Venue in the Southern District of Texas is therefore proper pursuant to 28 U.S.C. 1391(b)(2) and more specifically 33 U.S.C. § 1365(c).

PARTIES

16. D.B. Western, Inc.-Texas, is an Oregon corporation and is listed in TCEQ files as the operator of the Facility in the TPDES Permit.
17. D.B. Western, Inc. is an Oregon corporation that shares control of the Facility.
18. Dennis Beetham is the President and Secretary of D.B. Western, Inc.-Texas, as well as, D.B. Western, Inc.
19. Dennis Beetham has held those positions during the time which the violations alleged here have occurred.
20. Dennis Beetham has been personally aware of the violations alleged here.
21. Dennis Beetham has the control and authority sufficient to affect the operations and pollution discharges from the Facility.
22. Steve Beetham is the Engineering Manager at the Facility.
23. Steve Beetham has held that position during the time that the violations alleged here occurred.
24. Steve Beetham has been personally aware of the violations alleged here.

25. Steve Beetham has the control and authority sufficient to affect the operations and pollution discharges from the Facility.
26. Michael Bocksnick is the Operations Manager for the Facility.
27. Michael Bocksnick has held that position during the time that the violations alleged here occurred.
28. Michael Bocksnick has been personally aware of the violations alleged here. He regularly certifies under penalty of law the DMRs on which many of the violations alleged here acknowledged.
29. Michael Bocksnick has the control and authority sufficient to affect the operations and pollution discharges from the Facility.
30. Dennis Beetham, Steve Beetham, and Michael Bocksnick (collectively "individual defendants") share personal responsibility and liability for violations that have occurred and are continuing to occur at the Facility.
31. Plaintiff is a 501(c)(4) non-profit, public interest conservation organization based in Seabrook, Texas. Baykeeper's mission is to protect clean water and healthy aquatic habitats for humans and aquatic species in the Galveston Bay watershed. This work includes protection of water quality in the rivers and streams that feed into Galveston Bay, such as the San Jacinto River and Bay.
32. Plaintiff uses education, advocacy and, when necessary, legal enforcement tools authorized under the federal CWA to achieve its goals.
33. Plaintiff has members, supporters, and staff that regularly use and enjoy the San Jacinto River and Bay, and Upper Galveston Bay, including the waters immediately upstream and downstream from Defendants' discharges at the Facility. Plaintiff's staff and members use and enjoy these for fishing, boating, kayaking, bird watching, hiking, camping, and other recreational, spiritual, environmental, scientific, vocational and other such activities and interests. The pollution associated with the Defendants' discharges in violation of

applicable permit limits has a negative impact on Plaintiff, its staff and members and their ability to enjoy those activities and interests. The pollutants discharged by Defendants threaten the health and safety of Plaintiff's members by exposing members who engage in water contact recreational activities, such as boating, kayaking, swimming and fishing to pollutants that threaten their ability to safely enjoy these activities.

34. Plaintiff, its staff, and members intend to continue to use these same waters in the future and have specific and near-term plans to return to use such waters for the uses described above in the fall and winter of 2012. But, ongoing pollution from the Facility also deters Plaintiff's members from using and enjoying such waters as they otherwise would because of reasonable and scientifically-based concerns about the adverse effects of Defendants' discharges.
35. Additionally, Defendants' discharges adversely affect the abundance and health of fish and wildlife species in waters upstream and downstream from its discharges and this decreases the abundance of these species. This harms and reduces Plaintiff's members' ability to see, enjoy, and fish for such species for aesthetic and recreational purposes.
36. Plaintiff and plaintiff's members are also injured by the Defendants failure to accurately report and provide required pollutant monitoring data and timely notice when the Facility's pollutant discharges exceed permitted effluent limits by more than 40%. The timely notice required by the applicable permit provides TCEQ the opportunity to notify the public, including Plaintiff's members, of particularly significant threats if warranted. Through public record laws, Plaintiff and Plaintiff's members also have the ability to learn of such exceedances and take necessary precautions, such as refraining from recreating in waters impacted by such an exceedance. Absent timely reporting, however, Plaintiff and Plaintiff's members are left without important information they could use to avoid areas impacted by such unpermitted discharges. Additionally, without timely reporting, Plaintiff's members use of areas impacted by the Facility's discharges are degraded and

adversely affected at all times of use because of uncertainty regarding whether violations are occurring or have recently occurred that could create a particularly significant threat to human health and the environment.

37. The instant action would redress the harms faced by Plaintiff and its members by requiring the Facility to reduce its pollutant discharges to levels that comply with authorized limits. It would result in civil penalties that would deter future violations that threaten Plaintiff's members' use and enjoyment of upstream and downstream waters.
38. The foregoing are actual, concrete injuries suffered by Galveston Baykeeper and its members and are fairly traceable to Defendants' violations and are capable of redress by action of this Court. Plaintiff has no other adequate remedy at law.

STATUTORY BACKGROUND

39. Congress enacted the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). In doing so, Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985.
40. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants to navigable waters of the United States unless the discharge is in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.
41. "Navigable waters" are broadly defined as "the waters of the United States." 33 U.S.C. §§ 1362(7) & (14).
42. The "discharge of a pollutant" means any "addition of a pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutant is defined to include "industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or

other floating craft from which pollutants are or may be discharged. 33 U.S.C § 1362(7); 40 C.F.R. § 122.2.

43. The National Pollutant Discharge Elimination System permitting scheme is the primary means by which discharges of pollutants are controlled. NPDES permits must include conditions that will ensure compliance with the CWA.
44. Although EPA is the administrator of the Clean Water Act, section 402 of the Clean Water Act, 33 U.S.C. § 1342, authorizes EPA to delegate its authority to states to implement and administer the Clean Water Act. 33 U.S.C. § 1342(b). In 1998, EPA delegated responsibility to administer the NPDES permit program to the State of Texas via the TPDES program.
45. CWA violators are subject to enforcement activities initiated by EPA, states, and citizens. 33 U.S.C. §§ 1319, 1365(a); 40 C.F.R. § 135. Citizens are required to provide notice of any alleged violations sixty days prior to commencing suit. 33 U.S.C. § 1365(b). After sixty days have passed, citizens may bring an action in federal district court to enforce against any ongoing violations of the Clean Water Act.
46. Section 505 of the Clean Water Act authorizes citizens to bring suit against any person, including a corporation, that is alleged to be in violation of an effluent standard or limitation under the Clean Water Act. 33 U.S.C. § 1365(a). Effluent limitation is defined broadly to include "any unlawful act under subsection (a) of [section 301] of this title." 33 U.S.C. § 1365(f).

STATEMENT OF FACTS

A. Background

47. D.B. Western, Inc.-Texas, and D.B. Western, Inc., own and operate an organometallic compounds manufacturing plant.

48. The Facility is located at facility located at 12511 Strang Road (“Facility”), east of the Texas New Orleans Railroad, approximately 3,000 feet northwest of the intersection of State Highway 225 and State Highway 146 in the City of La Porte in Harris County, Texas.
49. Each Defendant is a “person” within the meaning of § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a) and is subject to suit under the Clean Water Act citizen suit provision, 33 U.S.C. § 1365.
50. The Facility includes one or more pipes and conduits that fall within the definition of a “point source” under the Clean Water Act. 33 U.S.C. § 1362(14), specifically Outfall 001. Defendants discharge “pollutants,” as that term is defined in the CWA, through Outfall 001 into the San Jacinto Bay and River.
51. The San Jacinto Bay and River are waters of the United States as defined by 33 U.S.C. §§ 1311(a), 1362(7) and 40 C.F.R. § 230.3(s)(5).
52. The Facility’s TPDES permit limits the acidity and alkalinity of the pollutants in the Defendants’ discharges through permit limits on pH.
53. Discharges of wastewater that exceeds allowed limits for pH present a threat to aquatic species and adversely affect use of public waters for water contact recreation.
54. The Facility’s TPDES permit limits the quantity of pollutants in the Facility’s discharges that will decrease oxygen levels in the receiving waters through limits on the “chemical oxygen demand” (“COD”) in Defendants’ discharges.
55. Discharges of high COD wastewater reduces the amount of oxygen available to aquatic fish and wildlife and generally reduces water quality.
56. TCEQ has initiated at least two prior enforcement actions against D.B. Western for NPDES Permit violations that resulted in Agreed Orders dated December 14, 2005 and November 18, 2010.
57. (a) The December 14, 2005, Agreed Order did not address allegations of pH exceedances for any unit of time or at any level. (b) The November 18, 2010, Agreed Order did not

address pH exceedances in 2007, 2008, or after January 2010. (c) Neither Agreed Order addressed exceedances of the permitted chemical oxygen demand limitation. (d) Neither Agreed Order addressed the Defendants' systematic failures to ensure that the Facility and all of its systems of collection, treatment, and disposal are properly operated and maintained (i.e., addressed noncompliance with the permit's No. 1 "Operational Requirement"). (e) Neither Agreed Order addressed noncompliance prior to February 2009 or subsequent to January 2010 with the permit requirement that pH exceedances greater than 40% of the effluent limitation be reported within five (5) days (i.e., "Monitoring and Reporting Requirements" No. 7). (f) Neither Agreed Order addressed noncompliance prior to February 2009 or subsequent to January 2010 with the permit requirement that Discharge Monitoring Reports be submitted by the 20th of the month following the month for which a report is or should be made (i.e., "Monitoring and Reporting Requirements" No. 1). (g) Neither Agreed Order identified D.B. Western, Inc., Dennis Beetham, Steve Beetham or Michael Bocksnick as an alleged violator.

58. Neither Agreed Order was developed and entered pursuant to a process in which a member of the general public or a person specially aggrieved by the alleged violations had a right, on petition, to an evidentiary hearing on the terms of the Agreed Order.
59. Neither Agreed Order was sufficient or effective at stopping the ongoing violations at the Facility.

B. D.B. Western's Violations of the Effluent Limitations in its TPDES Permit

60. Defendants have violated and continue to violate various conditions of their TPDES Permit, as explained below and described in the Notice Letter, Exhibit 1, which is hereby incorporated by reference.
61. Defendants have violated and continue to violate the effluent limitation in their TPDES Permit for pH by discharging effluent with a pH below 5 standard units or above 11 standard units on the dates and in the amounts identified below in paragraphs 62 and 63.

62.

pH Effluent Limitation: No excursions > pH of 11 su	
Reporting Date	reported pH value
12/31/2007	11.31
8/31/2008	11.01
11/30/2008	11.54
6/2/2009	11.53
6/4/2009	11.21
7/28/2009	11.5
12/23/2009	11.61
2/28/2010	12.31

Before Jan 12

3

After
5

8

63.

pH Effluent Limitation: No excursions < pH of 5 su	
Reporting Date	reported pH value
6/30/2007	2.01*
7/31/2007	1.93*
8/31/2007	3.44
10/31/2007	4.89
5/31/2008	3.16
11/30/2008	2.42*
12/31/2008	1.99*
1/31/2009	3.36
3/2/2009	4.06
3/3/2009	2.57*
3/11/2009	2.85*

Before
7

After
4

11

Before
10

After
9

3/12/2009	2.81*
3/13/2009	3.32
5/6/2009	4.34
5/12/2009	3.75
5/24/2009	0.16*
6/6/2009	4.83
6/24/2009	4.41
6/26/2009	3.52
6/28/2009	4.49
7/1/2009	1.87*
7/2/2009	1.79*
7/3/2009	2.7*
7/23/2009	2.66*
7/27/2009	1.9*
7/30/2009	3.74
10/14/2009	4.67
12/14/2009	4.68
1/29/2010	4.67
1/30/2010	4.02
1/31/2010	3.97
2/28/2010	4.73
12/31/2011	4.35
3/31/2012	2.78*
4/30/2012	4.19

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64. Defendants' TPDES permit prohibits discharges of effluent with a pH between 5-6 for a period of longer than 60 minutes at a time. Defendants have violated this permit condition on the following dates and in the following amounts identified in paragraph 65.

65.

Not between 5-6 su for more than 60 minutes	
Date	No. of exceedances per month
March 2009	6
April 2009	2
July 2009	4
October 2009	5
November 2009	3
December 2009	2
January 2010	4
June 2011	1

27

66. Defendants' TPDES permit also prohibits discharges of effluent with a pH between 9-11 su for a period of longer than 60 minutes at a time. Defendants have violated this permit condition on the following dates and in the following amounts identified in paragraph 67.

67.

Effluent Limitation: pH	
Not between 9-11 su for more than 60 minutes	
Date	No. of exceedances per month
March 2009	5
April 2009	3
May 2009	18
June 2009	21

47

July 2009	7
August 2009	8
September 2009	2
October 2009	1
November 2009	2
January 2010	21
February 2010	10
March 2010	22
May 2010	2
June 2010	3
August 2010	72
February 2011	1
March 2011	2
April 2011	2
September 2011	1
November 2011	1

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68. Defendants have also violated and continue to violate the effluent limitation in their TPDES Permit for chemical oxygen demand (COD). The permit limit for COD is a daily average of 150 mg/l and a daily maximum of 200 mg/l. Defendants have violated this permit condition on the following dates and in the following amounts identified in paragraph 69.

total
15

69.

3

12

Effluent limitation: Chemical Oxygen Demand			
Permit Limits: Daily average: 150 mg/l		Permit Limits: Daily Max: 200 mg/l	
Last day of reporting period	Reported discharge Value (mg/l)	Last day of reporting period	Reported discharge Value (mg/l)
2010 03/31	180	2007 12/31	355 *
2011 01/31	418 *	2008 11/30	230
2011 02/28	167	2009 01/31	235
		2010 03/31	381 *
		2010 10/31	220
		2010 11/30	255
		2011 01/31	838 *
		2011 02/28	564 *
		2011 04/30	201
		2/28/2012	264
		6/30/2012	220
		7/1/2012	297

70. Defendants have violated and continue to violate the effluent limitation in the applicable TPDES Permit for pH and COD.

71. Given the persistent permit violations, Defendants have also violated and continue to violate their NPDES Permit by failing to properly operate and maintain systems of collection, treatment and disposal, as required by their TPDES Permit, on every day that a

discharge has occurred in the past five (5) years. These dates include, but are not limited to, all of the violations listed in Paragraphs 62-69.

C. Monitoring and Reporting Violations

72. D.B. Western's permit requires that "[a]ny effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the TCEQ within five (5) working days. D.B. Western's discharges have exceeded the permitted effluent limitations for multiple pollutants by more than 40% and yet D.B. Western failed to submit the required reports within the required timeline. The violations that exceeded 40% of that specific permit limit and for which the required reports were not timely filed are marked with an asterisk in Paragraphs 62-69, above. Each time D.B. Western failed to timely report these violations represents a distinct violation of its permit and, thus, a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311, and its implementing regulations, 40 C.F.R. § 122.41(a), which prohibit violation of this TPDES permit. These types of reporting violations are of a continuing nature and are in addition to the underlying effluent discharge violations.

73. Defendants have also violated and continue to violate their NPDES Permit by failing to submit DMRs by the 20th day of the following calendar month, as required by their Permit. DMRs for the following months were not timely submitted. Each date represents a separate and independent violation:

2007 02/28
2007 03/31
2007 04/30

2007 07/31
2007 09/30
2008 09/30
2010 10/31
2010 12/31
2010 11/30
2010 12/31
2011 03/31

Total = 11

- 74. Defendants have also failed to accurately report excursions and sampling data results. This incorrect reporting has been documented by TCEQ in its investigation reports.
- 75. Defendants have benefited economically as a consequence of the effluent limitation violations. Defendants have avoided the costs associated with installing the proper operation controls to avoid violations. These costs include, but are not limited to, hiring consultants, fees associated with installation, implementing Best Management Practices to comply with a NPDES permit, purchasing and maintaining technology to comply with the NPDES permit, and altering business practices to control the sources of pollution restricted by a NPDES permit.

CLAIM FOR RELIEF

Discharge of Pollutants in Violation of Terms of NPDES Permit

(Violations of 33 U.S.C. Sections 1311(a))

- 76. Plaintiff incorporates all preceding paragraphs.
- 77. Defendants' violations of the pollutant effluent limits contained in their TPDES permit constitute violations of 301(a) of the CWA, 33 U.S.C. § 1311(a) and regulations implementing the CWA, including 40 C.F.R. § 122.41(a).
- 78. As defined by the CWA, Defendants are all "persons" responsible for discharging

“pollutants” from a “point source” into the “waters of the United States” in violation of the “effluent limitations” contained in the applicable NPDES permit. 33 U.S.C. § 1362.

79. Each day of violation constitutes a separate and distinct violation under the CWA.
80. These violations are ongoing and there is more than a reasonable likelihood that they will recur and a realistic prospect they will continue absent redress from this Court.

SECOND CLAIM FOR RELIEF

Violation of reporting requirements in Violation of Terms of NPDES Permit

(Violations of 33 U.S.C. § 1311(a))

81. Plaintiff incorporates all preceding paragraphs.
82. Defendants’ failure to report discharges that exceed permitted effluent limits by more than 40% within the timelines provided in their TPDES permit constitutes permit violations and thus violations of 301(a) of the CWA, 33 U.S.C. § 1311(a), and regulations implementing the CWA, 40 C.F.R. § 122.41(a).
83. Defendants have repeatedly failed to submit pollution monitoring reports required by their TPDES permit within the timelines the permit requires. These failures and permit violations are in violation of 301(a) of the CWA, 33 U.S.C. § 1311(a), and regulations implementing the CWA at 40 C.F.R. § 122.41(a).
84. Defendants failure to accurately report exceedances and sampling data results as required by their TPDES permit constitute permit violations and thus violations of 301(a) of the CWA, 33 U.S.C. § 1311(a) and its implementing regulations.
85. Each day of violation constitutes a separate and distinct violation under the CWA.
86. These violations are ongoing and there is a reasonable likelihood they will recur and a realistic prospect that they will continue absent redress from this Court

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- A. Declare that Defendants have violated and continue to be in violation of their NPDES Permit and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342;
- B. Order Defendants to take specific actions to remediate the past and future environmental harm caused by their violations and enjoin Defendants from further violations of the terms of their TPDES permit;
- C. Retain jurisdiction over this matter until such time as Defendants have come into compliance with the prohibitions, terms, and conditions of their TPDES permit and the CWA;
- D. Enter a money judgment imposing maximum civil penalties against Defendants for violations of the CWA in the amount of \$32,500 per violation per day for violations on or before January 12, 2009, and \$37,500 per violation per day for violations after January 12, 2009 pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. § 1319(d), and 1365(a), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19;
- E. Issue an order awarding Plaintiff its litigation expenses, including reasonable attorneys' and expert witness fees, as authorized by Section 505(d) of the CWA, 33 U.S.C. § 1365(d); and
- F. Award such other relief as this Court deems appropriate.

DATED this 4th day of December 2012.

Respectfully submitted,

/s/ David Frederick

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Galveston Baykeeper

(b) County of Residence of First Listed Plaintiff Harris
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David Frederick, Lowerre & Frederick et. al., 707 Rio Grande St.,
Ste. 200, Austin, Texas 78701

DEFENDANTS

D.B. Western, Inc. - Texas; D.B. Western, Inc.; Dennis
Beetham; Steve Beetham; Michael Bocksnick

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395F) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainees <input type="checkbox"/> 465 Other Immigration Actions		

V: ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation
 - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
33 U.S.C. § 1251 et seq.

Brief description of cause:
Citizen Suit for violations of Clean Water Act

VII. REQUESTED IN COMPLAINT:

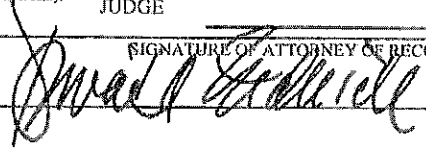
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 12/04/2012
SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____