



- The *Court* has scheduled a hearing on final approval of the *Settlement* and on the *Named Plaintiffs'* motion for attorneys' fees and expenses and for compensation to the *Named Plaintiffs*. The hearing, before United States District Judge Samuel Conti, has been scheduled for February 18, 2011, at 10:00 a.m. at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, in Courtroom 1, 17th Floor, or in the courtroom then occupied by Judge Conti.
- Any objections to the *Settlement* or to the motion for attorneys' fees and expenses and compensation to the *Named Plaintiffs* must be sent in writing to the Court and to *Class Counsel*, who are identified in paragraph 14 of this Notice. The procedure for objecting is described below.
- This Notice contains summary information with respect to the *Settlement*. The full terms and conditions of the *Settlement* are contained in a Class Action Settlement Agreement (the "*Settlement*"). Capitalized and italicized terms used in this Notice, but not defined in this Notice, have the meanings assigned to them in the *Settlement*. The *Settlement* and additional information with respect to this lawsuit are available at [www.lewisfeinberg.com](http://www.lewisfeinberg.com) or by contacting *Class Counsel*.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

<b>Your Legal Rights and Options in the Settlement:</b>	
<p><b>You Can Do Nothing.</b></p>	<p>If the <i>Settlement</i> is approved by the <i>Court</i> and you are a member of the <i>Class</i>, then the portion, if any, of the <i>Net Settlement Fund</i> to be allocated to your <i>Plan</i> account will be calculated as part of the implementation of the <i>Settlement</i>.</p> <p>The <i>Net Settlement Fund</i> will be paid into a trust under the supervision of the settlement <i>Administrator</i>. The <i>Administrator</i> will allocate the <i>Net Settlement Fund</i> among <i>Class Members</i>' accounts in proportion to the amount of <i>Plan</i> assets allocated to each <i>Class Members</i>' account as reflected in each account's vested balance on December 31, 2001, or upon distribution of the account (if the distribution occurred between January 1, 2000 and December 30, 2001). Allocations from the <i>Net Settlement Fund</i> may be eligible for rollover. If you receive an allocation, the <i>Administrator</i> will send you distribution election forms to enable you to direct a rollover of your allocation or to choose a taxable cash distribution.</p>
<p><b>You Can Object</b> <b>(by January 3, 2011)</b></p>	<p>If you wish to object to any part of the <i>Settlement</i>, you may (as discussed below) write to the <i>Court</i> and <i>Class Counsel</i> about why you do not like the <i>Settlement</i>.</p>
<p><b>You Can Go to a Hearing</b> <b>(to be held on February 18, 2011)</b></p>	<p>If you have submitted a written objection to the <i>Settlement</i> to the <i>Court</i> and <i>Class Counsel</i>, you may (but do not have to) attend the Court hearing about the <i>Settlement</i> and present your objections to the <i>Court</i>. You may attend the hearing even if you do not file a written objection, but you will only be allowed to speak at the hearing if you file written comments in advance of the hearing, except by leave of the <i>Court</i>.</p>

These rights and options – and the deadlines to exercise them – are explained in this Notice.

- The *Court* in charge of this case still has to decide whether to approve the *Settlement*. Payments will be made only if the *Court* approves the *Settlement* and that approval is upheld in the event that anybody appeals from the *Court's* approval.
- Further information regarding the lawsuit and this notice may be obtained by contacting *Class Counsel* or visiting *Class Counsel's* website:

Lewis, Feinberg, Lee, Renaker & Jackson, P.C.  
476 9th Street, Oakland, CA 94607 - Phone: (510) 839-6824  
[www.lewisfeinberg.com](http://www.lewisfeinberg.com)

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In this lawsuit (the “*Litigation*”), *Plaintiffs* allege that the *Defendants* breached fiduciary duties they owed to the participants in and beneficiaries of the *Plan*. Defendants dispute the allegations of the Complaint and have vigorously defended the *Litigation*. Copies of the most recent Complaint and other documents filed in the *Litigation* are available at [www.lewisfeinberg.com](http://www.lewisfeinberg.com).

### **SUMMARY OF SETTLEMENT**

- A *Settlement Fund* consisting of \$1.9 million in cash will be established.
- The net amount in the *Settlement Fund*, including interest, and after payment of any taxes, expenses, approved attorneys’ fees and costs, and compensation to the *Named Plaintiffs*, will be paid to the *Plan* and will be allocated to *Class Members* in proportion to the vested balance in their accounts on December 31, 2001, or upon distribution of the account (if the distribution occurred between January 1, 2000 and December 30, 2001).

### ***Potential Outcome of the Litigation***

As with any litigated case, *Plaintiffs* would face an uncertain outcome if the *Litigation* were to continue against the *Defendants*. Continued prosecution of the *Litigation* against these *Defendants* could result in a judgment or verdict greater or lesser than the recovery under the *Settlement*, or in no recovery at all.

Throughout this lawsuit, the *Plaintiffs* and the *Defendants* have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the *Plaintiffs* were to win the case.

The *Defendants* have denied and continue to deny the claims and contentions alleged by the *Plaintiffs*, that they are liable at all to the *Class*, and that the *Class* or the *Plan* has suffered any damages for which the *Defendants* could be legally responsible. Nevertheless, the *Defendants* have taken into account the uncertainty and risks inherent in any litigation, particularly in a complex case such as this, and have concluded that it is desirable that the case be fully and finally settled as to them on the terms and conditions set forth in the *Settlement*.

The *Plaintiffs* and their attorneys, who are experienced in litigating ERISA class actions, believe that they have strong claims against the *Defendants*. However, they recognize that there is uncertainty and risk in any litigation, and that the law governing cases of this sort in particular is uncertain. In addition, they understand that even if they win the case, they could recover for the *Plan* and its participants less than the *Settlement* amount, and that any recovery could be delayed for as much as several years. As a result, the *Plaintiffs* and their attorneys have concluded that it is desirable to settle the case on the terms set forth in the *Settlement*.

### ***Attorneys’ Fees and Costs Sought in the Litigation***

*Class Counsel*, who took the case on a contingent fee basis (i.e., they risked their time, for which they have not been paid to date), have applied to the *Court* for an order awarding to *Class Counsel*, from the proceeds of the *Settlement Fund*, attorneys’ fees of not more than 30% of the amount recovered in the *Settlement* (\$570,000), plus reimbursement of the expenses they have incurred to litigate the *Litigation* (approximately \$80,000). The motion for attorneys’ fees is available on *Class Counsel*’s website, [www.lewisfeinberg.com](http://www.lewisfeinberg.com).

### ***What Will the Named Plaintiffs Get?***

The two *Named Plaintiffs* who represent the *Class* in the *Litigation* will share in the allocation of the money paid to the *Plan* on the same basis and to the same extent as all other members of the *Class*, except that, in addition, the *Named Plaintiffs* may apply to the *Court* for compensation up to \$15,000 each, which includes reimbursement of their reasonable costs and expenses directly relating to their representation of the *Class*, as well as compensation for the considerable amount of time they have spent on the case. In particular, the *Named Plaintiffs* have gathered documents, prepared for and given depositions, monitored *Class Counsel's* work and consulted with them on the progress of the *Litigation*, and participated in two mediations. Any compensation awarded to the *Named Plaintiffs* by the *Court* will be paid from the proceeds of the *Settlement Fund*.

### ***Further Information***

Further information regarding the *Litigation* and this *Notice* may be obtained by contacting *Class Counsel*:

Lewis, Feinberg, Lee, Renaker & Jackson, P.C.  
476 9th Street  
Oakland, CA 94607  
(510) 839-6824

### **BASIC INFORMATION**

#### **1. Why did I get this notice package?**

You or someone in your family was a participant in or beneficiary of the *Plan* during the period commencing January 1, 2000.

The *Court* caused this Notice to be sent to you because, if you fall within that group, you have a right to know about the *Settlement* and about all of your options, before the *Court* decides whether to approve the *Settlement*. If the *Court* approves the *Settlement*, and after any appeals are resolved and the IRS decides the tax status of the *Plan*, the net amount of the *Settlement Fund* will be paid to the *Plan* and then allocated among *Class Members* according to a *Court*-approved *Plan of Allocation*. This Notice package describes the lawsuit, the *Settlement*, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The *Court* in charge of this case is the federal court known as the United States District Court for the Northern District of California. The people who sued are called the "*Named Plaintiffs*," and the people and entities they sued are called "*Defendants*." The *Named Plaintiffs* in the *Litigation* are Jerry Vaughn and Theresa Travers. They are both former participants in the *Plan*. The *Defendants* are Bay Environmental Management Inc., Caesar Nuti, Dennis Varni, Mario Aquilino, Loyd Bonfante Sr., Joseph Della Zoppa, Estate of Richard Granzella Sr., Edward Menosse, Pasquale Parenti, FSC Securities Corporation, and Jerrold N. Weinberg. The lawsuit that is the subject of this Notice and the *Settlement* is known as *Vaughn, et al., v. Bay Environmental Management, Inc., et al.*, No. C03-5725 (SC) (U.S. Dist. Ct. N.D. Cal.).

#### **2. What is the lawsuit about?**

The *Litigation* contends that the *Defendants* were fiduciaries of the *Plan* and violated fiduciary duties under ERISA that they owed to current and former Bay Environmental

employees who were participants in the *Plan*. In the Complaint, the *Named Plaintiffs* have made claims for the losses they allege were suffered by the *Plan* as the result of the alleged breaches of fiduciary duty by the *Defendants*.

*Plaintiffs* allege that *Defendants* invested the *Plan*'s assets imprudently and failed to diversify the *Plan*'s investments, causing the *Plan* to suffer investment losses during 2000 and 2001. In particular, *Plaintiffs* allege that *Defendants* breached their fiduciary duties by failing to adequately investigate the *Plan*'s investment advisors prior to hiring them, and failing to adequately monitor the performance of the *Plan*'s investment advisors and the performance of the *Plan*'s investments. *Plaintiffs* also allege that the *Plan*'s outside investment advisors were fiduciaries and breached their duties by failing to recommend prudent and diversified investments and failing to adequately monitor the performance of the investments they recommended. *Plaintiffs* also claim that the *Plan*'s fiduciaries should have moderated the *Plan*'s investment portfolio no later than the spring of 2000 in view of factors including the likely sale of the company. *Plaintiffs* asked the *Court* to compel the *Defendants* to make good losses to the *Plan* that *Plaintiffs* allege resulted from *Defendants*' breaches of fiduciary duty.

### ***The Defenses in the Litigation***

The *Defendants* deny that they have liability to the *Plan* or its participants or beneficiaries. *Defendants* have raised numerous defenses to liability, including the following:

- They were not fiduciaries of the *Plan*, or, if they were fiduciaries, their fiduciary duties did not extend to the matters at issue in the *Litigation*;
- To the extent they were fiduciaries as to the matters at issue in the *Litigation*, they fully discharged all fiduciary duties imposed on them by ERISA;
- The *Plan*'s investments were at all times prudent and properly diversified;
- Even if they failed to discharge one or more of their ERISA fiduciary duties, any such breach of fiduciary duty did not cause the losses alleged by the *Plaintiffs*; and
- The relief sought by the *Plaintiffs* in the *Litigation* is not permitted by ERISA.

### ***The Case Has Been Aggressively Litigated***

The *Litigation* was filed in December 2003. *Plaintiffs*' lawyers commenced extensive discovery, obtaining thousands of pages of documents from *Defendants* and from the *Plan*'s outside administrator and its custodian of assets. Through discovery, *Plaintiffs*' lawyers learned of the existence and role of the *Plan*'s outside investment advisors, and amended the Complaint to name them as additional *Defendants* in March 2005.

In September 2005, the *Court* dismissed the *Litigation* on the basis that the *Named Plaintiffs* lacked standing to sue because, like all other *Plan* participants, they had already received distributions of their benefits under the *Plan*. *Plaintiffs*' lawyers appealed this decision to the Ninth Circuit United States Court of Appeals. In June 2009, the Ninth Circuit reversed the dismissal and remanded the case back to the *Court*. The Ninth Circuit's decision is known as *Vaughn v. Bay Environmental Management, Inc.*, 567 F.3d 1021 (9th Cir. 2009).

Following the remand, the *Court* certified the case as a class action, appointed *Plaintiffs'* lawyers as *Class Counsel*, and ordered that a notice be sent out to the *Class Members* about the case. *Plaintiffs'* lawyers sent that notice in October 2009.

Discovery continued. *Defendants* took both *Named Plaintiffs'* depositions, and *Plaintiffs'* lawyers took depositions of the seven surviving individual Bay Environmental *Defendants*, Bay Environmental's controller, and Defendant Jerrold N. Weinberg. In December 2009, *Plaintiffs'* lawyers received and reviewed an additional 18,000 pages of documents from Bay Environmental. After analyzing these documents, *Plaintiffs'* lawyers took a second deposition of Defendant Weinberg, and took depositions of two representatives of Bay Environmental regarding the retention and location of documents and the administration of the *Plan* following termination.

In March 2010, the parties disclosed their expert witnesses and exchanged the experts' reports. *Plaintiffs'* lawyers disclosed as *Plaintiffs'* expert Jon C. Chambers of the investment consulting firm Schultz Collins Lawson Chambers, Inc., in San Francisco. *Defendants* disclosed as their experts Stephen P. Grenadier, a Professor of Finance at Stanford University; C. Frederick Reish, an attorney with the Reish & Reicher law firm in Los Angeles; and John Maine, an investment broker.

In April 2010, all parties and their lawyers attended a full-day mediation with mediator Michael Dickstein in San Francisco. The parties were unable to reach an agreement.

*Plaintiffs* and *Defendants* proceeded with expert discovery, exchanging rebuttal expert reports and taking all experts' depositions. Following the conclusion of expert discovery, *Defendants* and *Plaintiffs* filed motions for summary judgment, asking the *Court* to decide all or part of the case without a trial. *Defendants* moved for summary judgment on all *Plaintiffs'* claims. *Plaintiffs* moved for partial summary judgment as to the fiduciary status of Defendants Weinberg and FSC. *Plaintiffs* opposed *Defendants'* motions for summary judgment, and Defendants Weinberg and FSC opposed *Plaintiffs'* motion. The *Parties'* lawyers submitted approximately 200 pages of briefing and thousands of pages of documents and deposition transcripts in support of and opposition to the respective summary judgment motions. The parties' lawyers also submitted evidentiary objections to certain evidence submitted by opposing parties, and opposed one another's evidentiary objections. The *Court* has not ruled on the motions or evidentiary objections.

Following the summary judgment briefing, all parties' lawyers began preparing for trial, which was set to commence on September 7, 2010. On July 27, 2010, the *Parties* and their lawyers attended a second full-day mediation in San Francisco, this time with mediator Ronald Dean. At this mediation, the *Parties* agreed to the *Settlement*.

If the *Court* does not approve the *Settlement*, the case will proceed. The *Court* may grant one or more of the *Defendants'* motions for summary judgment, it may grant *Plaintiffs'* motion for partial summary judgment, and/or it may allow the case or part of the case to go to trial. A losing party on summary judgment or at trial would have the right to appeal the adverse decision.

### ***Settlement Discussions***

This *Settlement* is the product of extensive negotiations between *Class Counsel* and *Defendants'* attorneys, with the assistance and participation of two professional mediators over a period of several months. The mediation process included many telephonic discussions and two days of face-to-face meetings in San Francisco. Throughout the settlement negotiations, the

*Plaintiffs* and the *Defendants* were advised by attorneys, consultants, and experts, including individuals with expertise in ERISA fiduciary liability issues and estimating potential damages in cases involving ERISA fiduciary liability.

### **3. Why is this case a class action?**

In a class action, one or more plaintiffs, called “Named Plaintiffs,” sue on behalf of people who have similar claims. All of the individuals on whose behalf the *Named Plaintiffs* are suing are “*Class Members*.” One court resolves the issues for all *Class Members*. United States District Judge Conti is presiding over this case. In a Order dated October 1, 2009 (available at [www.lewisfeinberg.com](http://www.lewisfeinberg.com)), the *Court* certified a class on *Plaintiffs*’ claims.

### **4. Why is there a Settlement?**

The *Court* has not reached any final decisions on the merits of *Plaintiffs*’ claims against the *Defendants*. Instead, the *Plaintiffs* and the *Defendants* have agreed to a settlement. By reaching the *Settlement*, they have avoided the expense, time, and risk of a trial, as well as the possibility of another appeal or appeals.

As with any litigated case, the *Plaintiffs* would face an uncertain outcome if this case went to summary judgment or trial. On the one hand, continuation of the case against the *Defendants* could result in a verdict for an amount greater than that provided for by this *Settlement*. On the other hand, continuing the case against them could result in a verdict for less money than *Plaintiffs* have obtained for the *Class* in this *Settlement*, or even no recovery at all. Based on these factors, the *Plaintiffs* and their attorneys in this case believe the *Settlement* is best for all *Class Members*.

Additional information concerning the *Settlement* and these factors is available in the motion for preliminary approval of the *Settlement*, which may be obtained at [www.lewisfeinberg.com](http://www.lewisfeinberg.com) or directly from the Clerk of the United States District Court for the Northern District of California.

### **5. How do I know whether I am part of the Settlement?**

The proceeds of the *Settlement* will be allocated only to members of the *Class*, and then only according to a *Court*-approved *Plan of Allocation*.

You are a member of the *Class* if you fall within the “class definition” previously approved by United States District Judge Conti:

- All participants in and beneficiaries of the Bay Environmental Pension Plan from January 1, 2000, through the final date on which the Pension Plan’s assets were transferred entirely to interest bearing investments, excluding any participants, beneficiaries, and the estates of any deceased participants or beneficiaries, who are or have previously been named as Defendants in this action.
- All participants in and beneficiaries of the Bay Environmental Retirement Plan from January 1, 2000, through the final date on which the Retirement Plan’s assets were transferred entirely to interest bearing investments, excluding any participants, beneficiaries, and the estates of any deceased participants or beneficiaries, who are or have previously been named as Defendants in this action.

If you are a member of the *Class*, the amount of money you will receive, if any, will depend upon the *Plan of Allocation*, described below in Section 8.

**6. Are there exceptions to being included?**

You are not a member of the *Class* if you are now or have previously been named as a *Defendant* in this *Litigation*.

**THE SETTLEMENT BENEFITS - WHAT YOU GET**

**7. What does the Settlement provide?**

A *Settlement Fund* consisting of \$1.9 million in cash is being established in the *Litigation*. This amount has been deposited into an interest-bearing escrow account. If the *Court* approves the *Settlement* and no appeals are taken, or if the *Court*'s approval is affirmed on appeal, then any *Court*-approved attorneys' fees, costs, and compensation to the *Named Plaintiffs*, and any fees and taxes, will be paid out of this fund. The remaining amount, including interest ("*Net Settlement Fund*") will be paid to the *Plan*. The amount paid to the *Plan* will be allocated among members of the *Class* according to a *Plan of Allocation* to be approved by the *Court*.

The terminated *Plan* will be "revived" for the purpose of creating *Plan* accounts for members of the *Class* who are entitled to an award under the *Plan of Allocation*. *Defendants* will pay the cost of "reviving" the terminated *Plan*, including updating the *Plan* documents and filing any necessary tax returns. Because the *Plan* was terminated a number of years ago, steps will be taken to confirm its tax-qualified status, including making submissions to the U.S. Department of Labor ("DOL") and Internal Revenue Service ("IRS"). These steps must be taken before the *Net Settlement Fund* can be distributed, and may take anywhere from a few months to over one year. If the IRS confirms the *Plan*'s tax-qualified status, *Settlement* payments will be eligible for rollover. If the IRS does not confirm the *Plan*'s tax-qualified status, then the *Settlement* will continue to go forward, but *Settlement* payments will not be eligible for rollover.

*Defendants* will also pay the cost of allocating the *Net Settlement Fund* among *Class Members*, processing distribution elections, and tax reporting of distributions. These tasks will be performed by Nicholas L. Saakvitne, an experienced pension attorney and professional Trustee with experience in administering terminated plans ("*Administrator*"). These costs of administration of the *Settlement* will not come from the *Settlement Fund*.

In exchange for these things, the *Plan*, all *Class Members*, and anyone claiming through them are deemed to fully release the "*Releasees*" from "*Released Claims*." The *Releasees* are the current and former named *Defendants* and certain persons and entities affiliated with *Defendants*, as defined in the *Settlement*. The *Released Claims* generally include all claims that are or were alleged in the *Litigation*, and all claims that could have been alleged in the *Litigation*. By way of examples, the *Released Claims* include claims based on (a) imprudent investment of *Plan* assets or failure to diversify *Plan* investments, (b) improper investigation of *Plan* investments, (c) improper monitoring of *Plan* investments, and (d) the hiring of Defendants Weinberg and FSC Securities Corporation to advise the *Plan*.

The above description of the operation of the *Settlement* is only a summary. The governing provisions are set forth in the *Settlement* (including its exhibits), which may be obtained at [www.lewisfeinberg.com](http://www.lewisfeinberg.com) or by contacting *Class Counsel*.

## **8. How much will my payment be?**

Your share of the *Net Settlement Fund* paid into the *Plan* will depend on your proportionate share of *Plan* assets, excluding those assets allocated to *Defendants'* accounts. Each *Class Member's* proportionate share will be determined using a *Plan of Allocation*. Because the *Net Settlement Fund* is less than the total investment losses alleged by the *Class*, each *Class Member's* proportionate recovery will be less than the amount of the *Plan's* loss attributable to his or her former *Plan* account.

You are not responsible for calculating the amount you may be entitled to receive under the *Settlement*. This calculation will be done as part of the implementation of the *Settlement*.

In general, your proportionate share of the *Net Settlement Fund* will be calculated as follows:

- Using the *Plan's* records and other records as necessary, the Administrator will identify each member of the *Class*.
- The *Net Settlement Fund* will be divided between the revived Bay Environmental Retirement Plan (the "Retirement Plan") and the revived Bay Environmental Pension Plan (the "Pension Plan") in proportion to the assets held by those plans on January 1, 2000.
- The *Administrator* will use *Plan* records to determine the vested balance of each *Class Member's Plan* account on December 31, 2001, or upon distribution of his or her account, if distribution occurred between January 1, 2000 and December 30, 2001.
- Each *Class Member* will be assigned a Plan Percentage under the Retirement Plan and a Plan Percentage under the Pension Plan, which shall be his or her account balance as a percentage of the assets held by the entire *Class* under the calculation in the previous step.
- The *Administrator* will allocate to each *Class Member* a share of the *Net Settlement Fund* held by the Retirement Plan and a share of the *Net Settlement Fund* held by the Pension Plan, multiplied by the *Class Member's Plan Percentage(s)* under the respective plans ("Class Member Share").

If a total *Class Member Share* under the two plans is less than \$25, the amount will be reallocated among other *Class Members* and that *Class Member* will not receive a share of the *Net Settlement Fund*.

Do not worry if you do not have records that show your account balances with the *Plan*. If you are entitled to a share of the *Net Settlement Fund*, you will receive a statement showing the amount of your share, together with paperwork to elect a form of distribution. If you have questions regarding the *Settlement* or the *Plan of Allocation*, please contact *Class Counsel*.

## **9. How can I get a payment?**

You do not need to file a claim. If you are a *Class Member* entitled to a share of the *Net Settlement Fund*, you will be given an account with the revived *Plan* and your share will be deposited in your *Plan* account(s). The *Administrator* will send you distribution election

paperwork so that you can direct a rollover of your additional benefit, if available, choose a cash distribution, or select another form of benefit if available.

**10. When would I get my payment?**

Payment is conditioned on several matters, including the *Court's* approval of the *Settlement* and that approval becoming final and no longer subject to any appeals to any court. Upon satisfaction of various conditions, the *Net Settlement Fund* will be paid to the *Plan* and allocated to the accounts of *Class Members* pursuant to the *Plan of Allocation* as soon as possible after final approval has been obtained for the *Settlement* (which includes exhaustion of any appeals). If final approval is appealed, resolution of that appeal may take several years. In addition, the steps necessary to confirm the *Plan's* tax-qualified status must be completed before payments can be distributed and may take anywhere from a few months to over one year. Any accrued interest on the *Settlement Fund* will be included in the amount paid to the *Plan* and allocated to the *Plan* accounts of *Class Members*.

***There Will Be No Payments If The Settlement Is Terminated.***

The *Settlement* may be terminated on several grounds, including if the *Court* does not approve the *Settlement* or modifies the *Settlement*. Should the *Settlement* be terminated, the *Settlement* will be terminated, and the *Litigation* will proceed as if the *Settlement* had not been entered into.

**11. Can I get out of the Settlement?**

You do not have the right to exclude yourself from the *Settlement*. The *Court* certified the *Class* under Federal Rule of Civil Procedure 23(b)(1) and/or (2) as a non-“opt-out” class action because the *Court* determined the requirements of those rules were satisfied. As a result, it is not possible for any participants or beneficiaries to exclude themselves from the *Settlement*. As a *Class Member*, you will be bound by any judgments or orders that are entered in the *Litigation* for all claims that were or could have been asserted in the *Litigation* or are otherwise included in the release under the *Settlement*.

Although you cannot opt out of the *Settlement*, you can object to the *Settlement* and ask the *Court* not to approve it. See Answer to Question No. 14, below.

**THE LAWYERS REPRESENTING YOU**

**12. Do I have a lawyer in the case?**

The *Court* has appointed the law firm of Lewis, Feinberg, Lee, Renaker & Jackson, P.C., as *Class Counsel* for the *Class* in the *Litigation*. You will not be charged any fees directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**13. How will the lawyers be paid?**

*Class Counsel* filed a motion for an award of attorneys' fees on November 22, 2010. This motion is available for your review on *Class Counsel's* website, [www.lewisfeinberg.com](http://www.lewisfeinberg.com), and will be considered at the Fairness Hearing. As previously described, *Class Counsel* will apply for an award of attorneys' fees of not more than 30% of the recovery, plus reimbursement of costs and expenses incurred in the prosecution of the *Litigation*.

## ***Objecting to the Settlement or the Attorneys' Fees***

You can tell the *Court* that you do not agree with the *Settlement* or some part of it, including the attorneys' fees and expenses the attorneys intend to seek.

### **14. How do I tell the Court that I don't like the Settlement?**

If you are a *Class Member*, you can object to the *Settlement* if you do not like any part of it. You can give reasons why you think the *Court* should not approve it. To object, you must send a letter or other written statement saying that you object to the *Settlement* in *Vaughn v. Bay Environmental Management, Inc.*, Case No. C03-5725 (SC). Be sure to include your name, address, telephone number, signature, and a full explanation of all reasons you object to the *Settlement*. Your written objection must be sent to *Class Counsel* and *Plan Counsel* at the following address and must be postmarked by no later than January 3, 2011:

Teresa S. Renaker  
Lindsay Nako  
Lewis, Feinberg, Lee, Renaker & Jackson, P.C.  
476 9th Street  
Oakland, CA 94607

Ward Kallstrom  
Nicole Diller  
Morgan, Lewis & Bockius, LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105

You must also send your objection to the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102.

Your objection must be postmarked no later than January 3, 2011.

## **THE COURT'S FAIRNESS HEARING**

The *Court* will hold a hearing to decide whether to approve the *Settlement* as fair, adequate, and reasonable (the "Fairness Hearing"). You may attend the Fairness Hearing in person or through an attorney retained at your expense. You do not have to attend the Fairness Hearing.

### **15. When and where will the Court decide whether to approve the Settlement?**

The *Court* will hold the Fairness Hearing at 10:00 a.m. on February 18, 2011, at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, in Courtroom 1, 17th Floor, or in the courtroom then occupied by Judge Conti. At the hearing, the *Court* will consider whether the *Settlement* is fair, adequate, and reasonable. If there are objections, the *Court* will consider them. After the Fairness Hearing, the *Court* will decide whether to approve the *Settlement*. The *Court* also will rule on the motions for attorneys' fees and expenses and for compensation to the *Named Plaintiffs*. We do not know how long after the Fairness Hearing the *Court* will issue its decisions.

**16. Do I have to come to the hearing?**

No. *Class Counsel* will answer any questions Judge Conti may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to *Court* to talk about it. As long as you mail your written objection on time, it will be before the *Court* when the *Court* considers whether to approve the *Settlement* as fair, adequate, and reasonable. You also may have your own lawyer attend the Fairness Hearing, but such attendance is not necessary.

**17. May I speak at the hearing?**

If you are a *Class Member*, you may ask the *Court* for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in *Vaughn v. Bay Environmental Management, Inc.*, Case No. C03-5725 (SC).” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be sent to *Class Counsel* at the address listed in the Answer to Question No. 14, above, postmarked no later than January 3, 2011, and must be filed with the Clerk of the Court at the address listed in the Answer to Question No. 14, postmarked no later than January 3, 2011.

**IF YOU DO NOTHING**

**18. What happens if I do nothing at all?**

If you do nothing and you are a *Class Member*, you will participate in the *Settlement* of the *Litigation* as described above in this Notice if the *Settlement* is approved.

**GETTING MORE INFORMATION**

**19. Are there more details about the Settlement?**

This Notice summarizes the proposed *Settlement*. The complete *Settlement* is set forth in the *Settlement*. You may obtain a copy of the *Settlement* by contacting *Class Counsel*. Copies of the *Settlement*, as well as *Class Counsel*'s motion for attorneys' fees and costs, the motion seeking preliminary approval of the *Settlement*, and the *Preliminary Approval Order*, also may be obtained at [www.lewisfeinberg.com](http://www.lewisfeinberg.com). The *Settlement* also was filed with the Clerk of the United States District Court for the Northern District of California and may be obtained from the Clerk's office directly.

**20. How do I get more information?**

You can contact *Class Counsel* at (510) 839-6824, or visit the website at [www.lewisfeinberg.com](http://www.lewisfeinberg.com), for more information regarding the *Settlement*.