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11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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

14 CALIFORNIA SPORTFISHING  
15 PROTECTION ALLIANCE, a non-profit  
16 corporation,  
17 Plaintiff,  
18 vs.  
19 SIERRA PACIFIC INDUSTRIES, a  
20 California corporation, and CHRIS  
21 SKINNER, an individual,  
22 Defendants,

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND CIVIL  
PENALTIES

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

22 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
23 through its counsel, hereby alleges:

24 **I. JURISDICTION AND VENUE**

25 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
26 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
27 or “the Act”) against the Sierra Pacific Industries (“SPI”) and Mr. Chris Skinner (hereafter  
28

1 “Defendants”). This Court has subject matter jurisdiction over the parties and the subject  
2 matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A),  
3 and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief  
4 requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in  
5 case of actual controversy and further necessary relief based on such a declaration), 33  
6 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil  
7 penalties).

8 2. On or about April 26, 2010, Plaintiff provided notice of Defendants’ violations  
9 of the Act, and of its intention to file suit against Defendants, to the Administrator of the  
10 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region  
11 IX; the Executive Director of the State Water Resources Control Board (“State Board”); the  
12 Executive Officer of the Regional Water Quality Control Board, Central Valley Region  
13 (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).  
14 A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and is incorporated  
15 by reference.

16 3. More than sixty days have passed since notice was served on Defendants and  
17 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
18 neither the EPA nor the State of California has commenced or is diligently prosecuting a  
19 court action to redress the violations alleged in this complaint. This action’s claim for civil  
20 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,  
21 33 U.S.C. § 1319(g).

22 4. Venue is proper in the Eastern District of California pursuant to Section  
23 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
24 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in  
25 Sacramento, California because the source of the violations is located within Shasta County.

## 26 **II. INTRODUCTION**

27 5. This complaint seeks relief for Defendants’ discharges of pollutants from an  
28 approximately 60-acre sawmill facility (“the Facility”) owned and/or operated by Defendants

1 SPI and Chris Skinner. The Facility discharges to Burney Creek and/or Canyon Creek,  
2 which ultimately drain to the Sacramento River, and the Sacramento-San Joaquin Delta.  
3 Defendants' discharges of pollutants from the Facility are in violation of the Act and the  
4 State of California's General Industrial Permit for storm water discharges, State Water  
5 Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as amended  
6 by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ,  
7 National Pollutant Discharge Elimination System ("NPDES") General Permit No.  
8 CAS000001 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing,  
9 monitoring, reporting, discharge and management practice requirements, and other  
10 procedural and substantive requirements of the General Permit and the Act are ongoing and  
11 continuous.

12 6. The failure on the part of industrial facility operators such as Defendants to  
13 comply with the General Permit is recognized as a significant cause of the continuing decline  
14 in water quality of these receiving waters. The general consensus among regulatory agencies  
15 and water quality specialists is that storm water pollution amounts to more than half the total  
16 pollution entering the marine environment each year. With every rainfall event, hundreds of  
17 thousands of gallons of polluted storm water originating from industrial facilities discharge  
18 to Burney Creek, Canyon Creek, the Sacramento River, and the Sacramento-San Joaquin  
19 Delta.

### 20 **III. PARTIES**

21 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
22 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
23 California with its main office in Stockton, California. CSPA has approximately 2,000  
24 members who live, recreate and work in and around waters of the State of California,  
25 including Burney Creek, Canyon Creek, the Sacramento River, and the Sacramento-San  
26 Joaquin Delta. CSPA is dedicated to the preservation, protection, and defense of the  
27 environment, and the wildlife and the natural resources of all waters of California. To  
28 further these goals, CSPA actively seeks federal and state agency implementation of the Act

1 and other laws and, where necessary, directly initiates enforcement actions on behalf of itself  
2 and its members.

3 8. Members of CSPA reside in California and use and enjoy California's  
4 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the  
5 waters of Burney Creek, Canyon Creek, the Sacramento River, and the Sacramento-San  
6 Joaquin Delta, into which Defendants have caused, are causing, and will continue to cause,  
7 pollutants to be discharged. Members of CSPA use these areas to fish, sail, boat, kayak,  
8 swim, birdwatch, view wildlife and engage in scientific study, including monitoring  
9 activities, among other things. Defendants' discharges of pollutants threaten or impair each  
10 of those uses or contribute to such threats and impairments. Thus, the interests of CSPA's  
11 members have been, are being, and will continue to be adversely affected by Defendants'  
12 ongoing failure to comply with the Clean Water Act. The relief sought herein will redress the  
13 harms to Plaintiff caused by Defendants' activities.

14 9. Continuing commission of the acts and omissions alleged above will  
15 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have  
16 no plain, speedy or adequate remedy at law.

17 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant SPI  
18 is a corporation organized under the laws of the State of California.

19 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant Chris  
20 Skinner is the Division Manager for SPI and that in this capacity he directs the operations  
21 and maintenance of the Facility. Accordingly, Defendants own and/or operate the Facility.

#### 22 **IV. STATUTORY BACKGROUND**

23 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
24 pollutant into waters of the United States, unless such discharge is in compliance with  
25 various enumerated sections of the Act. Among other things, Section 301(a) prohibits  
26 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
27 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

28 13. Section 402(p) of the Act establishes a framework for regulating municipal

1 and industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p).  
2 States with approved NPDES permit programs are authorized by Section 402(p) to regulate  
3 industrial storm water discharges through individual permits issued to dischargers and/or  
4 through the issuance of a single, statewide general permit applicable to all industrial storm  
5 water dischargers. 33 U.S.C. § 1342.

6 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of  
7 the U.S. EPA has authorized California's State Board to issue NPDES permits including  
8 general NPDES permits in California.

9 15. The State Board elected to issue a statewide general permit for industrial  
10 discharges. The State Board issued the General Permit on or about November 19, 1991,  
11 modified the General Permit on or about September 17, 1992, and reissued the General  
12 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33  
13 U.S.C. § 1342(p).

14 16. The General Permit contains certain absolute prohibitions. Discharge  
15 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
16 other than storm water ("non-storm water discharges"), which are not otherwise regulated by  
17 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
18 General Permit prohibits storm water discharges and authorized non-storm water discharges  
19 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water  
20 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
21 ground water that adversely impact human health or the environment. Receiving Water  
22 Limitation C(2) of the General Permit prohibits storm water discharges that cause or  
23 contribute to an exceedance of any applicable water quality standards contained in a  
24 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

25 17. In addition to absolute prohibitions, the General Permit contains a variety of  
26 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
27 or having the potential to discharge, storm water associated with industrial activity that have  
28 not obtained an individual NPDES permit must apply for coverage under the State's General

1 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing  
2 dischargers to file their NOIs before March 30, 1992.

3 18. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
4 or prevent pollutants in its storm water discharges through implementation of the Best  
5 Available Technology Economically Achievable ("BAT") for toxic and nonconventional  
6 pollutants and the Best Conventional Pollutant Control Technology ("BCT") for  
7 conventional pollutants. BAT and BCT include both nonstructural and structural measures.  
8 General Permit, Section A(8).

9 19. EPA has established Benchmark Levels as guidelines for determining  
10 whether a facility discharging industrial storm water has implemented the requisite BAT and  
11 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
12 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –  
13 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –  
14 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L.  
15 The State Water Quality Control Board has proposed adding a benchmark level for specific  
16 conductance of 200 µmhos/cm.

17 20. Dischargers must develop and implement a Storm Water Pollution  
18 Prevention Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the  
19 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
20 (1) a narrative description and summary of all industrial activity, potential sources of  
21 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
22 water conveyance system, associated points of discharge, direction of flow, areas of  
23 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
24 storm water management practices, best management practices ("BMPs") and preventive  
25 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
26 the location where Significant Materials are being shipped, stored, received and handled, as  
27 well as the typical quantities of such materials and the frequency with which they are  
28 handled; (5) a description of potential pollutant sources including industrial processes,

1 material handling and storage areas, dust and particulate generating activities; (6) a summary  
2 of storm water sampling points; (7) a description of individuals and their responsibilities for  
3 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of  
4 potential pollutant sources including industrial processes, material handling and storage  
5 areas, and dust and particulate generating activities; (9) a description of significant spills and  
6 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description  
7 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an  
8 assessment of potential pollutant sources at the Facility and a description of the BMPs to be  
9 implemented at the Facility that will reduce or prevent pollutants in storm water discharges  
10 and authorized non-storm water discharges, including structural BMPs where non-structural  
11 BMPs are not effective (Section A(7), (8)).

12           21.       The SWPPP must be re-evaluated annually to ensure effectiveness and must  
13 be revised where necessary (Section A(9),(10)). Section C(3) of the General Permit requires  
14 a discharger to prepare and submit a report to the Regional Board describing changes it will  
15 make to its current BMPs in order to prevent or reduce any pollutant in its storm water  
16 discharges that is causing or contributing to an exceedance of water quality standards. Once  
17 approved by the Regional Board, the additional BMPs must be incorporated into the  
18 Facility's SWPPP. The report must be submitted to the Regional Board no later than 60 days  
19 from the date the discharger first learns that its discharge is causing or contributing to an  
20 exceedance of an applicable water quality standard. Section C(4)(a). Section C(11)(d) of  
21 the General Permit's Standard Provisions also requires dischargers to report any  
22 noncompliance. *See also* Section E(6). Lastly, Section A(9) of the General Permit requires  
23 an annual evaluation of storm water controls including the preparation of an evaluation  
24 report and implementation of any additional measures in the SWPPP to respond to the  
25 monitoring results and other inspection activities.

26           22.       The General Permit requires dischargers to eliminate all non-storm water  
27 discharges to storm water conveyance systems other than those specifically set forth in  
28 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth

1 in Special Condition D(1)(b).

2 23. The General Permit requires dischargers commencing industrial activities  
3 before October 1, 1992 to develop and implement an adequate written Monitoring and  
4 Reporting Program no later than October 1, 1992. Existing facilities covered under the  
5 General Permit must implement all necessary revisions to their monitoring programs no later  
6 than August 1, 1997.

7 24. The General Permit also requires dischargers to submit “Annual Reports” to  
8 the Regional Board. As part of their monitoring program, dischargers must identify all storm  
9 water discharge locations that produce a significant storm water discharge, evaluate the  
10 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
11 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
12 then conduct visual observations of these discharge locations for at least one storm per  
13 month during the wet season (October through May) and record their findings in their  
14 Annual Report. Dischargers must also collect and analyze storm water samples from at least  
15 two storms per year. Section B requires dischargers to sample and analyze during the wet  
16 season for basic parameters such as pH, total suspended solids (“TSS”), specific  
17 conductance, and total organic content (“TOC”) or oil and grease, certain industry-specific  
18 parameters, and toxic chemicals and other pollutants likely to be in the storm water  
19 discharged from the facility. Section B(5) and Table D of the General Permit requires  
20 dischargers whose industrial activities fall within SIC Code 2421 (“General Sawmills and  
21 Planing Mills”) to analyze their storm water discharge samples for chemical oxygen demand  
22 (“COD”), TSS and zinc (“Zn”). Dischargers must also conduct dry season visual  
23 observations to identify sources of non-storm water pollution. The monitoring and reporting  
24 program requires dischargers to certify, based upon the annual site inspections, that the  
25 facility is in compliance with the General Permit and report any non-compliance, and  
26 contains additional requirements as well.

27 25. In order to discharge storm water lawfully in California, industrial  
28 dischargers must comply with the terms of the General Permit or have obtained and

1 complied with an individual NPDES permit.

2 26. The term “discharge of pollutants” means “any addition of any pollutant to  
3 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
4 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
5 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

6 27. A point source is defined as “any discernable, confined and discrete  
7 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .  
8 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

9 28. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §  
10 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.  
11 Waters of the United States include man-made water bodies that are tributary to waters that  
12 are navigable in fact. Waters of the United States include ephemeral waters that are tributary  
13 to waters that are navigable in fact.

14 29. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
15 enforcement actions against any “person,” including individuals, corporations, or  
16 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of  
17 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under  
18 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an  
19 assessment of civil penalties of up to \$32,500 per day for violations that occurred between  
20 March 15, 2004 and January 12, 2009, and an assessment of civil penalties of up to \$37,500  
21 per day for violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of  
22 the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

23 30. The Regional Board has established water quality standards for the  
24 Sacramento River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan  
25 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin  
26 Plan.

27 31. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
28 waters shall be maintained free of toxic substances in concentrations that produce

1 detrimental physiological responses in human, plant, animal, or aquatic life.”

2 32. The Basin Plan establishes a standard for electrical conductivity in the Delta  
3 of 0.7 µmhos/cm from April 1 through August 31 and 1.0 µmhos/cm from September 1  
4 through March 31.

5 33. The Basin Plan provides that “[w]aters shall not contain chemical constituents  
6 in concentrations that adversely affect beneficial uses.”

7 34. The Basin Plan provides that “[a]t a minimum, water designated for use as  
8 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
9 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the  
10 Sacramento River and the Delta have been designated by the State Board for use as  
11 municipal and domestic supply.

12 **V. STATEMENT OF FACTS**

13 35. Defendants operate the Facility, an approximately 60-acre sawmill facility  
14 located at 36336 State Highway 299 East, in Burney, California. The Facility discharges  
15 storm water to Burney Creek and/or Canyon Creek, which ultimately flow into the  
16 Sacramento River, and the Sacramento-San Joaquin Delta.

17 36. The Facility is classified under SIC Code 2421 (“General Sawmills and  
18 Planing Mills”). Industrial activities occur throughout the Facility. The Facility is primarily  
19 a sawmill used to receive, store and process wood-based products for commercial use. Other  
20 current industrial activities occurring at the Facility include the use, storage, and  
21 maintenance of heavy machinery and motorized vehicles. Many of these activities occur  
22 outside in areas that are exposed to storm water and storm flows due to the lack of overhead  
23 coverage, functional berms and other storm water controls. Plaintiff is informed and  
24 believes that Defendants’ storm water controls, to the extent any exist, fail to achieve BAT  
25 and BCT standards.

26 37. The management practices at the Facility are wholly inadequate to prevent  
27 the sources of contamination described above from causing the discharge of pollutants to  
28 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential

1 structural controls such as grading, berming and roofing to prevent rainfall and storm water  
2 flows from coming into contact with these and other sources of contaminants, thereby  
3 allowing storm water to flow over and across these materials and become contaminated prior  
4 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the  
5 discharge of water once contaminated. The Facility also lacks an adequate filtration system  
6 to treat water once it is contaminated.

7 38. During rain events storm water laden with pollutants flows from the Facility  
8 into the Burney Creek and/or Canyon Creek, which ultimately flow to the Sacramento River,  
9 and the Sacramento-San Joaquin Delta.

10 39. Information available to Plaintiff indicates that as a result of these practices,  
11 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
12 being discharged from the Facility directly to these waters during significant rain events.

13 40. Burney Creek, Canyon Creek, the Sacramento River, and the Sacramento-  
14 San Joaquin Delta are waters of the United States.

15 41. Information available to Plaintiff indicates that Defendants have not fulfilled  
16 the requirements set forth in the General Permit for discharges from the Facility due to the  
17 continued discharge of contaminated storm water.

18 42. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
19 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

20 43. Information available to Plaintiff indicates the continued existence of  
21 unlawful storm water discharges at the Facility.

22 44. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
23 have failed to develop and implement adequate monitoring, reporting and sampling  
24 programs for the Facility. Plaintiffs are informed and believe, and thereupon allege, that  
25 Defendants have not sampled with adequate frequency, have not conducted visual  
26 monitoring, and have not analyzed the samples collected for the required pollutant  
27 parameters.

28 45. Plaintiff is informed and believes, and thereupon alleges, that all of the

1 violations alleged in this Complaint are ongoing and continuing.

2 **VI. CLAIMS FOR RELIEF**

3 **FIRST CAUSE OF ACTION**

4 **Discharges of Contaminated Storm Water**  
5 **in Violation of Permit Conditions and the Act**  
6 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

7 46. Plaintiff incorporates the allegations contained in the above paragraphs as  
8 though fully set forth herein.

9 47. Discharge Prohibition A(2) of the General Permit requires that storm water  
10 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
11 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
12 General Permit require that storm water discharges and authorized non-storm water discharges  
13 shall not adversely impact human health or the environment, and shall not cause or contribute  
14 to a violation of any water quality standards contained in a Statewide Water Quality Control  
15 Plan or the applicable Regional Board's Basin Plan.

16 48. Plaintiff is informed and believes, and thereupon alleges, that since at least  
17 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to  
18 Burney Creek, Canyon Creek, the Sacramento River, and the Sacramento-San Joaquin Delta  
19 in violation of the General Permit.

20 49. During every significant rain event, storm water flowing over and through  
21 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
22 Facility to Burney Creek, Canyon Creek, the Sacramento River, and the Sacramento-San  
23 Joaquin Delta.

24 50. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
25 of contaminated storm water are causing pollution and contamination of the waters of the  
26 United States in violation of Discharge Prohibition A(2) of the General Permit.

27 51. Plaintiff is informed and believes, and thereupon alleges, that these  
28 discharges of contaminated storm water are adversely affecting human health and the  
environment in violation of Receiving Water Limitation C(1) of the General Permit.



1 Permit.

2 58. Each day since October 1, 1992 that Defendants have failed to develop and  
3 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate  
4 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

5 59. Defendants have been in violation of the SWPPP requirement every day since  
6 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to  
7 develop and fully implement an adequate SWPPP for the Facility.

8 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

9 **THIRD CAUSE OF ACTION**  
10 **Failure to Develop and Implement the Best Available**  
11 **And Best Conventional Treatment Technologies**  
12 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

13 60. Plaintiff incorporates the allegations contained in the above paragraphs as  
14 though fully set forth herein.

15 61. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
16 require dischargers to reduce or prevent pollutants in their storm water discharges through  
17 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
18 pollutants.

19 62. Defendants have failed to implement BAT and BCT at the Facility for their  
20 discharges of pollutants in violation of Effluent Limitation B(3) of the General Permit.

21 63. Each day since April 26, 2005 that Defendants have failed to develop and  
22 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
23 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

24 64. Defendants have been in violation of the BAT and BCT requirements every day  
25 since at least April 26, 2005. Defendant continues to be in violation of the BAT and BCT  
26 requirements each day that it fails to develop and fully implement an adequate BAT and BCT  
27 for the Facility.

28 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**FOURTH CAUSE OF ACTION**

**Failure to Develop and Implement an Adequate Monitoring and Reporting Program  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

65. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

66. Section B of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement a monitoring and reporting program (including, among other things, sampling and analysis of discharges) no later than October 1, 1992.

67. Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendants' ongoing failures to develop and implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing failure to collect and analyze storm water samples from all discharge locations, their continuing failure to analyze storm water samples for all toxic chemicals and other pollutants likely to be present in the Facility's storm water discharges in significant quantities, and their failure to file required Annual Reports with the Regional Board which provide required information concerning the Facility's visual observations and storm water sampling and analysis.

68. Each day since October 1, 1992 that Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**FIFTH CAUSE OF ACTION**

**False Certification of Compliance in Annual Report  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

69. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

70. Defendants have falsely certified compliance with the General Permit in each

1 of the Annual Reports submitted to the Regional Board since April 26, 2005.

2 71. Each day since at least April 26, 2005, that Defendants have falsely certified  
3 compliance with the General Permit is a separate and distinct violation of the General Permit  
4 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation  
5 of the General Permit's verification requirement each day that they maintain their false  
6 certification of its compliance with the General Permit.

7 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

8 **VII. RELIEF REQUESTED**

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

- 10 a. Declare Defendants to have violated and to be in violation of the Act as  
11 alleged herein;
- 12 b. Enjoin Defendants from discharging pollutants from the Facility and to the  
13 surface waters surrounding and downstream from the Facility;
- 14 c. Enjoin Defendants from further violating the substantive and procedural  
15 requirements of the General Permit;
- 16 d. Order Defendants to immediately implement storm water pollution control  
17 and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
18 pollutants in the Facility's storm water from contributing to violations of any water quality  
19 standards;
- 20 e. Order Defendants to comply with the General Permit's monitoring and  
21 reporting requirements, including ordering supplemental monitoring to compensate for past  
22 monitoring violations;
- 23 f. Order Defendants to prepare a SWPPP consistent with the General Permit's  
24 requirements and implement procedures to regularly review and update the SWPPP;
- 25 g. Order Defendants to provide Plaintiff with reports documenting the quality  
26 and quantity of their discharges to waters of the United States and their efforts to comply with  
27 the Act, the General Permit and the Court's orders;
- 28 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for

1 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all  
2 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections  
3 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4  
4 (pp. 200-202) (Dec. 31, 1996);

5 i. Order Defendants to take appropriate actions to restore the quality of  
6 navigable waters impaired by their activities;

7 j. Award Plaintiffs' costs (including reasonable attorney, witness, and  
8 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

9 k. Award any such other and further relief as this Court may deem appropriate.

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11 Dated: June 28, 2010

Respectfully Submitted,

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LAW OFFICES OF ANDREW L. PACKARD

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By: /s/ Erik Roper  
Erik M. Roper  
Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

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**EXHIBIT A**



**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

April 26, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Chris Skinner, Division Manager  
Sierra Pacific Industries  
P.O. Box 2677  
36336 Highway 299 East  
Burney, CA 96013

Sierra Pacific Industries  
c/o Mr. David H. Dun, Agent for Service  
2313 I Street  
Eureka, CA 95501

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

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Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Sierra Pacific Industries ("SPI") sawmill facility located at 36336 Highway 299 East in Burney, California ("the Facility"). The WDID identification number for the Facility is 5R45I021356. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Canyon Creek, Burney Creek, the Sacramento River, the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility.

This letter addresses SPI's unlawful discharges of pollutants from the Facility to Canyon Creek and/or Burney Creek, which in turn ultimately flow(s) into the Sacramento River and the Sacramento - San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“the EPA”), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, SPI and Mr. Chris Skinner are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against SPI and Mr. Chris Skinner under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

SPI operates a sawmill facility located in Burney, California. The Facility receives, stores and processes wood-based products for commercial use. Other activities at the Facility include the use, storage, and maintenance of heavy machinery.

On or about December 20, 2007, SPI belatedly submitted its notice of intent to comply with the terms of the General Permit (“NOI”). The Facility is classified as a sawmill facility under Standard Industrial Classification (“SIC”) Code 2421 (“General Sawmills and Planing Mills”). The Facility collects and discharges storm water from its approximately 60-acre industrial site through at least four discharge points to Canyon Creek and/or Burney Creek, which in turn ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters

shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by SPI at the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron

– 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; and, chemical oxygen demand – 120 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

SPI has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On December 15, 2009, a representative of the Regional Water Quality Control Board, Region 5, sent SPI a letter entitled “Storm Water Sampling and Analysis Results.” The letter requested additional information relating to the Facility’s storm water discharges exceeding US EPA benchmarks for certain pollutants and what actions SPI planned to take to reduce or eliminate the discharge of such pollutants. Specifically, the Regional Board’s letter instructed SPI to: (1) identify sources of pollutants at the Facility which contribute to the exceedances reported in the 2008-2009 Annual Report; (2) review current BMPs; and, (3) modify existing BMPs or implement new BMPs to reduce or eliminate the discharge of new pollutants.

Based on its review of available public documents, CSPA is informed and believes that SPI continues to discharge myriad pollutants in excess of benchmarks and that SPI has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. SPI’s ongoing violations are discussed further below.

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

SPI has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. SPI's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of Applicable EPA Benchmarks**

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
10/03/2008	TSS	SW-002	115 mg/L	100 mg/L
01/04/2009	TSS	SW-003	204 mg/L	100 mg/L
01/06/2009	TSS	SW-004	1490 mg/L	100 mg/L
01/22/2009	TSS	SW-004	6580 mg/L	100 mg/L
01/22/2009	TSS	SW-002	1550 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Proposed EPA Benchmark**

Date	Parameter	Discharge Point	Concentration in Discharge	Proposed Benchmark Value
10/03/2008	Spec. Con.	SW-002	545 µmhos/cm	200 µmhos/cm
01/04/2009	Spec. Con.	SW-003	593 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-004	208 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-001	593 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-002	487 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-001	368 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-004	254 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-002	488 µmhos/cm	200 µmhos/cm

**3. Discharges of Storm Water Containing Oil and Grease at Levels in Excess of EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/22/2009	O&G	SW-004	18.8 mg/L	15 mg/L
01/22/2009	O&G	SW-002	79.2 mg/L	15 mg/L

**4. Discharges of Storm Water with Zinc (Zn) in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/06/2009	Zn	SW-004	0.19 mg/L	0.117 mg/L
01/22/2009	Zn	SW-004	0.792 mg/L	0.117 mg/L
01/22/2009	Zn	SW-002	0.827 mg/L	0.117 mg/L

**5. Discharges of Storm Water with Chemical Oxygen Demand (COD) in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/06/2009	COD	SW-004	220 mg/L	120 mg/L
01/06/2009	COD	SW-001	177 mg/L	120 mg/L
01/22/2009	COD	SW-001	256 mg/L	120 mg/L
01/22/2009	COD	SW-004	1170 mg/L	120 mg/L
01/22/2009	COD	SW-002	632 mg/L	120 mg/L

CSPA’s investigation, including its review of SPI’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for specific conductivity, indicates that SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Oil and Grease (O&G), Specific Conductivity (SC), Zinc (Zn) and Chemical Oxygen Demand (COD), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SPI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 26, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since April 26, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each

of the specific rain dates on which CSPA alleges that SPI has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD), and other unmonitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

**B. SPI Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as SPI, designated under SIC Code 2421 are also required to sample for Zinc (Zn) and Chemical Oxygen Demand (COD). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that SPI has failed to develop and implement an adequate Monitoring & Reporting Plan. CSPA’s review of publicly available records reveals that there is no 2007-2008 Annual Report for SPI on file at the Regional Board office. This suggests that SPI failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. CSPA notes that SPI filed its NOI for the Facility on December 20, 2007. CSPA notes that entities subject to the General Permit are required to collect and analyze samples of storm water discharges from each discharge point from at least two qualifying storm events each wet season; and, for purposes of storm water sampling under the General Permit, the “wet season”

runs from October 1<sup>st</sup> to May 31<sup>st</sup> of any given year. Accordingly, SPI's failure to file a 2007-2008 Annual Report, and its failure to sample and analyze the Facility's discharges of storm water from all discharge points from two qualifying storm events at any time from December 21, 2007 through May 31, 2008 constitute violations of the Act and the General Permit.

Similarly, the absence of the 2007-2008 Annual Report suggests that SPI failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005. These violations are set forth in greater detail below:

**1. SPI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that SPI has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the four discharge points currently designated by SPI. This failure to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

**2. SPI Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires SPI to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as SPI which are designated as SIC Code 2421 to analyze its storm water discharge for Zinc (Zn) and Chemical Oxygen Demand (COD). Further, based on its investigation, CSPA is informed and believes that SPI has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Other pollutants likely to be present in the Facility's storm water discharges include: aluminum, ammonia, arsenic, biological oxygen demand, copper, iron, lead, mercury and nitrate + nitrite (N+N). SPI's failure to monitor these pollutants extends back to at least April 26, 2005. SPI's failure to monitor these other pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. SPI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 26, 2005.**

CSPA is informed and believes that available documents demonstrate SPI's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

**C. SPI Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity, Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, SPI must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum SPI must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. SPI has failed to adequately implement such measures.

SPI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPI has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that SPI fails to implement BAT and BCT. SPI is subject to penalties for violations of the Order and the Act occurring since April 26, 2005.

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

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no

later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that SPI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. SPI has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that SPI fails to develop and implement an effective SWPPP. SPI is subject to penalties for violations of the Order and the Act occurring since April 26, 2005.

**E. SPI Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, SPI is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity, Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, SPI was aware of high levels of these pollutants prior to April 26, 2005. Likewise, SPI has not filed any reports describing its non-compliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). SPI has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since April 26, 2005, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

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

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying

compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that SPI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, in response to item E.7. SPI reported that all storm water sampling was preceded by three (3) working days without a storm water discharge. However, a cursory glance at the dates of storm water discharge sampling as reported in SPI's 2008-2009 Annual Report reveal that assertion to be patently false. To wit, in its 2008-2009 Annual Report SPI reported that it collected storm water discharge samples on January 4, 2009 and then again on January 6, 2009. Clearly, January 4<sup>th</sup> is less than three (3) working days prior to January 6<sup>th</sup>. As indicated above, SPI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SPI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. SPI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

### **III. Persons Responsible for the Violations.**

CSPA puts Sierra Pacific Industries and Mr. Chris Skinner on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Sierra Pacific Industries and Mr. Chris Skinner on notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Party.**

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

### **V. Counsel.**

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

Andrew L. Packard  
Erik M. Roper  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227

Fax. (707) 763-9227

E-mail: [Andrew@PackardLawOffices.com](mailto:Andrew@PackardLawOffices.com)  
[Erik@PackardLawOffices.com](mailto:Erik@PackardLawOffices.com)

And to:

Robert J. Tuerck  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: [Bob@JacksonTuerck.com](mailto:Bob@JacksonTuerck.com)

## **VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Sierra Pacific Industries and Mr. Chris Skinner to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Sierra Pacific Industries and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

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

Pamela Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**  
**Notice of Intent to File Suit, SPI (Burney, CA)**  
**Significant Rain Events,\* April 23, 2005 – April 23, 2010**

April 30 2005	Jan. 29 2006	Nov. 16 2006	Nov. 19 2007
May 01 2005	Jan. 31 2006	Nov. 23 2006	Nov. 20 2007
May 02 2005	Feb. 01 2006	Nov. 26 2006	Dec. 04 2007
May 05 2005	Feb. 02 2006	Nov. 27 2006	Dec. 07 2007
May 06 2005	Feb. 04 2006	Nov. 28 2006	Dec. 17 2007
May 09 2005	Feb. 18 2006	Dec. 09 2006	Dec. 18 2007
May 10 2005	Feb. 27 2006	Dec. 10 2006	Dec. 19 2007
May 16 2005	Feb. 28 2006	Dec. 12 2006	Dec. 20 2007
May 18 2005	Mar. 01 2006	Dec. 13 2006	Dec. 24 2007
May 19 2005	Mar. 02 2006	Dec. 15 2006	Dec. 30 2007
Oct. 15 2005	Mar. 03 2006	Dec. 22 2006	Jan. 04 2008
Oct. 27 2005	Mar. 04 2006	Dec. 26 2006	Jan. 05 2008
Nov. 02 2005	Mar. 06 2006	Dec. 27 2006	Jan. 06 2008
Nov. 03 2005	Mar. 07 2006	Jan. 04 2007	Jan. 07 2008
Nov. 04 2005	Mar. 08 2006	Jan. 05 2007	Jan. 09 2008
Nov. 07 2005	Mar. 11 2006	Feb. 07 2007	Jan. 21 2008
Nov. 08 2005	Mar. 13 2006	Feb. 08 2007	Jan. 22 2008
Nov. 25 2005	Mar. 14 2006	Feb. 09 2007	Jan. 25 2008
Nov. 26 2005	Mar. 15 2006	Feb. 10 2007	Jan. 26 2008
Nov. 29 2005	Mar. 16 2006	Feb. 11 2007	Jan. 27 2008
Dec. 01 2005	Mar. 24 2006	Feb. 12 2007	Jan. 28 2008
Dec. 02 2005	Mar. 25 2006	Feb. 13 2007	Jan. 30 2008
Dec. 08 2005	Mar. 26 2006	Feb. 21 2007	Feb. 01 2008
Dec. 18 2005	Mar. 28 2006	Feb. 22 2007	Feb. 03 2008
Dec. 19 2005	Mar. 29 2006	Feb. 23 2007	Feb. 22 2008
Dec. 20 2005	Mar. 31 2006	Feb. 25 2007	Feb. 23 2008
Dec. 21 2005	April 01 2006	Feb. 26 2007	Feb. 24 2008
Dec. 22 2005	April 02 2006	Feb. 27 2007	Feb. 25 2008
Dec. 23 2005	April 03 2006	Feb. 28 2007	Mar. 01 2008
Dec. 25 2005	April 04 2006	Mar. 08 2007	Mar. 15 2008
Dec. 26 2005	April 05 2006	Mar. 20 2007	Mar. 20 2008
Dec. 27 2005	April 08 2006	Mar. 27 2007	Mar. 27 2008
Dec. 28 2005	April 09 2006	April 08 2007	April 08 2008
Dec. 29 2005	April 10 2006	April 09 2007	April 15 2008
Dec. 30 2005	April 11 2006	April 12 2007	April 23 2008
Dec. 31 2005	April 12 2006	April 22 2007	April 24 2008
Jan. 01 2006	April 13 2006	April 23 2007	May 25 2008
Jan. 02 2006	April 16 2006	May 02 2007	May 28 2008
Jan. 04 2006	April 17 2006	May 03 2007	Oct. 04 2008
Jan. 07 2006	April 22 2006	May 04 2007	Oct. 31 2008
Jan. 08 2006	May 23 2006	Oct. 05 2007	Nov. 01 2008
Jan. 11 2006	May 27 2006	Oct. 10 2007	Nov. 02 2008
Jan. 14 2006	Nov. 02 2006	Oct. 13 2007	Nov. 03 2008
Jan. 15 2006	Nov. 03 2006	Oct. 16 2007	Nov. 04 2008
Jan. 18 2006	Nov. 08 2006	Oct. 17 2007	Nov. 06 2008
Jan. 19 2006	Nov. 11 2006	Oct. 20 2007	Nov. 09 2008
Jan. 21 2006	Nov. 13 2006	Oct. 30 2007	Dec. 15 2008
Jan. 26 2006	Nov. 14 2006	Nov. 11 2007	Dec. 16 2008

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

**ATTACHMENT A**  
**Notice of Intent to File Suit, SPI (Burney, CA)**  
**Significant Rain Events,\* April 23, 2005 – April 23, 2010**

Dec. 19 2008	Dec. 21 2009
Dec. 21 2008	Dec. 30 2009
Dec. 22 2008	Dec. 31 2009
Dec. 23 2008	Jan. 01 2010
Dec. 24 2008	Jan. 06 2010
Dec. 25 2008	Jan. 12 2010
Jan. 02 2009	Jan. 13 2010
Jan. 09 2009	Jan. 17 2010
Jan. 22 2009	Jan. 20 2010
Jan. 23 2009	Jan. 24 2010
Jan. 24 2009	Jan. 25 2010
Jan. 25 2009	Jan. 26 2010
Feb. 09 2009	Jan. 30 2010
Feb. 11 2009	Feb. 04 2010
Feb. 12 2009	Feb. 05 2010
Feb. 13 2009	Feb. 06 2010
Feb. 15 2009	Feb. 24 2010
Feb. 16 2009	Feb. 26 2010
Feb. 17 2009	Mar. 03 2010
Feb. 18 2009	Mar. 08 2010
Feb. 22 2009	Mar. 12 2010
Feb. 23 2009	Mar. 13 2010
Feb. 24 2009	Mar. 25 2010
Feb. 26 2009	Mar. 29 2010
Mar. 01 2009	Mar. 30 2010
Mar. 02 2009	Mar. 31 2010
Mar. 03 2009	April 02 2010
Mar. 04 2009	April 05 2010
Mar. 05 2009	April 13 2010
Mar. 22 2009	April 20 2010
April 10 2009	April 21 2010
April 11 2009	
April 24 2009	
April 28 2009	
May 01 2009	
May 02 2009	
May 05 2009	
Oct. 13 2009	
Oct. 14 2009	
Oct. 15 2009	
Oct. 19 2009	
Oct. 20 2009	
Nov. 18 2009	
Nov. 21 2009	
Nov. 27 2009	
Dec. 11 2009	
Dec. 12 2009	
Dec. 15 2009	
Dec. 20 2009	

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