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 CALIFORNIA SPORTFISHING
 13 PROTECTION ALLIANCE

14 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

15 CALIFORNIA SPORTFISHING
 16 PROTECTION ALLIANCE, a non-profit
 corporation,

17 Plaintiff,

18 vs.

19 VIKING TRUCK & AUTO, INC., a
 20 California corporation, and KENNETH
 HOFFMAN, an individual,

21 Defendants.
 22

Case No. _____

COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF AND CIVIL
 PENALTIES

(Federal Water Pollution Control Act,
 33 U.S.C. §§ 1251 to 1387; and, California
 Health & Safety Code § 25249.5 *et seq.*)

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

25 **I. JURISDICTION AND VENUE**

26 1. This is a civil suit brought under the citizen suit enforcement provisions of the
 27 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”
 28

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

9 2. On or about September 3, 2010, Plaintiff provided notice of Defendants’
10 violations of the Act (“CWA Notice Letter”), and of its intention to file suit against
11 Defendants, to the Administrator of the United States Environmental Protection Agency
12 (“EPA”); the Administrator of EPA Region IX; the Executive Director of the State Water
13 Resources Control Board (“State Board”); the Executive Officer of the Regional Water
14 Quality Control Board, Central Valley Region (“Regional Board”); and to Defendants, as
15 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA’s CWA
16 Notice Letter is attached as Exhibit A, and is incorporated by reference.

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

23 4. This action further seeks to remedy Defendant Viking Truck & Auto, Inc.’s
24 continuing discharges or releases of lead and lead compounds, arsenic, cadmium, mercury
25 and nickel into sources of drinking water in violation of California Health & Safety Code
26 Section 25249.5 (also referred to as “Proposition 65”). Defendant Viking Truck & Auto,
27 Inc.’s operation of the auto wrecking and salvage facility that is the subject of this action has
28 caused, and continues to cause, the discharge of lead and lead compounds, arsenic, cadmium,

1 mercury and nickel to sources of drinking water in violation of Proposition 65.

2 5. Lead and lead compounds, arsenic, cadmium, mercury and nickel (the
3 "Proposition 65-Listed Chemicals") are chemicals known to the State of California to cause
4 cancer and reproductive toxicity.

5 6. On or about September 20, 2010, Plaintiff provided notice of Defendant
6 Viking Truck & Auto, Inc.'s violations of Proposition 65 ("Proposition 65 Notice Letter"),
7 and of its intention to file suit against Defendant Viking Truck & Auto, Inc., to: the
8 Proposition 65 Enforcement Reporting section of the office of the California Attorney
9 General ("California Attorney General"); the District Attorney of each California county
10 containing sources of drinking water potentially impacted by Defendants' violations of
11 Proposition 65; and, to Defendant Viking Truck & Auto, Inc., as required by California
12 Health & Safety Code Section 25249.5 *et seq.* A true and correct copy of CSPA's
13 Proposition 65 Notice Letter is attached hereto as Exhibit B and is incorporated by reference.

14 7. Venue is proper in the Eastern District of California pursuant to Section
15 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
16 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in
17 Sacramento, California because the source of the violations is located within Shasta County.

18 **II. INTRODUCTION**

19 8. This Complaint seeks relief for Defendants' discharges of pollutants from an
20 approximately 19-acre vehicle dismantling and automotive parts recycling facility ("the
21 Facility") owned and/or operated by Defendants Viking Truck & Auto Inc. and Mr. Kenneth
22 Hoffman. Unless otherwise noted, "pollutants" as used within this Complaint shall also refer
23 to the Proposition 65-Listed Chemicals.

24 9. The Facility discharges directly to Churn Creek, which ultimately drains to
25 the Sacramento River, and the Sacramento-San Joaquin Delta.

26 10. Defendants' discharges of pollutants from the Facility are in violation of the
27 Act and the State of California's General Industrial Permit for storm water discharges, State
28 Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as

1 amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-
2 DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit No.
3 CAS000001 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing,
4 monitoring, reporting, discharge and management practice requirements, and other
5 procedural and substantive requirements of the General Permit and the Act are ongoing and
6 continuous.

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

14 **III. PARTIES**

15 12. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
16 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
17 California with its main office in Stockton, California. CSPA has approximately 2,000
18 members who live, recreate and work in and around waters of the State of California,
19 including Churn Creek, the Sacramento River, and the Sacramento-San Joaquin Delta.
20 CSPA is dedicated to the preservation, protection, and defense of the environment, and the
21 wildlife and the natural resources of all waters of California. To further these goals, CSPA
22 actively seeks federal and state agency implementation of the Act and other laws and, where
23 necessary, directly initiates enforcement actions on behalf of itself and its members.

24 13. Members of CSPA reside in California and use and enjoy California's
25 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the
26 waters of Churn Creek, the Sacramento River, and the Sacramento-San Joaquin Delta, into
27 which Defendants have caused, are causing, and will continue to cause, pollutants to be
28 discharged. Members of CSPA use these areas to fish, sail, boat, kayak, swim, birdwatch,

1 view wildlife and engage in scientific study, including monitoring activities, among other
2 things. Defendants' discharges of pollutants threaten or impair each of those uses or
3 contribute to such threats and impairments. Thus, the interests of CSPA's members have
4 been, are being, and will continue to be adversely affected by Defendants' ongoing failure to
5 comply with the Clean Water Act. The relief sought herein will redress the harms to Plaintiff
6 caused by Defendants' activities.

7 14. Plaintiff brings its Proposition 65 claim herein in the public interest pursuant to
8 California Health & Safety Code Section 25249.7(d).

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

12 16. Plaintiff is informed and believes, and thereupon alleges, that Defendant
13 Viking Truck & Auto, Inc., is a corporation organized under the laws of the State of
14 California and that it operates the Facility. Defendant Viking Truck & Auto, Inc., is a "person
15 doing business" within the meaning of California Health & Safety Code Section 25249.11.

16 17. Plaintiff is informed and believes, and thereupon alleges, that Defendant
17 Kenneth Hoffman owns the land upon which the Facility is located and that he directs the
18 operations and maintenance of the Facility. Accordingly, Defendants own and/or operate the
19 Facility.

20 **IV. STATUTORY BACKGROUND**
21 **Clean Water Act**

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

27 19. Section 402(p) of the Act establishes a framework for regulating municipal
28 and industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p).
States with approved NPDES permit programs are authorized by Section 402(p) to regulate

1 industrial storm water discharges through individual permits issued to dischargers and/or
2 through the issuance of a single, statewide general permit applicable to all industrial storm
3 water dischargers. 33 U.S.C. § 1342.

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

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

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

23 23. In addition to absolute prohibitions, the General Permit contains a variety of
24 substantive and procedural requirements that dischargers must meet. Facilities discharging,
25 or having the potential to discharge, storm water associated with industrial activity that have
26 not obtained an individual NPDES permit must apply for coverage under the State's General
27 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing
28 dischargers to file their NOIs before March 30, 1992.

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

7 25. EPA has established Benchmark Levels as guidelines for determining
8 whether a facility discharging industrial storm water has implemented the requisite BAT and
9 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
10 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –
11 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –
12 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L;
13 arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; mercury – 0.0024 mg/L; and, nickel –
14 1.417 mg/L. The State Water Quality Control Board has proposed adding a benchmark level
15 for specific conductance of 200 µmhos/cm.

16 26. Dischargers must develop and implement a Storm Water Pollution
17 Prevention Plan (“SWPPP”) before October 1, 1992. The SWPPP must comply with the
18 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:
19 (1) a narrative description and summary of all industrial activity, potential sources of
20 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm
21 water conveyance system, associated points of discharge, direction of flow, areas of
22 industrial activities, and areas of actual and potential pollutant contact; (3) a description of
23 storm water management practices, best management practices (“BMPs”) and preventive
24 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)
25 the location where Significant Materials are being shipped, stored, received and handled, as
26 well as the typical quantities of such materials and the frequency with which they are
27 handled; (5) a description of potential pollutant sources including industrial processes,
28 material handling and storage areas, dust and particulate generating activities; (6) a summary

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

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

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

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

6 30. The General Permit also requires dischargers to submit “Annual Reports” to
7 the Regional Board. As part of their monitoring program, dischargers must identify all storm
8 water discharge locations that produce a significant storm water discharge, evaluate the
9 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
10 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
11 then conduct visual observations of these discharge locations for at least one storm per
12 month during the wet season (October through May) and record their findings in their
13 Annual Report. Dischargers must also collect and analyze storm water samples from at least
14 two storms per year. Section B requires dischargers to sample and analyze during the wet
15 season for basic parameters such as pH, total suspended solids (“TSS”), specific
16 conductance, and total organic content (“TOC”) or oil and grease, certain industry-specific
17 parameters, and toxic chemicals and other pollutants likely to be in the storm water
18 discharged from the facility. Additionally, Section B(5) and Table D of the General Permit
19 requires dischargers whose industrial activities fall within Standard Industrial Classification
20 (“SIC”) Code 5015 to analyze their storm water discharge samples for iron, lead and
21 aluminum. Dischargers must also conduct dry season visual observations to identify sources
22 of non-storm water pollution. The monitoring and reporting program requires dischargers to
23 certify, based upon the annual site inspections, that the facility is in compliance with the
24 General Permit and report any non-compliance, and contains additional requirements as well.

25 31. In order to discharge storm water lawfully in California, industrial
26 dischargers must comply with the terms of the General Permit or have obtained and
27 complied with an individual NPDES permit.

28 32. The term “discharge of pollutants” means “any addition of any pollutant to

1 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to
2 include, among other examples, industrial waste, chemical wastes, biological materials, heat,
3 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

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

7 34. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
8 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.
9 Waters of the United States include man-made water bodies that are tributary to waters that
10 are navigable in fact. Waters of the United States include ephemeral waters that are tributary
11 to waters that are navigable in fact.

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

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

25 37. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
26 waters shall be maintained free of toxic substances in concentrations that produce
27 detrimental physiological responses in human, plant, animal, or aquatic life.”

28 38. The Basin Plan establishes a standard for electrical conductivity in the Delta

1 of 0.7 μ mhos/cm from April 1 through August 31 and 1.0 μ mhos/cm from September 1
2 through March 31.

3 39. The Basin Plan provides that “[w]aters shall not contain chemical constituents
4 in concentrations that adversely affect beneficial uses.”

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

10 **Proposition 65**

11 41. The People of the State of California have declared in Proposition 65 their
12 right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
13 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

14 42. To effectuate this goal, Proposition 65 strictly prohibits persons from
15 discharging chemicals listed by the State of California as causing cancer or reproductive
16 toxicity to sources of drinking water. California Health & Safety Code Section 25249.5
17 states, in pertinent part:

18 No person in the course of doing business shall knowingly discharge or
19 release a chemical known to the state to cause cancer or reproductive
20 toxicity into water or onto or into land where such chemical passes or
probably will pass into any source of drinking water...

21 43. Proposition 65 provides that any person “violating or threatening to violate”
22 the statute may be enjoined in a court of competent jurisdiction. California Health & Safety
23 Code Section 25249.7. The phrase “threaten to violate” is defined to mean “to create a
24 condition in which there is a substantial likelihood that a violation will occur.” California
25 Health & Safety Code Section 25249.11(e). Violators are liable for civil penalties of “up to
26 \$2,500 per day for each such violation.” California Health & Safety Code Section 25249.7.

27 **V. STATEMENT OF FACTS**

28 44. Defendants operate the Facility, an approximately 19-acre automotive vehicle

1 dismantling and automotive parts recycling facility located at 19980 Viking Way, in
2 Redding, California. The Facility discharges water directly to Churn Creek, which
3 ultimately flows into the Sacramento River, and the Sacramento-San Joaquin Delta.

4 45. The Facility is classified under SIC Code 5015 (“Facilities Engaged in
5 Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale”). Industrial
6 activities occur throughout the Facility. The Facility is primarily used to dismantle and
7 recycle used automotive vehicles and their constituent parts, with weekly crushing and bi-
8 weekly scrap metal removal. Accordingly, the Facility receives, dismantles, stores, reclaims,
9 processes and recycles automotive vehicles and automotive parts. Other current industrial
10 activities occurring at the Facility include the use, storage, and maintenance of motorized
11 vehicles and heavy machinery. Many of these activities occur outside in areas that are
12 exposed to storm water and storm flows due to the lack of overhead coverage, functional
13 berms and other storm water controls. Plaintiff is informed and believes that Defendants’
14 storm water controls, to the extent any exist, fail to achieve BAT and BCT standards.

15 46. The management practices at the Facility are wholly inadequate to prevent
16 the sources of contamination described above from causing the discharge of pollutants to
17 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential
18 structural controls such as grading, berming and roofing to prevent rainfall and storm water
19 flows from coming into contact with these and other sources of contaminants, thereby
20 allowing storm water to flow over and across these materials and become contaminated prior
21 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the
22 discharge of water once contaminated. The Facility also lacks an adequate filtration system
23 to treat water once it is contaminated.

24 47. During rain events storm water laden with pollutants flows from the Facility
25 into Churn Creek, which ultimately flows to the Sacramento River, and the Sacramento-San
26 Joaquin Delta.

27 48. Information available to Plaintiff indicates that as a result of these practices,
28 storm water containing pollutants harmful to fish, plant and bird life, and human health are

1 being discharged from the Facility directly to these waters during significant rain events.

2 49. Churn Creek, the Sacramento River, and the Sacramento-San Joaquin Delta
3 are waters of the United States and sources of drinking water within the meaning of
4 Proposition 65.

5 50. Information available to Plaintiff indicates that Defendants have not fulfilled
6 the requirements set forth in the General Permit for discharges from the Facility due to the
7 continued discharge of contaminated storm water.

8 51. Plaintiff is informed and believes, and thereupon alleges, that Defendants
9 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

10 52. Information available to Plaintiff indicates the continued existence of
11 unlawful storm water discharges at the Facility.

12 53. Plaintiff is informed and believes, and thereupon alleges, that Defendants
13 have failed to develop and implement adequate monitoring, reporting and sampling
14 programs for the Facility. Plaintiff is informed and believes, and thereupon alleges, that
15 Defendants have not sampled with adequate frequency, have not conducted visual
16 monitoring, and have not analyzed the samples collected for the required pollutant
17 parameters.

18 54. On February 27, 1987, the State of California officially listed the chemical
19 lead under Proposition 65 as a chemical known to cause reproductive toxicity. Lead became
20 subject to Proposition 65's "discharge prohibition" on October 27, 1988. 27 California Code
21 of Regulations ("CCR") §27001, *et seq.*; California Health & Safety Code Section 25249.5,
22 *et seq.*

23 55. On October 1, 1992, the State of California officially listed the chemicals
24 lead and lead compounds under Proposition 65 as chemicals known to cause cancer. Lead
25 and lead compounds became subject to the Proposition 65 "discharge prohibition" on June 1,
26 1994. 27 CCR §27001, *et seq.*; California Health & Safety Code Section 25249.5, *et seq.*

27 56. On October 1, 1989, the State of California officially listed the chemical
28 nickel under Proposition 65 as a chemical known to cause cancer. Nickel became subject to

1 the Proposition 65 “discharge prohibition” on June 1, 1991. 27 CCR §27001, *et seq.*;
2 California Health & Safety Code Section 25249.5, *et seq.*

3 57. On May 1, 1997, the State of California officially listed the chemical arsenic
4 (inorganic oxides) as a chemical known to cause reproductive toxicity. Arsenic became
5 subject to the Proposition 65 “discharge prohibition” on January 1, 1999. 27 CCR §27001,
6 *et seq.*; California Health & Safety Code Section 25249.5, *et seq.*

7 58. On February 27, 1987, the State of California officially listed the chemical
8 arsenic as a chemical known to cause cancer. Arsenic became subject to the Proposition 65
9 “discharge prohibition” on October 27, 1989. 27 CCR §27001, *et seq.*; California Health &
10 Safety Code Section 25249.5, *et seq.*

11 59. On July 1, 1990, the State of California officially listed the chemical mercury
12 and mercury compounds as chemicals known to cause reproductive toxicity. Mercury and
13 mercury compounds became subject to the Proposition 65 “discharge prohibition” on March
14 1, 1992. 27 CCR §27001, *et seq.*; California Health & Safety Code Section 25249.5, *et seq.*

15 60. On May 1, 1997, the State of California officially listed the chemical
16 cadmium as a chemical known to cause reproductive toxicity. Cadmium became subject to
17 the Proposition 65 “discharge prohibition” on January 1, 1999. 27 CCR §27001, *et seq.*;
18 California Health & Safety Code Section 25249.5, *et seq.*

19 61. Defendant Viking Truck & Auto, Inc., has discharged or released the
20 Proposition 65-Listed Chemicals into sources of drinking water in violation of Proposition
21 65 since at least November 29, 2007. Such discharges or releases of the Proposition 65-
22 Listed Chemicals are ongoing.

23 62. As a proximate result of acts by Defendant Viking Truck & Auto, Inc., as a
24 person in the course of doing business within the meaning of Health & Safety Code Section
25 25249.11, discharges or releases of the Proposition 65-Listed Chemicals into sources of
26 drinking water in violation of Proposition 65 have occurred and continue to occur since at
27 least November 29, 2007.
28

1 discharges and authorized non-storm water discharges shall not cause or threaten to cause
2 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
3 General Permit require that storm water discharges and authorized non-storm water discharges
4 shall not adversely impact human health or the environment, and shall not cause or contribute
5 to a violation of any water quality standards contained in a Statewide Water Quality Control
6 Plan or the applicable Regional Board's Basin Plan.

7 69. Plaintiff is informed and believes, and thereupon alleges, that since at least
8 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to
9 Churn Creek, the Sacramento River, and the Sacramento-San Joaquin Delta in violation of
10 the General Permit.

11 70. During every significant rain event, storm water flowing over and through
12 materials at the Facility becomes contaminated with pollutants, flowing untreated from the
13 Facility to Churn Creek, the Sacramento River, and the Sacramento-San Joaquin Delta.

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

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

20 73. Plaintiff is informed and believes, and thereupon alleges, that these discharges
21 of contaminated storm water are contributing to the violation of the applicable water quality
22 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's
23 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

24 74. Plaintiff is informed and believes, and thereupon alleges, that every day since
25 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
26 from the Facility in violation of the General Permit. Every day Defendants have discharged
27 and continue to discharge polluted storm water from the Facility in violation of the General
28 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1 These violations are ongoing and continuous.

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

3 **SECOND CAUSE OF ACTION**

4 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan**
5 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

8 76. Section A and Provision E of the General Permit requires dischargers of
9 storm water associated with industrial activity to develop and implement an adequate Storm
10 Water Pollution Prevention Plan (“SWPPP”) no later than October 1, 1992.

11 77. Defendants have failed to develop and implement an adequate SWPPP for
12 the Facility. Defendants’ ongoing failure to develop and implement an adequate SWPPP for
13 the Facility is evidenced by, *inter alia*, Defendants’ outdoor storage of industrial materials,
14 including waste materials, without appropriate best management practices; the continued
15 exposure of significant quantities of industrial material to storm water flows; the failure to
16 either treat storm water prior to discharge or to implement effective containment practices;
17 and the continued discharge of storm water pollutants from the Facility at levels in excess of
18 EPA benchmark values and other applicable water quality standards.

19 78. Defendants have further failed to update the Facility’s SWPPP in response to
20 the analytical results of the Facility’s storm water monitoring as required by the General
21 Permit.

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

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

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

THIRD CAUSE OF ACTION

**Failure to Develop and Implement the Best Available
And Best Conventional Treatment Technologies
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

1
2
3
4 81. Plaintiff incorporates the allegations contained in the above paragraphs as
5 though fully set forth herein.

6 82. The General Permit's SWPPP requirements and Effluent Limitation B(3)
7 require dischargers to reduce or prevent pollutants in their storm water discharges through
8 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
9 pollutants.

10 83. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
11 failed to implement BAT and BCT at the Facility for its discharges of pollutants in violation
12 of Effluent Limitation B(3) of the General Permit.

13 84. Each day since September 3, 2005 that Defendants have failed to develop and
14 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
15 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

16 85. Defendants have been in violation of the BAT and BCT requirements every day
17 since at least September 3, 2005. Defendant continues to be in violation of the BAT and BCT
18 requirements each day that it fails to develop and fully implement an adequate BAT and BCT
19 for the Facility.

20 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)**

21
22
23 86. Plaintiff incorporates the allegations contained in the above paragraphs as
24 though fully set forth herein.

25 87. Section B of the General Permit requires dischargers of storm water associated
26 with industrial activity to develop and implement a monitoring and reporting program
27 (including, among other things, sampling and analysis of discharges) no later than October 1,
28 1992.

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

10 89. Each day since October 1, 1992 that Defendants have failed to develop and
11 implement an adequate monitoring and reporting program for the Facility in violation of the
12 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §
13 1311(a). These violations are ongoing and continuous.

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

15 **FIFTH CAUSE OF ACTION**

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

18 90. Plaintiff incorporates the allegations contained in the above paragraphs as
19 though fully set forth herein.

20 91. Defendants have falsely certified compliance with the General Permit in each
21 of the Annual Reports submitted to the Regional Board since September 3, 2005.

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

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

SIXTH CAUSE OF ACTION

Injunctive Relief for Discharges of Proposition 65-Listed Chemicals By Defendant Viking Truck & Auto, Inc. in Violation of the “Discharge Prohibition” in Proposition 65 (Violations of Cal. Health and Safety Code § 25249.5, *et seq.*)

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

94. On September 20, 2010, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendant Viking Truck & Auto, Inc. This notice (“Proposition 65 Notice Letter”) was issued pursuant to, and in compliance with, the requirements of California Health & Safety Code Section 25249.7(d) and the statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violator. The Proposition 65 Notice Letter given included, *inter alia*, the following information: the name, address, and telephone number of the noticing individual; the name of the alleged violator; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations, including the chemicals involved, a general identification of the discharge or release and of the sources of drinking water in to which the discharges are alleged to have occurred, to be occurring or to be likely to occur. Defendant Viking Truck & Auto, Inc. and the California Attorney General were provided copies of the Proposition 65 Notice Letter by Certified Mail. Additionally, Defendant Viking Truck & Auto, Inc. was provided a copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of Cal. Code of Regulations (“C.C.R.”) Section 25903.

95. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under California Health & Safety Code Section 25249.5, *et seq.* against Defendant Viking Truck & Auto, Inc. based on the allegations contained in the Proposition 65 Notice Letter and the related claims asserted herein.

96. By committing the acts alleged in this Complaint, Defendant Viking Truck & Auto, Inc., at all times relevant to this action and continuing throughout the present, has

1 violated California Health & Safety Code Section 25249.5 by, in the course of doing business,
2 knowingly discharging or releasing the Proposition 65-Listed Chemicals into sources of
3 drinking water within the meaning of California Health & Safety Code Sections 25249.5,
4 25249.9 and 25249.11.

5 97. An action for injunctive relief under Proposition 65 is specifically authorized
6 by California Health & Safety Code Section 25249.7(a).

7 98. Continuing commission by Defendant Viking Truck & Auto, Inc. of the acts
8 alleged above will irreparably harm the citizens of the State of California, for which harm they
9 have no plain, speedy, or adequate remedy at law.

10 Wherefore, Plaintiff prays for relief as hereinafter set forth.

11 **SEVENTH CAUSE OF ACTION**

12 **Civil Penalties for Discharges of Proposition 65-Listed Chemicals By Defendant Viking**
13 **Truck & Auto, Inc. in Violation of the “Discharge Prohibition” in Proposition 65**
14 **(Violations of Cal. Health and Safety Code § 25249.5, et seq.)**

15 99. Plaintiff incorporates the allegations contained in the above paragraphs as
16 though fully set forth herein.

17 100. On September 20, 2010, Plaintiff sent a 60-Day Notice of Proposition 65
18 violations to the requisite public enforcement agencies and to Defendant Viking Truck &
19 Auto, Inc. This notice (“Proposition 65 Notice Letter”) was issued pursuant to, and in
20 compliance with, the requirements of California Health & Safety Code Section 25249.7(d) and
21 the statute's implementing regulations regarding the notice of the violations to be given to
22 certain public enforcement agencies and to the violator. The Proposition 65 Notice Letter
23 given included, *inter alia*, the following information: the name, address, and telephone number
24 of the noticing individual; the name of the alleged violator; the statute violated; the
25 approximate time period during which violations occurred; and descriptions of the violations,
26 including the chemicals involved, a general identification of the discharge or release and of the
27 sources of drinking water in to which the discharges are alleged to have occurred, to be
28 occurring or to be likely to occur. Defendant Viking Truck & Auto, Inc. and the California
Attorney General were provided copies of the Proposition 65 Notice Letter by Certified Mail.

1 Additionally, Defendant Viking Truck & Auto, Inc. was provided a copy of a document
2 entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
3 Summary" (Appendix A to 27 C.C.R. § 25903).

4 101. The appropriate public enforcement agencies have failed to commence and
5 diligently prosecute a cause of action under California Health & Safety Code Section 25249.5,
6 *et seq.* against Defendant Viking Truck & Auto, Inc. based on the allegations contained in the
7 Proposition 65 Notice Letter and the related claims asserted herein.

8 102. By committing the acts alleged in this Complaint, Defendant Viking Truck &
9 Auto, Inc., at all times relevant to this action and continuing throughout the present, has
10 violated California Health & Safety Code Section 25249.5 by, in the course of doing business,
11 knowingly discharging or releasing the Proposition 65-Listed Chemicals into sources of
12 drinking water within the meaning of California Health & Safety Code Sections 25249.5,
13 25249.9 and 25249.11.

14 103. By the above-described acts, Defendant Viking Truck & Auto, Inc. is liable,
15 pursuant to California Health & Safety Code Section 25249.7(b), for civil penalties of up to
16 \$2,500 per day for each violative discharge or release of Proposition 65-Listed Chemicals
17 since at least November 29, 2009.

18 Wherefore, Plaintiff prays for relief as hereinafter set forth.

19 **VII. RELIEF REQUESTED**

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

- 21 a. Declare Defendants to have violated and to be in violation of the Act and
22 Proposition 65 as alleged herein;
- 23 b. Enjoin Defendants from discharging pollutants from the Facility and to the
24 surface waters surrounding and downstream from the Facility;
- 25 c. Enjoin Defendants from further violating the substantive and procedural
26 requirements of the General Permit and Proposition 65;
- 27 d. Order Defendants to immediately implement storm water pollution control
28 and treatment technologies and measures that are equivalent to BAT or BCT and prevent

1 pollutants in the Facility's storm water from contributing to violations of any water quality
2 standards;

3 e. Order Defendants to comply with the General Permit's monitoring and
4 reporting requirements, including ordering supplemental monitoring to compensate for past
5 monitoring violations;

6 f. Order Defendants to prepare a SWPPP consistent with the General Permit's
7 requirements and implement procedures to regularly review and update the SWPPP;

8 g. Order Defendants to provide Plaintiff with reports documenting the quality
9 and quantity of their discharges to waters of the United States and their efforts to comply with
10 the Act, the General Permit and the Court's orders;

11 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for
12 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all
13 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
14 309(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
15 (pp. 200-202) (Dec. 31, 1996);

16 i. Order Defendant to pay \$2,500 per day for each violative discharge or
17 release of a Proposition 65-Listed Chemical since at least November 29, 2009.

18 j. Order Defendants to take appropriate actions to restore the quality of
19 navigable waters and sources of drinking water impaired by their activities;

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

22 l. Award any such other and further relief as this Court may deem appropriate.

23
24 Dated: November 29, 2010

Respectfully Submitted,

25 LAW OFFICES OF ANDREW L. PACKARD

26 By: /s/ Erik Roper

27 Erik M. Roper
28 Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

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

September 3, 2010

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. Kenneth W. Hoffman, President
Viking Truck & Auto, Inc.
19980 Viking Way
Redding, CA 96003

Mr. Kenneth W. Hoffman, Agent For Service Of Process
Viking Truck & Auto, Inc.
2336 Airstrip Rd.
Redding, CA 96003

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

Dear Sir:

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 Viking Truck & Auto Dismantlers, Inc. ("VTA") vehicle dismantling and automotive parts recycling facility located at 19980 Viking Way in Redding, California ("the Facility"). The WDID identification number for the Facility is 5R45I017416. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Churn 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 VTA. For purposes of this Notice of Violations and Intent to File Suit, "VTA" shall also refer to Mr. Kenneth Hoffman.

This letter addresses VTA's unlawful discharges of pollutants from the Facility to Churn Creek, which in turn ultimately flows 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, VTA, and Mr. Kenneth Hoffman 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 VTA and Mr. Kenneth Hoffman 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.

VTA operates a vehicle dismantling and automotive parts recycling facility located in Redding, California. The Facility receives, dismantles, stores, reclaims, processes and recycles truck and automotive vehicles and automotive parts. The Facility also accepts vehicles for crushing and subsequent recycling, with weekly crushing and bi-weekly scrap metal removal.

On or about August 8, 2002, VTA submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as an auto dismantling facility under Standard Industrial Classification (“SIC”) Code 5015 (“Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale”). The Facility collects and discharges storm water from its approximately 19-acre industrial site through at least four discharge points to Churn Creek, which in turn ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and Churn Creek 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 – 0.01mg/L; 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 VTA: 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 μ mhos/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

VTA 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 August 6, 2002, a representative of the United States Environmental Protection Agency and the Regional Water Quality Control Board, Region 5, conducted an inspection of the Facility. The inspector met with Mr. Kenneth Hoffman to tour the facility and review relevant paperwork. Four discharge points associated with industrial activity at the Facility were identified during the inspection. Subsequently, on September 19, 2002, Mary Randall of the Regional Board sent a letter to VTA noting the following: (1) Vehicle wash water was being discharged from the Facility and is not authorized under the Storm Water Permit; (2) The SWPPP for the Facility must be revised to include any new or modified Best Management Practices for vehicle washing; (3) The inspector noted VTA did not implement one of the BMPs described in its SWPPP, which states: “Store all vehicles and parts off the ground...”; and, (4) VTA must implement all of the BMPs listed in its SWPPP to be in compliance with the General Permit.

On August 27, 2009, the Regional Water Quality Control Board, Region 5, sent a Notice of Violation (“NOV”) to Mr. Kenneth Hoffman and VTA. The NOV cited an August 13, 2009 inspection by the Board and Shasta County Environmental Health, which revealed several violations of the General Permit. The NOV noted that VTA: (1)

failed to prevent prohibited discharges from the “Crusher Area to off-site areas” from occurring; (2) failed to implement and maintain appropriate BMPs, specifically noting:

The indoor dismantling bays, fluid draining area, waste oil area, new motor bay, engine core room, repair shop, ‘U-Pull-It’ vehicle storage area, and the crusher area all require additional BMPs to prevent further violations; the drainage ditches/swales leaving the facility require additional BMPs and necessary maintenance to achieve permit compliance; and interior roads lack adequate armoring to prevent sediment from discharging off-site.

Based on this inspection, the Board ordered VTA to immediately complete the following corrective actions:

- (1) Clean up accumulated waste fluids on the ground in the Dismantling Bays;
- (2) Use adequate storage bins for new, used and waste absorbent materials, and label appropriately. Discontinue the mixing of waste absorbent and trash;
- (3) Label all waste drums and containers in the Waste Area, and throughout the facility, with appropriate Hazardous Materials labels, and fill out label completely. Ensure all containers are adequately covered and contained;
- (4) Clean-up the accumulated waste fluid in the Waste Area, and dispose of properly;
- (5) Ensure that all steam cleaning wash water is contained in the treatment facility, and discontinue all discharges outside of the contained area;
- (6) Clean up all accumulated waste fluid and trash in the New Motor Bay. Provide secondary containment for the drain table, and label the drain table appropriately;
- (7) Clean up all accumulated waste fluid and trash in the Engine Core Room and provide adequate containment barrels for all waste fluids, trash, and absorbent materials, and label appropriately;
- (8) Provide additional containment barrels for waste fluids, trash and absorbent material in the Repair Shop, and label appropriately;
- (9) Eliminate additional waste fluid discharges to the ground in the U-Pull-It storage area, by performing thorough fluid draining of all vehicles entering the facility, and by implementing additional BMPs to eliminate and/or reduce future discharges;
- (10) Clean up accumulated trash, debris, and waste fluids on the ground in the Crusher Area, and implement additional BMPs to contain trash, debris and waste materials on-site, eliminating and/or reducing potential discharges off-site;
- (11) Provide better containment on 500-gallon diesel tank, and clean up accumulated diesel on the ground below the tank, in the Crusher Area;
- (12) Update and maintain all housekeeping logs, as specified in the SWPPP;
- (13) Clean all drop inlets, and/or drainage ditches, especially in the Crusher Area, of accumulated petroleum sediment and debris and trash and maintain as specified in the SWPPP; and,

(14) Add road base rock to the interior road network to reduce potential sediment discharges off-site.

The Board also ordered VTA to:

- (1) Monitor and maintain all BMPs as specified in the SWPPP, and submit copies of all housekeeping logs and monitoring reports to the Regional Water Board, monthly throughout 2009/2010. The reports must document both the problems and the corrective actions taken to address storm water issues observed at the site, and must include photographs. Reports must be submitted by the 10th day of the following month;
- (2) Evaluate the sources of your pollutants, review your current BMPs and identify and implement additional BMPs to reduce the pollutants that discharge from your site. Update the SWPPP to reflect new BMPs, including a site map illustrating the location of all BMPs, and submit a copy of the updated SWPPP to the Central Valley Water Board by 30 September, 2009;
- (3) Submit a written report demonstrating the methods you will institute to prevent future violations and potential discharges of pollutants to waters of the state;
- (4) Ensure that the person(s) responsible for inspections of the VTA facility have been trained in storm water management, in the effective use of storm water management BMPs, and good housekeeping practices for auto dismantling sites as it is clear from inspection observations that personnel have not been adequately trained, or that training has not been utilized to formulate and implement proper control at your site; and,
- (5) Develop and implement an Individual Monitoring Program – Sampling and Analysis Plan. Parameters to be sampled will include Total Suspended Solids (TSS), Iron (Fe), Lead (Pb), and Aluminum (Al) as outlined in Table D – Sector M. Automobile Salvage Yards – SIC Code 5015 – Facilities Engaged in Dismantling or Wrecking Used Motor – Vehicles for Parts Recycling or Resale and for Scrap. All sample results shall be included in the Annual Report for the facility which is due July 1 of each year. Submit a copy of the Individual Monitoring Program – Sampling and Analysis Plan to the Regional Water Board by 30 September, 2009.

VTA responded to these concerns with an email to the Regional Board from Don Reh of NEST Environmental on October 1, 2009, providing a new Monitoring Plan and asserting a new SWPPP and BMPs would follow. However, as of August 12, 2010, nearly one year later, there was no revised SWPPP nor any evidence of new BMPs having been implemented at the Facility in VTA's file at the Regional Board. Furthermore, VTA's file did not contain any of the monthly reports the Regional Board ordered, demonstrating the housekeeping log and monitoring reports. Based on its review of available public documents, CSPA is informed and believes that VTA

continues to discharge these very same pollutants in excess of benchmarks and that VTA has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. VTA's ongoing violations are discussed further below.

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

VTA has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), Copper (Cu), Iron (Fe), and Zinc (Zn) 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. VTA's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	TSS	188 mg/L	100 mg/L
10/13/2009	Point #2	TSS	300 mg/L	100 mg/L

2. Discharges of Storm Water Containing Aluminum (Al) at Levels in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	Proposed Benchmark Value
10/03/2008	Unidentified	Al	Failure to Test	0.75 mg/L
10/13/2009	Point #1	Al	4.4 mg/L	0.75 mg/L
10/13/2009	Point #2	Al	18 mg/L	0.75 mg/L
03/12/2010	Point #1	Al	1.7 mg/L	0.75 mg/L
03/12/2010	Point #2	Al	47 mg/L	0.75mg/L

3. Discharges of Storm Water with Lead (Pb) in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Pb	.168 mg/L	.0816 mg/L
10/13/2009	Point #2	Pb	.21 mg/L	.0816 mg/L

4. Discharges of Storm Water with Iron (Fe) in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Fe	Failure to Test	1 mg/L
10/13/2009	Point #1	Fe	6.4 mg/L	1 mg/L
10/13/2009	Point #2	Fe	2.4 mg/L	1 mg/L
03/26/2007	Point #1	Fe	2.9 mg/L	1 mg/L
10/12/2007	Point #2	Fe	78 mg/L	1 mg/L

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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Zn	.897 mg/L	0.117 mg/L
10/13/2009	Point #1	Zn	.21 mg/L	0.117 mg/L
10/13/2009	Point #2	Zn	.62 mg/L	0.117 mg/L
03/12/2010	Point #1	Zn	1.7 mg/L	0.117 mg/L
03/12/2010	Point #2	Zn	.59 mg/L	0.117 mg/L

6. Discharges of Storm Water with Copper (Cu) in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Cu	.226 mg/L	0.0636 mg/L
10/13/2009	Point #2	Cu	.13 mg/L	0.0636 mg/L
03/12/2010	Point #2	Cu	.15 mg/L	0.0636 mg/L

CSPA's investigation, including its review of VTA's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values, indicates that VTA has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Aluminum (Al), Lead (Pb), Copper (Cu),

Zinc (Zn), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. VTA was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, VTA is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that VTA has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least September 3, 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 September 3, 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 VTA has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), Copper (Cu), Iron (Fe), Zinc (Zn) 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, VTA is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 3, 2005.

B. VTA 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 VTA, designated under SIC Code 5015 are also required to sample for Iron (Fe), Lead (Pb) and Aluminum (Al). 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 VTA has failed to implement an adequate Monitoring & Reporting Plan. CSPA's review of publicly available records reveals that: (1) there is no 2005-2006 Annual Report for VTA on file at the Regional Board office; (2) the Annual Reports VTA did file for the 2008-2009 and 2007-2008 periods further establish VTA's failure to sample two storm events as required by the General Permit (the Regional Board notes on the 2007-2008 Annual Report that no waiver from sampling was given, contrary to VTA assertions); (3) the 2008-2009 Annual Report shows VTA failed to test for Aluminum and Iron, as required by the General Permit; and (4) the Annual Reports VTA filed for the 2009-2010, 2008-2009 and 2006-2007 Wet Seasons also demonstrate VTA's chronic failure to collect samples of storm water discharges from each of the Facility's four designated discharge points.

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, VTA is subject to penalties for violations of the General Permit and the Act since September 3, 2005. These violations are set forth in greater detail below:

1. VTA Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In the Years It Has Been Designated As A Sampler Within The California Auto Dismantlers Group In Accordance With VTA's Responsibilities as a Group Member

Based on its review of publicly available documents, CSPA is informed and believes that VTA has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during at least two of the past five years as required. CSPA believes that although VTA is a part of a Group Monitoring Plan, VTA did not comply with the applicable requirements for sampling as stated in the General Permit.

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 VTA. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Clean Water Act.

2. VTA 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 VTA to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbon. The General Permit also requires facilities such as VTA which are designated as SIC Code 5015 to analyze its storm water discharge for Iron (Fe), Lead (Pb), and Aluminum (Al). Further, based on its investigation, CSPA is informed and

believes that VTA has failed to monitor for other pollutants “likely to be present in storm water discharges in significant quantities” (see, General Permit Section B.5.C(ii)), including, as acknowledged in VTA’s SWPPP, Copper (Cu) and Zinc (Zn). VTA failed to analyze storm water samples for Aluminum (Al) and Iron (Fe) in its 2008-2009 Annual Report. Other pollutants likely to be present in the Facility’s storm water discharges include: benzene, toluene, antimony, arsenic, boron, beryllium, cadmium, chromium, cobalt, manganese, mercury, molybdenum, nickel, selenium, silver, thallium and vanadium. VTA’s failure to monitor these pollutants extends back to at least September 3, 2005. VTA’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 General Permit and the Act.

3. VTA Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 3, 2005.

CSPA is informed and believes that available documents demonstrate VTA’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, VTA is subject to penalties for these violations of the General Permit and the Act since September 3, 2005.

C. VTA Has Failed to Implement BAT and 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). CSPA’s investigation indicates that VTA has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Benzene (C₆H₆), Toluene (CH₃), Antimony (Sb), Arsenic (As), Boron (B), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Manganese (Mn), Mercury (Hg), Molybdenum (Mo), Nickel (Ni), Selenium (Se), Silver (Ag), Thallium (Tl) and Vanadium (V) in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, VTA 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 VTA 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), follow all orders from the Regional Board in the August 27, 2009

NOV, or eliminate storm water discharge from the Facility altogether. VTA has failed to adequately implement such measures.

VTA was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, VTA 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 VTA fails to implement BAT and BCT. VTA is subject to penalties for violations of the Order and the Act occurring since September 3, 2005.

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

Section A(1) and Provision E(2) of the General 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 VTA has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. VTA has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary and as ordered by the Regional Board in 2009. Although an October 1, 2009 email communication from VTA's environmental consultant stated a SWPPP would be submitted "in a couple days" there is no revised SWPPP on file with the Regional Board. VTA 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 VTA fails to develop and implement an effective SWPPP. VTA is subject to penalties for violations of the Order and the Act occurring since September 3, 2005.

E. VTA 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, VTA is discharging elevated levels of TSS, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), and likely discharging elevated levels of Benzene (C₆H₆), Toluene (CH₃), Antimony (Sb), Arsenic (As), Boron (B), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Manganese (Mn), Mercury (Hg), Molybdenum (Mo), Nickel (Ni), Selenium (Se), Silver (Ag), Thallium (Tl) and Vanadium (V) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, VTA 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.

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). VTA 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 September 3, 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. VTA is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since September 3, 2005.

F. VTA 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 VTA has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, VTA failed to collect samples of storm water discharge from two qualifying storm events and from all designated discharge points as required by the General Permit. VTA failed to provide an explanation for the incomplete 2008-2009 Annual Report.

Based on its review of publicly available data on precipitation for the area, CSPA is informed and believes that there were at least two qualifying storm events during the 2008-2009 Wet Season. To wit, CSPA notes the following: (1) based on its own reporting as stated in its 2008-2009 Annual Report, VTA collected a sample of storm water discharged from the Facility's southeast drain on October 3, 2008; (2) publicly available precipitation data for the area reveals that 0.44 inches of precipitation was recorded as falling in the area on January 22, 2009, a weekday that followed three days of dry weather; and, (3) between October 1, 2008 and May 31, 2009 (the 2008-2009 Wet Season for purposes of General Permit compliance), there were no less than 20 days where at least 0.03 inches of rainfall were recorded for the area; further, see Attachment A below, which includes dates on which 0.10 inches or more of precipitation was recorded as having fallen in the area. Thus, VTA has failed to submit true and complete reports to the extent it has misrepresented to the Regional Board the frequency of qualifying storm events during which VTA could have collected a second sample of storm water discharge as required by the General Permit.

As indicated above, VTA has failed to comply with the General Permit and the Act consistently for at least the past five years; therefore, VTA 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. VTA's failure to submit true and complete reports constitutes continuous and ongoing violations of the General Permit and the Act. VTA is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since September 3, 2005.

G. VTA Has Discharged Unauthorized Non-Storm Water in Violation of the General Permit.

Based on its investigation, CSPA is informed and believes that VTA has discharged and continues to discharge unauthorized non-storm water from the Facility. On September 19, 2002, Mary Randall of the Regional Board sent a letter to VTA noting the following: (1) Vehicle wash water was being discharged from the Facility and is not authorized under the Storm Water Permit; (2) The SWPPP for the Facility must be revised to include any new or modified Best Management Practices for vehicle washing. CSPA notes that the Regional Board's August 27, 2009 Notice of Violation ordered VTA to "ensure that all steam cleaning wash water is contained in the treatment facility, and discontinue all discharges outside of the contained area." CSPA is informed and believes that VTA is discharging unauthorized non-storm water to the extent any water used to wash or rinse vehicles, structures, equipment, and the like on site discharges from the Facility. VTA has been in continuous violation of Discharge Prohibition A(1) of the General Permit every day since September 3, 2005, and will continue to be in violation every day VTA fails to eliminate its discharges of unauthorized non-storm water or obtains a separate NPDES permit to authorize such discharges of non-storm water. Accordingly, VTA is subject to penalties for violations of the General Permit and the Act occurring since September 3, 2005.

III. Persons Responsible for the Violations.

CSPA puts VTA and Mr. Kenneth Hoffman 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 VTA 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
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Hallie B. Albert
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100 Petaluma Boulevard, Suite 301
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And to:

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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 VTA and Mr. Kenneth Hoffman 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 VTA 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

Notice of Violation and Intent To File Suit

September 3, 2010

Page 17 of 17

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,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

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
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Eric Holder
U.S. Attorney General
U.S. Department of Justice
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Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
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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, VTA (Redding, CA)
Significant Rain Events,* September 3, 2005 – September 3, 2010**

Oct.	14	2005	Mar.	12	2006	Feb.	07	2007	Jan.	29	2008
Oct.	26	2005	Mar.	13	2006	Feb.	08	2007	Jan.	31	2008
Nov.	03	2005	Mar.	14	2006	Feb.	09	2007	Feb.	02	2008
Nov.	07	2005	Mar.	15	2006	Feb.	10	2007	Feb.	21	2008
Nov.	25	2005	Mar.	20	2006	Feb.	22	2007	Feb.	22	2008
Nov.	28	2005	Mar.	23	2006	Feb.	24	2007	Feb.	23	2008
Nov.	29	2005	Mar.	24	2006	Feb.	27	2007	Feb.	24	2008
Nov.	30	2005	Mar.	25	2006	Mar.	26	2007	Mar.	12	2008
Dec.	01	2005	Mar.	27	2006	April	11	2007	Mar.	28	2008
Dec.	17	2005	Mar.	28	2006	April	19	2007	April	22	2008
Dec.	18	2005	Mar.	29	2006	April	21	2007	May	24	2008
Dec.	19	2005	Mar.	31	2006	April	22	2007	Oct.	03	2008
Dec.	20	2005	April	01	2006	May	01	2007	Oct.	04	2008
Dec.	21	2005	April	02	2006	May	02	2007	Oct.	30	2008
Dec.	22	2005	April	03	2006	May	03	2007	Oct.	31	2008
Dec.	25	2005	April	05	2006	Oct.	09	2007	Nov.	01	2008
Dec.	26	2005	April	09	2006	Oct.	10	2007	Nov.	02	2008
Dec.	27	2005	April	10	2006	Oct.	12	2007	Nov.	03	2008
Dec.	28	2005	April	11	2006	Oct.	16	2007	Nov.	08	2008
Dec.	29	2005	April	12	2006	Oct.	19	2007	Dec.	14	2008
Dec.	30	2005	April	15	2006	Nov.	10	2007	Dec.	15	2008
Dec.	31	2005	April	16	2006	Nov.	19	2007	Dec.	18	2008
Jan.	01	2006	May	19	2006	Dec.	03	2007	Dec.	21	2008
Jan.	03	2006	May	21	2006	Dec.	04	2007	Dec.	24	2008
Jan.	04	2006	Oct.	04	2006	Dec.	06	2007	Dec.	28	2008
Jan.	10	2006	Nov.	02	2006	Dec.	18	2007	Jan.	02	2009
Jan.	11	2006	Nov.	03	2006	Dec.	19	2007	Jan.	22	2009
Jan.	13	2006	Nov.	11	2006	Dec.	20	2007	Jan.	24	2009
Jan.	14	2006	Nov.	12	2006	Dec.	27	2007	Feb.	06	2009
Jan.	17	2006	Nov.	13	2006	Dec.	28	2007	Feb.	08	2009
Jan.	18	2006	Nov.	16	2006	Dec.	29	2007	Feb.	10	2009
Jan.	20	2006	Nov.	22	2006	Jan.	03	2008	Feb.	11	2009
Jan.	28	2006	Nov.	26	2006	Jan.	04	2008	Feb.	13	2009
Jan.	30	2006	Dec.	08	2006	Jan.	05	2008	Feb.	14	2009
Feb.	01	2006	Dec.	09	2006	Jan.	06	2008	Feb.	15	2009
Feb.	02	2006	Dec.	10	2006	Jan.	08	2008	Feb.	16	2009
Feb.	04	2006	Dec.	11	2006	Jan.	09	2008	Feb.	17	2009
Feb.	26	2006	Dec.	12	2006	Jan.	10	2008	Feb.	18	2009
Feb.	27	2006	Dec.	13	2006	Jan.	12	2008	Feb.	22	2009
Mar.	02	2006	Dec.	14	2006	Jan.	21	2008	Feb.	25	2009
Mar.	03	2006	Dec.	21	2006	Jan.	24	2008	Mar.	01	2009
Mar.	05	2006	Dec.	26	2006	Jan.	25	2008	Mar.	03	2009
Mar.	06	2006	Dec.	27	2006	Jan.	26	2008	April	09	2009
Mar.	07	2006	Jan.	03	2007	Jan.	27	2008	April	24	2009

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

ATTACHMENT A

**Notice of Intent to File Suit, VTA (Redding, CA)
Significant Rain Events,* September 3, 2005 – September 3, 2010**

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

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

EXHIBIT B

LAW OFFICES OF

ANDREW L. PACKARD

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

September 8, 2010

(See attached Certificate of Service)

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies and Viking Truck & Auto Inc.:

This office represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of California’s waters, including Churn Creek, the San Joaquin River, the Sacramento River, and the Sacramento-San Joaquin Delta and their tributaries.

CSPA has documented violations of California’s Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as “Proposition 65”). This letter serves to provide you and the Violator with CSPA’s notification of these violations. Pursuant to §25249.7(d) of the statute, CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies commence and diligently prosecute an action against these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is **VIKING TRUCK & AUTO, INC.** (hereinafter referred to as “the Violator”). These violations involve the discharge of lead and lead compounds, arsenic, cadmium, mercury and nickel to sources of drinking water. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from its facility located at the following address: 19980 Viking Way in Redding, California (“the Violator’s Facility”).

The Violator is discharging lead and lead compounds, arsenic, cadmium, mercury and nickel from the Violator’s Facility to designated sources of drinking water in violation of Proposition 65. The Violator is allowing storm water contaminated with lead and lead compounds, arsenic, cadmium, mercury and nickel to discharge from the Violators’ Facility into Churn Creek, thence to the Sacramento River.

Churn Creek and the Sacramento River are designated as sources of drinking water in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the “Basin Plan.”

September 8, 2010

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Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2005. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation. CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Andrew L. Packard
Erik M. Roper
Hallie Beth Albert
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100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Andrew@PackardLawOffices.com

Sincerely,



Andrew L. Packard
Attorneys for Plaintiff
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 100 Petaluma Boulevard North, Suite 301, Petaluma, California 94952.

On September 20, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office for delivery by Certified Mail:

Mr. Kenneth W. Hoffman, Agent for Service of Process
Viking Truck & Auto, Inc.
2336 Airstrip Rd.
Redding, CA 96003

Proposition 65 Enforcement Reporting
California Attorney General's Office
1515 Clay Street, Ste. 2000
Oakland, CA 94612

On September 20, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** on the following parties by placing a true and correct copy thereof in a sealed envelope, and depositing it in a US Postal Service Office for delivery by First Class Mail:

The Honorable Michael L. Ramsey
Butte County District Attorney
25 County Center Drive
Oroville, CA 95965

The Honorable Jan Scully
Sacramento County District Attorney
901 “G” Street
Sacramento, CA 95814

The Honorable Robert Kochly
Contra Costa County District Attorney
900 Ward Street
Martinez, CA 94553

The Honorable David W. Paulson
Solano County District Attorney
675 Texas Street, Ste 4500
Fairfield, CA 94533

The Honorable John R. Poyner
Colusa County District Attorney
547 Market Street, Suite 102
Colusa, CA 95932

The Honorable Carl Adams
Sutter County District Attorney
446 Second Street
Yuba City, CA 95991

The Honorable Jeff W. Reisig
Yolo County District Attorney
301 2nd Street
Woodland, CA 95695

The Honorable Gerald C. Benito
Shasta County District Attorney
1355 West Street
Redding, CA 96001

The Honorable Robert Holzapfel
Glenn County District Attorney
540 West Sycamore Street
Willows, CA 95988

The Honorable Gregg Cohen
Tehama County District Attorney
444 Oak Street, Room L
Red Bluff, CA 96080

Executed on September 20, 2010, in Petaluma, California.



Erik M. Roper
Attorneys for Plaintiff
California Sportfishing Protection Alliance