



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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February 25, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Corpe, President
M & R Metal Sales, Inc.
1370 E. Pine St.
Lodi, CA 95240

Holly Corpe-Rigas, Facility Manager and Corporate Secretary and Treasurer
M & R Metal Sales, Inc.
1370 E. Pine St.
Lodi, CA 95240

Richard Corpe, Agent for Service of Process
M & R Metal Sales, Inc.
1370 E. Pine St.
Lodi, CA 95240

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

Dear Mr. Corpe and Mrs. Corpe-Rigas:

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 M&R Metal Sales, Inc. ("MRMSI") new steel sales and scrap metal recycling facility located at 1370 East Pine Street in Lodi, California ("the Facility"). The WDID identification number for the Facility is 5S39I015535. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Mokelumne River, the San Joaquin River, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, operator or agent for service of process for the operator of the Facility. Unless otherwise noted, MRMSI, Richard Corpe and Holly Corpe-Rigas shall hereinafter be collectively referred to as MRMSI.

This letter addresses MRMSI's unlawful discharges of pollutants from the Facility to the Mokelumne River, which ultimately flows into the San Joaquin River and the

Sacramento-San Joaquin Delta (“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”).

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Mokelumne River, the San Joaquin River and the Delta are waters of the United States. Accordingly, MRMSI’s discharges of storm water containing pollutants from the Facility to the Mokelumne River and the San Joaquin River are discharges to waters of the United States.

Industrial facilities subject to regulation under the General Industrial Storm Water Permit are required to file a Notice of Intent to Comply with the terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). CSPA notes that MRMSI’s currently operative NOI was filed on or about December 6, 1999.

CSPA is informed and believes, and thereupon alleges, that MRMSI has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, MRMSI is subject to penalties for violations of the Act since February 25, 2006.

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, MRMSI, Richard Corpe and Holly Corpe-Rigas 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 MRMSI, Richard Corpe and Holly Corpe-Rigas 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 Permit. These violations are described more fully below.

I. Background.

MRMSI owns and operates a new steel sales and scrap metal recycling facility located in Lodi, California. The Facility is used to receive, store, handle, manufacture and transport various steel-based products. Other activities at the Facility include the handling, use, storage and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to and from the Facility.

The Facility is classified as a facility that receives, stores and/or manufactures products made from metals under Standard Industrial Classification (“SIC”) Code 3399 (“Miscellaneous Primary Metal Products”) and SIC Code 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”). The Facility collects and discharges storm water from its approximately 14,000 square foot industrial site through at least one discharge point to the Mokelumne River, which ultimately drains to the San Joaquin River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Mokelumne River, the San Joaquin River, the Delta and the creeks that receive storm water discharge and unauthorized non-storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; 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 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 MRMSI: pH – 6.0-9.0; total suspended solids – 100 mg/L; aluminum – 0.75 mg/L; chemical oxygen demand (“COD”) 120 mg/L; copper – 0.0636 mg/L; iron 1.0 mg/L; lead 0.0816 mg/L; and, zinc – 0.117 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; magnesium – 0.0636 mg/L; mercury – 0.0024 mg/L; selenium – 0.2385 mg/L; and, silver – 0.0318 mg/L.

II. Pollutant Discharges in Violation of the NPDES Permit.

MRMSI 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.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General 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 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 October 14, 2010, the Regional Water Quality Control Board, Region 5, sent MRMSI’s Richard Corpe a letter (“the October 2010 letter”) conveying its conclusion

that, among other things, MRMSI's 2009-2010 Annual Report contained evidence that the BMPs then in effect were "not sufficient to reduce pollutant concentrations below [EPA] benchmark levels." The October 2010 letter informed MRMSI that its 2009-2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered MRMSI to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility exceeded benchmark levels; (2) Identify sources of pollutants at the Facility which contribute to the exceedance; (3) Review current BMPs; and, (4) Modify the Facility's existing BMPs or implement new BMPs to reduce or eliminate the discharge of pollutants. The Board also requested that the Facility's Storm Water Pollution Prevention Plan ("SWPPP") and Monitoring Plan be updated to reflect these changes. Finally, the Board ordered MRMSI to provide a written response to the items raised in its October 2010 letter by no later than November 19, 2010:

In order to demonstrate that you are taking the appropriate actions, you need to submit a written response addressing the four items listed above. The response must also include a description of the corrective measures that will be implemented to address your facility's exceedances of the US EPA benchmark values and a schedule for completion. **Your response to this letter is due 19 November 2010.**

(emphasis added) Based on its review of available public documents at the Regional Board office in Rancho Cordova on December 17, 2010, CSPA is informed and believes that MRMSI failed to abide by the Board's order that MRMSI provide a written response to the Board's October 2010 letter by November 19, 2010. Further, based on its investigation and review of publicly available documents, CSPA is informed and believes that MRMSI continues to discharge these very same pollutants in excess of benchmarks and that MRMSI has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. MRMSI's ongoing violations are discussed further below.

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

MRMSI has discharged and continues to discharge stormwater with unacceptable levels of pH and iron 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. MRMSI's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 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 pH at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
10/12/2009	“East of property”	pH	5.8 s.u.	6.0-9.0 s.u.

2. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
10/12/2009	“East of property”	Fe	2.5 mg/L	1.0 mg/L
01/04/2008	“East of property”	Fe	2.5 mg/L	1.0 mg/L

CSPA’s investigation, including its review of MRMSI’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for specific conductivity, indicates that MRMSI has not implemented BAT and BCT at the Facility for its discharges of pH, iron (Fe) and other unmonitored pollutants likely to be present in significant quantities in violation of Effluent Limitation B(3) of the General Permit. MRMSI was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, MRMSI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that MRMSI has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 25, 2006. 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 February 25, 2006, 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 MRMSI has discharged storm water containing impermissible levels of pH, Iron (Fe) 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 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 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, MRMSI is subject to penalties for violations of the General Permit and the Act since February 25, 2006.

B. MRMSI 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 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. Section B(5)(c)(ii) of the General Permit further 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 MRMSI has failed to develop and implement an adequate Monitoring & Reporting Plan. For example, based on its review of publicly available documents, CSPA is informed and believes that MRMSI has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five Wet Seasons. Additionally, based on its review of publicly available documents, CSPA is informed and believes that MRMSI has failed to collect storm water samples from the first storm event of the Wet Season as required by General Permit Section B.5. during each of the past five years. Finally, based on its review of available public documents, CSPA is informed and believes that MRMSI has failed to analyze storm water discharged from its Facility for all pollutant parameters required under Table D of the General Permit. Table D requires facilities falling under SIC Code 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”) to analyze sampled storm water for, among other pollutants, aluminum, chemical oxygen demand (“COD”), copper and zinc. Simply put, within the last five years, MRMSI has never analyzed its storm water samples for these parameters.

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, MRMSI is

subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 25, 2006. These violations are set forth in greater detail below:

1. MRMSI Has Failed to Collect Storm Water Samples from at least Two Qualifying Storm Events During Each of the Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that MRMSI has failed to collect storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. Further, while item number E.1. in the Annual Reports filed by MRMSI for the last four Wet Seasons directs the reporting party to attach an explanation for the failure to collect and analyze samples from two qualifying storm events, MRMSI failed to provide any meaningful explanation for its failure to collect samples from two storm events in its previous four Annual Reports filed for the Facility.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one discharge point/sampling location currently designated by MRMSI. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. MRMSI Has Failed to Collect Storm Water Samples from the First Storm Event During Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that MRMSI has failed to collect storm water samples from the first qualifying storm event at the Facility during each of the past five years. For example, MRMSI reported in its 2009-2010 Annual Report that the "First Storm" of the Wet Season occurred on October 12, 2009. However, publicly available rain data for the area indicates that on the date that MRMSI reports a qualifying storm event occurred at the Facility, i.e., October 12, 2009, 0.0" inches of rain fell on the Facility. In other words, it didn't rain. Accordingly, it strains credulity to believe that MRMSI collected samples of storm water discharged from the Facility on that date.

MRMSI's incorrect reporting on this issue is again evidenced in its 2008-2009 Annual Report. In its 2008-2009 Annual Report, MRMSI reported that the "First Storm" occurred on February 11, 2009. However, this date was not a qualifying storm event because it was not preceded by three dry days at the Facility without a storm water discharge. Publicly available rain data indicates that the storm event that occurred at the Facility on February 11, 2009, was not a qualifying storm event to the extent that rain had fallen on the Facility (and likely resulted in a discharge of storm water therefrom) only two days prior.

In its 2007-2008 Annual Report, MRMSI reported that the "First Storm" occurred at the Facility on January 4, 2008. While that was a qualifying storm event, it was not the

first qualifying storm event of that Wet Season. That honor belongs to the storm that fell on the Facility on Wednesday, October 10, 2007.

The best example of MRMSI's penchant for falsely reporting having collected samples from the first storm of the season is found in its 2006-2007 Annual Report. MRMSI reported therein that the first storm of the 2006-2007 Wet Season occurred at the Facility on February 26, 2007. However, publicly available rain data indicates that the storm event that occurred at the Facility on February 26, 2007, was not a qualifying storm event to the extent that significant amounts of rain (0.27" of rain on February 24, 2007; and, 0.18" of rain on February 25, 2007) had fallen on the Facility (and likely resulted in a discharge of storm water therefrom) on both of the two days prior thereto. In other words, the storm water sample that MRMSI collected, analyzed and reported was invalid because a qualifying storm event did not occur at the Facility on February 26, 2007.

While MRMSI reported that February 26, 2007 was the first and only qualifying storm event that occurred at the Facility during the 2006-2007 Wet Season, clearly this is not the case. Publicly available rainfall data for the area reveals that the first qualifying storm event of the season fell on the Facility on Thursday, October 5, 2006. Between that date and the end of the Wet Season on May 31, 2007, at the very least there were an additional eleven (11) qualifying storm events that fell on the Facility from which MRMSI could have collected a sample of storm water discharged from the Facility.

These perennial failures to adequately monitor storm water discharges constitute separate and ongoing violations of the General Permit and the Act. MRMSI's failure to collect storm water discharge samples from the first qualifying storm event of each Wet Season extends back to at least February 25, 2006. MRMSI's failure to collect storm water discharge samples from the first qualifying storm event of each Wet Season has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

3. MRMSI Has Failed to Analyze Its Storm Water Samples For All Pollutant Parameters Required Under Table D of the General Permit.

As discussed above, based on its review of available public documents, CSPA is informed and believes that MRMSI has failed to analyze storm water discharged from its Facility for all pollutant parameters required under Table D of the General Permit. Table D requires facilities falling under SIC Code 5093 ("Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials") to analyze sampled storm water for, among other pollutants, aluminum, chemical oxygen demand ("COD"), copper and zinc. Simply put, within the last five years, MRMSI has never analyzed its storm water samples for these parameters.

MRMSI's failure to analyze storm water discharged from its Facility for all pollutant parameters required under Table D of the General Permit extends back to at least February 25, 2006. MRMSI's failure to analyze storm water discharged from its

Facility for all pollutant parameters required under Table D of the General Permit has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

4. MRMSI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 25, 2006.

CSPA is informed and believes that available documents demonstrate MRMSI'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, MRMSI is subject to penalties for these violations of the General Permit and the Act since February 25, 2006.

C. MRMSI 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 MRMSI has not implemented BAT and BCT at the Facility for its discharges of pH, iron and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, MRMSI 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 MRMSI must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. MRMSI has failed to adequately implement such measures.

MRMSI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, MRMSI 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 MRMSI fails to implement BAT and BCT. MRMSI is subject to penalties for violations of the General Permit and the Act occurring since February 25, 2006.

D. MRMSI 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 Water Quality Order No. 97-03-DWQ 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 MRMSI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. MRMSI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, MRMSI has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. MRMSI

is subject to penalties for violations of the Order and the Act occurring since February 25, 2006.

E. MRMSI 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, MRMSI is discharging storm water with elevated levels of pH, iron (Fe) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, MRMSI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, MRMSI was aware of high levels of these pollutants prior to February 25, 2006. Likewise, MRMSI has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). MRMSI has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since February 25, 2006, and will continue to be in violation every day MRMSI fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. MRMSI is subject to penalties for violations of the General Permit and the Act occurring since February 25, 2006.

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

Section B(14) of the General 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 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 MRMSI has signed and submitted incomplete Annual Reports and falsely purported to comply with the General Permit despite significant noncompliance at the Facility. For example, in response to item E.6. in its 2009-2010 Annual Report (i.e., whether all samples were collected during the first hour of discharge), MRMSI responded in the affirmative. However, on Side A of Form 1 in its 2009-2010 Annual Report, MRMSI contradicts this false assertion by admitting that while the discharge began at 8:00 a.m., MRMSI waited until 9:30 a.m. to collect a sample. This is evidence of falsely certifying compliance with the General Permit.

Similarly, MRMSI fraudulently reported having collected samples of storm water discharged from the Facility within the first hour of discharge in its 2006-2007 Annual Report. As in its 2009-2010 Annual Report, in its 2006-2007 Annual Report MRMSI reported that while the discharge began at 2:00 p.m., MRMSI waited until 3:15 p.m. to collect a sample. Again, this is evidence of falsely certifying compliance with the General Permit.

As indicated above, MRMSI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, MRMSI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time MRMSI submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. MRMSI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. MRMSI is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since February 25, 2006.

III. Persons Responsible for the Violations.

CSPA puts M&R Metal Sales, Inc., Richard Corpe and Holly Corpe-Rigas 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 M&R Metal Sales, Inc., Richard Corpe and Holly Corpe-Rigas on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

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

V. Counsel.

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

Andrew L. Packard
Erik M. Roper
Law Offices of Andrew L. Packard
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
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And to:

Robert J. Tuerck
Jackson & Tuerck
P.O. Box 148
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Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects M&R Metal Sales, Inc., Richard Corpe and Holly Corpe-Rigas 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 M&R Metal Sales, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to

Notice of Violation and Intent To File Suit

February 25, 2011

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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 style with a large, prominent initial "B".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

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

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

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

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

ATTACHMENT A
Notice of Intent to File Suit, M&R Metal Sales, Inc. (Lodi, CA)
Significant Rain Events,* February 25, 2006-February 25, 2011

Feb.	26	2006	Jan.	04	2007	Oct.	30	2008	Dec.	22	2009
Feb.	27	2006	Jan.	28	2007	Oct.	31	2008	Dec.	25	2009
Feb.	28	2006	Feb.	09	2007	Nov.	01	2008	Dec.	27	2009
Mar.	02	2006	Feb.	13	2007	Nov.	02	2008	Jan.	12	2010
Mar.	03	2006	Feb.	22	2007	Nov.	03	2008	Jan.	13	2010
Mar.	05	2006	Feb.	24	2007	Nov.	26	2008	Jan.	17	2010
Mar.	06	2006	Feb.	25	2007	Dec.	15	2008	Jan.	18	2010
Mar.	07	2006	Feb.	26	2007	Dec.	16	2008	Jan.	19	2010
Mar.	10	2006	Feb.	27	2007	Dec.	21	2008	Jan.	20	2010
Mar.	11	2006	Feb.	28	2007	Dec.	22	2008	Jan.	21	2010
Mar.	12	2006	Mar.	21	2007	Dec.	24	2008	Jan.	22	2010
Mar.	14	2006	Mar.	26	2007	Dec.	25	2008	Jan.	23	2010
Mar.	17	2006	April	11	2007	Jan.	04	2009	Jan.	25	2010
Mar.	20	2006	April	14	2007	Jan.	22	2009	Jan.	26	2010
Mar.	25	2006	April	15	2007	Jan.	23	2009	Jan.	30	2010
Mar.	27	2006	April	22	2007	Jan.	25	2009	Feb.	05	2010
Mar.	28	2006	May	04	2007	Feb.	05	2009	Feb.	06	2010
Mar.	29	2006	May	05	2007	Feb.	06	2009	Feb.	07	2010
Mar.	31	2006	Oct.	10	2007	Feb.	07	2009	Feb.	09	2010
April	01	2006	Oct.	12	2007	Feb.	09	2009	Feb.	21	2010
April	03	2006	Nov.	06	2007	Feb.	11	2009	Feb.	23	2010
April	04	2006	Nov.	11	2007	Feb.	13	2009	Feb.	25	2010
April	05	2006	Dec.	06	2007	Feb.	14	2009	Feb.	26	2010
April	08	2006	Dec.	07	2007	Feb.	15	2009	Feb.	27	2010
April	10	2006	Dec.	17	2007	Feb.	16	2009	Mar.	03	2010
April	11	2006	Dec.	18	2007	Feb.	17	2009	Mar.	10	2010
April	12	2006	Dec.	20	2007	Feb.	18	2009	Mar.	12	2010
April	13	2006	Jan.	04	2008	Feb.	22	2009	Mar.	13	2010
April	16	2006	Jan.	05	2008	Mar.	01	2009	Mar.	30	2010
May	21	2006	Jan.	07	2008	Mar.	02	2009	Mar.	31	2010
May	22	2006	Jan.	08	2008	Mar.	03	2009	April	02	2010
May	23	2006	Jan.	10	2008	Mar.	04	2009	April	03	2010
Oct.	05	2006	Jan.	11	2008	Mar.	21	2009	April	04	2010
Nov.	02	2006	Jan.	21	2008	Mar.	22	2009	April	05	2010
Nov.	03	2006	Jan.	22	2008	April	07	2009	April	11	2010
Nov.	08	2006	Jan.	23	2008	April	08	2009	April	12	2010
Nov.	11	2006	Jan.	24	2008	April	10	2009	April	13	2010
Nov.	13	2006	Jan.	25	2008	May	01	2009	April	14	2010
Nov.	14	2006	Jan.	27	2008	May	02	2009	April	20	2010
Nov.	26	2006	Jan.	28	2008	May	03	2009	April	21	2010
Nov.	27	2006	Jan.	31	2008	Oct.	13	2009	May	11	2010
Dec.	09	2006	Feb.	02	2008	Oct.	14	2009	May	25	2010
Dec.	10	2006	Feb.	20	2008	Nov.	20	2009	Oct.	17	2010
Dec.	13	2006	Feb.	22	2008	Dec.	07	2009	Oct.	23	2010
Dec.	15	2006	Feb.	24	2008	Dec.	11	2009	Oct.	24	2010
Dec.	21	2006	Feb.	25	2008	Dec.	12	2009	Nov.	07	2010
Dec.	22	2006	Mar.	29	2008	Dec.	13	2009	Nov.	19	2010
Dec.	27	2006	Oct.	04	2008	Dec.	21	2009	Nov.	20	2010

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

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Significant Rain Events,* February 25, 2006-February 25, 2011

Nov.	23	2010
Nov.	27	2010
Dec.	04	2010
Dec.	05	2010
Dec.	06	2010
Dec.	08	2010
Dec.	14	2010
Dec.	17	2010
Dec.	18	2010
Dec.	19	2010
Dec.	22	2010
Dec.	25	2010
Dec.	28	2010
Dec.	29	2010
Jan.	01	2011
Jan.	02	2011
Jan.	30	2011
Feb.	09	2011
Feb.	16	2011
Feb.	17	2011
Feb.	18	2011
Feb.	19	2011
Feb.	25	2011

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