



**California Sportfishing Protection Alliance**

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

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January 13, 2011

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Fred "Freddie" Espino, Regional Manager  
Paul Faias, Facility Manager  
Stockton Recycling, Inc. dba Stockton Recycling & Transfer Station  
410 S. Lincoln St.  
Stockton, CA 95205

James Williams, Agent for Service of Process  
Stockton Recycling, Inc.  
1533 Waterloo Road  
Stockton, CA 95205

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

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Dear Mssrs. Espino, Faias and Williams:

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 Stockton Recycling, Inc. dba Stockton Recycling & Transfer Station ("SRTS") auto salvage yard and scrap recycling facility located at 410 South Lincoln Street in Stockton, California ("the Facility"). The WDID identification number for the Facility is 5S39I015388. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the San Joaquin River, Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, SRTS, Fred "Freddie" Espino and Paul Faias shall hereinafter be collectively referred to as SRTS.

This letter addresses SRTS's unlawful discharges of pollutants from the Facility to the storm water drainage system for the City of Stockton and to the San Joaquin River, both of which ultimately flow 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, SRTS, Fred “Freddie” Espino and Paul Faias 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 SRTS, Fred “Freddie” Espino and Paul Faias 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.**

SRTS owns and operates an auto salvage yard and scrap recycling facility located in Stockton, California. The Facility is used to receive, store, handle and transport plastics, aluminum, cans, paper, cardboard and glass to other facilities for recycling. Other activities at the Facility include the handling, use and storage of hazardous wastes and the use, storage and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility.

Industrial facilities subject to regulation under the General 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 the SRTS’s NOI on file for this Facility at the Central Valley Regional Water Quality Control Board office in Rancho Cordova was filed on or about September 24, 1999. The Facility is classified in that NOI as a facility that receives, processes, stores and/or transports scrap and waste materials under Standard Industrial Classification (“SIC”) Code 5093 (“Processing, Reclaiming and Wholesale Distribution of Scrap and Waste Materials”). Additionally, that NOI characterizes the Facility as an automobile salvage yard under SIC Code 5015 (“Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale and for Scrap”). Further, CSPA notes that the NOI currently on file for the Facility is deficient to the extent that it fails to accurately reflect the actual physical conditions at the Facility. To wit, while the NOI reports that the Facility is five (5) acres in size and is 65% impervious, a 2004 Regional Board facility inspection report records the size of the Facility as only two (2) acres, with 100% of the grounds being impervious. Attachment 3 of the General Permit provides facility operators instructions relating to the filing of the required NOI and states, in relevant part: “[i]f the information provided on the NOI or site map changes, you should report the changes to the State

Water Board using an NOI form.” Accordingly, SRTS must file an amended NOI reflecting actual, current conditions at the Facility.

Setting that concern aside, SRTS collects and discharges storm water from its industrial site of at least two (2) acres in size through at least two (2) discharge points to the storm water drainage system for the City of Stockton and to the San Joaquin River, both of which ultimately flow into the Sacramento River and the Sacramento-San Joaquin Delta (“the Delta”). The Delta, the San Joaquin River, the Sacramento River 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 SRTS: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.117 mg/L; and, copper – 0.0636 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; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

## **II. SRTS is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States**

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 duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(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 San Joaquin River, the Sacramento River and the Sacramento-San Joaquin Delta are waters of the United States. Accordingly, SRTS’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that SRTS 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, SRTS is subject to penalties for violations of the Act since January 18, 2006.

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

SRTS 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.

As recently as October 19, 2010, the Regional Water Quality Control Board, Region 5, sent SRTS a letter ("the October 2010 letter") conveying its conclusion that, among other things, SRTS'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 SRTS 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 SRTS to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered SRTS to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

Based on its review of available public documents, CSPA is informed and believes: (1) that SRTS failed to provide the Board the ordered written response by November 19, 2010; (2) that SRTS continues to discharge these very same pollutants in excess of benchmarks; and, (3) that SRTS has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. SRTS's ongoing violations are discussed further below.

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

SRTS has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and Chemical Oxygen Demand (COD) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. SRTS'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 Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
03/02/2010	West Storm Drain	TSS	210 mg/L	100 mg/L

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

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
03/02/2010	West Storm Drain	SC	1560 µmhos/cm	200 µmhos/cm
12/19/2008	West Storm Drain	SC	249 µmhos/cm	200 µmhos/cm

**3. Discharges of Storm Water Containing Oil and Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
03/02/2010	West Storm Drain	O&G	25 mg/L	15 mg/L

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

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
03/02/2010	West Storm Drain	Fe	14.8 mg/L	1.0 mg/L

03/14/2006	West Storm Drain	Fe	1.81 mg/L	1.0 mg/L
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**5. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/02/2010	West Storm Drain	Al	7.3 mg/L	0.75 mg/L
03/14/2006	West Storm Drain	Al	1.2 mg/L	0.75 mg/L

**6. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
03/02/2010	West Storm Drain	Zn	0.73 mg/L	0.117 mg/L
12/19/2008	West Storm Drain	Zn	0.99 mg/L	0.117 mg/L
12/18/2007	West Storm Drain	Zn	0.45 mg/L	0.117 mg/L
03/14/2006	West Storm Drain	Zn	1.52 mg/L	0.117 mg/L
03/02/2006	West Storm Drain	Zn	0.33 mg/L	0.117 mg/L

**7. Discharges of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	SW Outfall Outside of Plant Fence	Cu	0.07 mg/L	0.0636 mg/L

CSPA's investigation, including its review of SRTS'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 SRTS has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and other pollutants,



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

CSPA is informed and believes that SRTS has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least January 18, 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 January 18, 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 SRTS has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) 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, SRTS is subject to penalties for violations of the General Permit and the Act since January 18, 2006.

**B. SRTS 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 SRTS has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its

review of publicly available documents, CSPA is informed and believes that SRTS 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 years. Second, based on its review of publicly available documents, CSPA is informed and believes that SRTS has failed to analyze the Facility's storm water discharges for: (1) Chemical Oxygen Demand (also often referred to as COD) as required by Table D of the General Permit; and, (2) "[t]oxic chemicals and other pollutants that are likely to be present" therein during each of the past five years. 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, SRTS is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since January 18, 2006. These violations are set forth in greater detail below:

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

Based on its review of publicly available documents, CSPA is informed and believes that SRTS has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. CSPA notes that every Annual Report filed by SRTS for the last five years directs the reporting operator to attach an explanation for their failure to analyze samples of storm water discharged during at least two (2) qualifying storm events per Wet Season. CSPA notes that while the Annual Report filed by SRTS for the Facility for the 2007-2008 Wet Season reported that SRTS only analyzed samples of storm water discharged during one qualifying storm event that season, SRTS failed to provide any explanation for this failure. Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the two discharge points currently designated by SRTS. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

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

In addition to the standard pollutant parameters for which SRTS must analyze the Facility's storm water discharges, Table D of the General Permit additionally requires SRTS to analyze such samples for Aluminum, Chemical Oxygen Demand, Copper, Iron, Lead and Zinc. Notably, SRTS has completely failed to analyze the Facility's samples of storm water discharges for Chemical Oxygen Demand as required by the General Permit for the last five (5) Wet Seasons (i.e., 2005-2006 Wet Season; 2006-2007 Wet Season; 2007-2008 Wet Season; 2008-2009 Wet Season; and, 2009-2010 Wet Season).

Further, based on its investigation, CSPA is informed and believes that SRTS has failed to monitor for other pollutants likely to be present in storm water discharges in

significant quantities. SRTS's failure to monitor these pollutants extends back to at least January 18, 2006. SRTS's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. SRTS Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since January 18, 2006.**

CSPA is informed and believes that available documents demonstrate SRTS'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, SRTS is subject to penalties for these violations of the General Permit and the Act since January 18, 2006.

**C. SRTS 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 SRTS has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, SRTS 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 SRTS 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. SRTS has failed to adequately implement such measures.

SRTS was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SRTS 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 it fails to implement BAT and BCT. SRTS is subject to penalties for violations of the General Permit and the Act occurring since January 18, 2006.

**D. SRTS 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 SRTS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SRTS has failed to

evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, SRTS 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. SRTS is subject to penalties for violations of the Order and the Act occurring since January 18, 2006.

**E. SRTS 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, SRTS is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SRTS 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, SRTS was aware of high levels of these pollutants prior to January 18, 2006. Likewise, SRTS 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). SRTS 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 January 18, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. SRTS is subject to penalties for violations of the General Permit and the Act occurring since January 18, 2006.

**F. SRTS 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 SRTS has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2009-2010 Annual Report filed by SRTS for the Facility reports that (1) SRTS collected samples of storm water discharged from the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours and (2) that the first storm event of the wet season that produced a discharge during scheduled facility operating hours occurred on March 2, 2010. However, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that March 2, 2010 was the first storm event of the 2009-2010 Wet Season that produced a storm water discharge during scheduled facility operating hours. To wit, while publicly available rainfall data for the area indicates that on March 2, 2010, 0.35" of rain fell on the Facility, that same data indicates that on October 12, 2009, 0.40" of rain was recorded as having fallen on the Facility. Further calling the validity of the March 2<sup>nd</sup> storm into question as a qualifying storm event, let alone the first one of the season, is the fact that publicly available rainfall data suggests that storm water discharged from the Facility on February 26 and 27, 2010, i.e., less than three days prior to the March 2<sup>nd</sup> storm. The General Permit defines a qualifying storm event as one where storm water discharges from the facility during its operating hours on a date preceded by at least three (3) working days without storm water discharge.

Here, assuming that 0.35" of rainfall is enough to generate a storm water discharge at the Facility then there would have been storm water discharging from the Facility less than three days before the date of the reported "First Storm Event" thereby rendering March 2, 2010 a non-qualifying storm event. Furthermore, assuming again that 0.35" of rain is enough to generate a storm water discharge at the Facility, March 2, 2010 was not the first qualifying storm event of the 2007-2008 Wet Season. That distinction belongs to Monday, October 12, 2009, a date during which 0.40" of rain fell on the Facility following at least three days without rain. This is only one example of how SRTS has failed to file completely true and accurate reports.

As indicated above, SRTS has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SRTS has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time SRTS submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years.

SRTS's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SRTS is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since January 18, 2006.

**IV. Persons Responsible for the Violations.**

CSPA puts Stockton Recycling, Inc. dba Stockton Recycling & Transfer Station, Fred "Freddie" Espino and Paul Faias 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 Stockton Recycling, Inc. dba Stockton Recycling & Transfer Station, Fred "Freddie" Espino and Paul Faias on notice that it intends to include those persons in this action.

**V. 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.

**VI. 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  
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E-mail: Andrew@PackardLawOffices.com  
Erik@PackardLawOffices.com

And to:

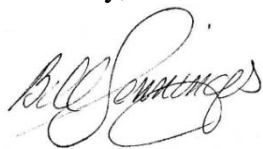
Robert J. Tuerck  
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429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

**VII. 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 Stockton Recycling, Inc. dba Stockton Recycling & Transfer Station, Fred “Freddie” Espino and Paul Faias 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 Stockton Recycling, 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 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", written in a cursive 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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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, SRTS (Stockton, CA)**  
**Significant Rain Events,\* January 13, 2006 - January 13, 2011**

Jan. 14 2006	Jan. 27 2007	Dec. 25 2008	Mar. 02 2010
Jan. 15 2006	Feb. 09 2007	Jan. 21 2009	Mar. 03 2010
Jan. 18 2006	Feb. 10 2007	Jan. 22 2009	Mar. 09 2010
Jan. 19 2006	Feb. 11 2007	Feb. 04 2009	Mar. 12 2010
Jan. 29 2006	Feb. 13 2007	Feb. 05 2009	April 02 2010
Jan. 31 2006	Feb. 22 2007	Feb. 06 2009	April 11 2010
Feb. 18 2006	Feb. 25 2007	Feb. 08 2009	April 19 2010
Feb. 27 2006	Feb. 26 2007	Feb. 10 2009	April 20 2010
Feb. 28 2006	Feb. 27 2007	Feb. 11 2009	April 21 2010
Mar. 02 2006	Feb. 28 2007	Feb. 12 2009	April 28 2010
Mar. 03 2006	Mar. 21 2007	Feb. 13 2009	May 10 2010
Mar. 06 2006	Mar. 27 2007	Feb. 15 2009	May 25 2010
Mar. 07 2006	April 12 2007	Feb. 16 2009	Oct. 17 2010
Mar. 11 2006	April 22 2007	Feb. 17 2009	Oct. 23 2010
Mar. 12 2006	Oct. 10 2007	Feb. 21 2009	Oct. 24 2010
Mar. 13 2006	Oct. 12 2007	Feb. 25 2009	Nov. 07 2010
Mar. 14 2006	Nov. 11 2007	Mar. 01 2009	Nov. 19 2010
Mar. 18 2006	Jan. 04 2008	Mar. 02 2009	Nov. 20 2010
Mar. 21 2006	Jan. 05 2008	Mar. 03 2009	Nov. 23 2010
Mar. 25 2006	Jan. 06 2008	Mar. 22 2009	Nov. 27 2010
Mar. 28 2006	Jan. 07 2008	April 07 2009	Dec. 04 2010
Mar. 29 2006	Jan. 09 2008	April 09 2009	Dec. 05 2010
Mar. 31 2006	Jan. 10 2008	May 01 2009	Dec. 06 2010
April 01 2006	Jan. 11 2008	Oct. 12 2009	Dec. 08 2010
April 03 2006	Jan. 22 2008	Oct. 13 2009	Dec. 14 2010
April 04 2006	Jan. 23 2008	Nov. 20 2009	Dec. 17 2010
April 05 2006	Jan. 24 2008	Dec. 10 2009	Dec. 18 2010
April 11 2006	Jan. 25 2008	Dec. 11 2009	Dec. 19 2010
April 12 2006	Jan. 27 2008	Dec. 12 2009	Dec. 22 2010
April 13 2006	Jan. 28 2008	Dec. 26 2009	Dec. 25 2010
May 22 2006	Jan. 30 2008	Dec. 28 2009	Dec. 28 2010
Oct. 02 2006	Feb. 03 2008	Jan. 12 2010	Dec. 29 2010
Oct. 05 2006	Feb. 20 2008	Jan. 13 2010	Jan. 01 2011
Nov. 02 2006	Feb. 22 2008	Jan. 17 2010	Jan. 02 2011
Nov. 03 2006	Feb. 23 2008	Jan. 18 2010	
Nov. 04 2006	Feb. 24 2008	Jan. 19 2010	
Nov. 11 2006	Feb. 25 2008	Jan. 20 2010	
Nov. 14 2006	Mar. 28 2008	Jan. 21 2010	
Nov. 27 2006	Oct. 04 2008	Jan. 22 2010	
Dec. 09 2006	Oct. 31 2008	Jan. 25 2010	
Dec. 10 2006	Nov. 01 2008	Jan. 26 2010	
Dec. 11 2006	Nov. 03 2008	Feb. 01 2010	
Dec. 12 2006	Nov. 26 2008	Feb. 04 2010	
Dec. 13 2006	Dec. 15 2008	Feb. 05 2010	
Dec. 15 2006	Dec. 17 2008	Feb. 08 2010	
Dec. 22 2006	Dec. 19 2008	Feb. 21 2010	
Dec. 27 2006	Dec. 22 2008	Feb. 23 2010	
Jan. 03 2007	Dec. 24 2008	Feb. 26 2010	

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