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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiffs, vs. WEST COAST METALS, INC., a corporation, Defendant.	Case No C11-01364 ADR **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES** (Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387)

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA"), a California non-profit corporation, by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§

1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

2. On December 23, 2010, Plaintiff provided notice of Defendant's violations of the Act, and of its intention to file suit against Defendant, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the California Regional Water Quality Control Board, North Coast Region ("Regional Board"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of Plaintiff's notice letter is attached as Exhibit A, and is incorporated by reference.

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

4. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

5. Pursuant to Local Rule 3-2(d), intradistrict assignment is proper in San Francisco or Oakland, California, because the sources of the violations are located within Sonoma County.

II. INTRODUCTION

6. This complaint seeks relief for Defendant's discharges of polluted storm water and non-storm water pollutants from Defendant's scrap and waste metal recycling facility located at 470 Caletti Avenue in Windsor, California ("the Facility") in violation of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Water Quality Order No. 97-03-DWQ (hereinafter "the Order" or "Permit" or "General

Permit"). Defendant's violations of the discharge, treatment technology, monitoring, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.

7. The failure on the part of persons and facilities such as Defendant and its industrial facility to comply with storm water requirements is recognized as a significant cause of the continued decline in water quality of the Russian River, Laguna de Santa Rosa, and other area receiving waters. The general consensus among regulatory agencies and water quality specialists is that storm pollution amounts to more than half of the total pollution entering the aquatic environment each year. In most areas of Sonoma County, storm water flows completely untreated through storm drain systems or other channels directly to the waters of the United States.

III. PARTIES

8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate, and work in and around waters of the State of California, including the Russian River, Laguna de Santa Rosa, and their tributaries. CSPA is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of all waters of California. To further these goals, CSPA actively seeks federal and state agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

9. Members of CSPA reside in and around the Russian River, the Laguna de Santa Rosa, and their tributaries. Members of CSPA use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife, and engage in scientific study including monitoring activities, among other things. Defendant's discharges of pollutants threaten or impair each of those uses or contribute to such threats and impairments. Thus, the interests of Plaintiff's members have been, are

being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

10. Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy at law.

11. Defendant WEST COAST METALS, INC. ("WCM") is a corporation organized under the laws of California. WCM operates a scrap and waste metal salvaging and recycling facility in Windsor, California.

IV. STATUTORY BACKGROUND

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

13. Section 402(p) of the Act establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm water discharges through individual permits issued to dischargers or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).

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

15. The State Board elected to issue a statewide general permit for industrial storm water discharges. The State Board issued the General Permit on or about November 19, 1991; modified the General Permit on or about September 17, 1992; and reissued the General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water

Act, 33 U.S.C. § 1342(p).

16. In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained and complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

17. The General Permit contains several prohibitions. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of the Best Available Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in any Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

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

19. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures

that comply with the BAT and BCT standards. The General Permit requires that an initial SWPPP have been developed and implemented before October 1, 1992 (Section A and Provision E(2)). 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 (Section A(2)). The SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow patterns 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 (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and 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 (Section A(6)). The SWPPP 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 (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Section A(9),(10)).

20. Section C(3) of the General Permit 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 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. Section C(4)(a).

21. Section C(11)(d) of the General Permit's Standard Provisions requires dischargers to report any noncompliance to the Regional Board. *See also* Section E(6). Section A(9) of the General 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.

22. The General Permit requires dischargers commencing industrial activities before October 1, 1992 to develop and implement an adequate written monitoring and reporting program no later than October 1, 1992. Existing facilities covered under the General Permit must implement all necessary revisions to their monitoring programs no later than August 1, 1997.

23. As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report (Section B(4)). Section B(4)(c) requires visual observation records to note, among other things, the date of each monthly observation. Dischargers must also collect and analyze storm water samples from at least two storms per year. 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) requires dischargers to sample and analyze during the wet season for basic parameters, such as pH, total suspended solids ("TSS"), electrical conductance, and total organic carbon or oil & grease, as well as certain industry-specific parameters. Section

B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii) requires dischargers to sample for parameters dependent on a facility's standard industrial classification ("SIC") code. Facilities that fall under SIC Code 5093 ("Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials") are required to analyze their storm water discharge samples for TSS, iron, lead, aluminum, copper, zinc, and chemical oxygen demand ("COD") (Table D, Sector N). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution. Section B(7)(a) indicates that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event." Section B(7)(c) requires that "if visual observation and sample collection locations are difficult to observe or sample…facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event."

24. Section B(14) of the General Permit requires dischargers to submit an annual report by July 1 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. 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 Permit. *See also* Sections C(9), C(10) and B(14).

25. The General Permit does not provide for any mixing zones by dischargers. The General Permit does not provide for any dilution credits to be applied by dischargers.

26. The Regional Board has identified beneficial uses and established water quality standards for the North Coast Region's waters in the "Water Quality Control Plan for the North Coast Region," generally referred to as the Basin Plan.

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

28. The Basin Plan provides that "[w]aters designated for use as domestic or

municipal supply…shall not contain concentrations of chemical constituents in excess of the limits specified in California Code of Regulations, Title 22, Chapter 15, Division 4, Article 4, Section 64435 (Tables 2 and 3), and Section 64444.5 (Table 5), and listed in Table 3-2 of this Plan."

29. The Basin Plan includes the following inorganic concentrations not to be exceeded in domestic or municipal supply: lead – 0.05 mg/L, chromium – 0.05 mg/L, and cadmium – 0.01 mg/L.

30. The Basin Plan provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses."

31. The Basin Plan requires that "[w]aters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses."

32. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses."

33. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."

34. The Basin Plan establishes a pH standard for the Laguna de Santa Rosa and Russian River of not less than 6.5 and not more than 8.5.

35. For the Russian River (downstream of confluence with Laguna de Santa Rosa), the Basin Plan limits specific conductivity to the range of 285 – 375 (micromhos).

36. The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC") and 0.120 mg/L (Criteria Continuous Concentration – "CCC"); for copper of 0.013 mg/L (CMC) and 0.009 mg/L (CCC); for nickel of 0.47 mg/L (CMC) and 0.052 mg/L (CCC); for cadmium of 0.0043

mg/L (CMC) and 0.0022 mg/L (CCC); for chromium (III) of 0.55 mg/L (CMC) and 0.18 mg/L (CCC); and for lead of 0.065 mg/L (CMC) and 0.0025 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000).

37. The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established Parameter Benchmark Values for the following parameters, among others: TSS – 100 mg/L; oil & grease – 15 mg/L; pH – 6.0-9.0 s.u.; total organic carbon ("TOC") – 110 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; cadmium – 0.0159 mg/L; nickel – 1.417 mg/L; and chemical oxygen demand ("COD") – 120 mg/L. The State Board has also proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

38. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $32,500 per day per violation for all violations occurring through January 12, 2009, and $37,500 per day per violation for all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.

V. STATEMENT OF FACTS

39. Defendant operates a scrap and waste metal salvaging facility located at 470 Caletti Avenue in Windsor, California. On information and belief, Plaintiff alleges that the Facility receives, sorts, crushes, cuts, stores and otherwise prepares for processing a variety of scrap metal. The Facility falls within SIC Code 5093. The Facility covers approximately four (4) acres, the majority of which is paved and used for transporting, processing, and storing metals throughout the Facility. On information and belief, Plaintiff alleges that at

least two buildings, several storage sheds and a trailer are located on the property. On information and belief, Plaintiff alleges that the receiving, sorting, crushing, cutting and storing of metals occurs both inside and outside of the buildings at the site. Metals are transported in and out of this building for storage in uncovered areas of the Facility.

40. Defendant channels and collects storm water falling on the Facility to at least one (1) storm water discharge outfall. On information and belief, storm water and any pollutants from the Facility flow from the facility's drains to a nearby channel and then to Pool Creek. Pool Creek flows into Windsor Creek and then flows into either the Russian River or Laguna de Santa Rosa.

41. Significant activities at the site take place outside and are exposed to rainfall. On information and belief, Plaintiff alleges that these activities include the storage and movement of metals, equipment used to sort, crush and cut scrap metal, the storage and use of vehicles and equipment for handling the scrap metals; and the storage, handling, and disposal of waste materials. Loading and delivery of metals occurs outside. Vehicles enter and exit the Facility directly from and to public roads. These areas are exposed to storm water and storm flows due to the lack of overhead coverage, berms, and other storm water controls.

42. Industrial machinery, equipment, and vehicles are operated and stored at the Facility in areas exposed to storm water flows. Vehicle maintenance occurs at the Facility. Plaintiff is informed and believes, and thereupon alleges, that such machinery, equipment, and vehicles leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows, and that such machinery, equipment, and vehicles track sediment and other contaminants throughout the Facility.

43. Plaintiff is informed and believes, and thereupon alleges that the storm water flows easily over the surface of the Facility and stored materials, collecting metals, suspended sediment, dirt, oils, grease, and other pollutants as it flows toward the storm water outfall. Storm water and any pollutants contained in that storm water entering the channels or drains flows directly to a channel that flows to Pool Creek.

44. The management practices at the Facility are wholly inadequate to prevent the sources of contamination described above from causing the discharge of pollutants to waters of the United States. The Facility lacks sufficient structural controls such as grading, berming, roofing, containment, or drainage structures to prevent rainfall and storm water flows from coming into contact with these and other exposed sources of contaminants. The Facility lacks sufficient structural controls to prevent the discharge of water once contaminated. The Facility lacks adequate storm water pollution treatment technologies to treat storm water once contaminated.

45. Since at least February 1, 2006, Defendant has taken samples or arranged for samples to be taken of storm water discharges at the Facility. The sample results were reported by the Facility in its annual reports submitted to the Regional Board. Defendant WCM, through its agent, President Jack Gardner, certified annual reports in 2006, 2007, 2008, 2009, and 2010 pursuant to Sections A and C of the General Permit.

46. Since at least February 1, 2006, the Facility has detected pH, TSS, electrical conductance, copper, cadmium, chromium, and lead in storm water discharged from the Facility. Since at least February 9, 2007, the Facility has detected oil & grease and COD in storm water discharged from the Facility. Since at least May 10, 2010, the Facility has detected total organic carbon in storm water discharged from the Facility. Levels of these pollutants detected in the Facility's storm water have been in excess of EPA's numeric parameter benchmark values and the State Board's proposed value for electrical conductance. Levels of these pollutants detected in the Facility's storm water have been in excess of water quality standards established in the Basin Plan.

47. The following discharges on the following dates contained concentrations of pollutants in excess of numeric or narrative water quality standards established in the Basin Plan:

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Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
5/10/2010	Chromium	0.084 mg/L	0.05 mg/L	WC1
5/10/2010	Lead	0.55 mg/L	0.05 mg/L	WC1
5/10/2010	Lead	0.55 mg/L	0.065 mg/L (CMC)	WC1
5/10/2010	Lead	0.55 mg/L	0.0025 mg/L (CCC)	WC1
5/10/2010	Copper	0.64 mg/L	0.013 mg/L (CMC)	WC1
5/10/2010	Copper	0.64 mg/L	0.009 mg/L (CCC)	WC1
5/10/2010	Nickel	0.098 mg/L	0.052 mg/L (CCC)	WC1
10/13/2009	Chromium	0.098 mg/L	0.05 mg/L	WC1
10/13/2009	Lead	0.43 mg/L	0.05 mg/L	WC1
10/13/2009	Lead	0.43 mg/L	0.065 mg/L (CMC)	WC1
10/13/2009	Lead	0.43 mg/L	0.0025 mg/L (CCC)	WC1
10/13/2009	Copper	0.31 mg/L	0.013 mg/L (CMC)	WC1
10/13/2009	Copper	0.31 mg/L	0.009 mg/L (CCC)	WC1
10/13/2009	Nickel	0.098 mg/L	0.052 mg/L (CCC)	WC1
2/6/2009	Chromium	0.064 mg/L	0.05 mg/L	WC1
2/6/2009	Lead	0.27 mg/L	0.05 mg/L	WC1
2/6/2009	Lead	0.27 mg/L	0.065 mg/L (CMC)	WC1
2/6/2009	Lead	0.27 mg/L	0.0025 mg/L (CCC)	WC1
2/6/2009	Copper	0.24 mg/L	0.013 mg/L (CMC)	WC1
2/6/2009	Copper	0.24 mg/L	0.009 mg/L (CCC)	WC1
2/6/2009	Nickel	0.057 mg/L	0.052 mg/L (CCC)	WC1
11/3/2008	Chromium	0.079 mg/L	0.05 mg/L	WC1
11/3/2008	Lead	0.57 mg/L	0.05 mg/L	WC1

11/3/2008	Lead	0.57 mg/L	0.065 mg/L (CMC)	WC1
11/3/2008	Lead	0.57 mg/L	0.0025 mg/L (CCC)	WC1
11/3/2008	Copper	0.55 mg/L	0.013 mg/L (CMC)	WC1
11/3/2008	Copper	0.55 mg/L	0.009 mg/L (CCC)	WC1
11/3/2008	Nickel	0.1 mg/L	0.052 mg/L (CCC)	WC1
1/25/2008	Cadmium	0.012 mg/L	0.01 mg/L	WC1
1/25/2008	Chromium	0.18 mg/L	0.05 mg/L	WC1
1/25/2008	Lead	0.82 mg/L	0.05 mg/L	WC1
1/25/2008	"water cloudy from sediment"		Narrative	WC1
1/25/2008	Copper	0.66 mg/L	0.013 mg/L (CMC)	WC1
1/25/2008	Copper	0.66 mg/L	0.009 mg/L (CCC)	WC1
1/25/2008	Cadmium	0.012 mg/L	0.0043 mg/L (CMC)	WC1
1/25/2008	Cadmium	0.012 mg/L	0.0022 mg/L (CCC)	WC1
1/25/2008	Lead	0.82 mg/L	0.065 mg/L (CMC)	WC1
1/25/2008	Lead	0.82 mg/L	0.0025 mg/L (CCC)	WC1
3/26/2007	Cadmium	0.021 mg/L	0.01 mg/L	WC1
3/26/2007	Chromium	0.2 mg/L	0.05 mg/L	WC1
3/26/2007	Lead	1.9 mg/L	0.05 mg/L	WC1
3/26/2007	Copper	0.76 mg/L	0.013 mg/L (CMC)	WC1
3/26/2007	Copper	0.76 mg/L	0.009 mg/L (CCC)	WC1
3/26/2007	Cadmium	0.021 mg/L	0.0043 mg/L (CMC)	WC1
3/26/2007	Cadmium	0.021 mg/L	0.0022 mg/L (CCC)	WC1
3/26/2007	Chromium	0.2 mg/L	0.18 mg/L (CCC)	WC1
3/26/2007	Nickel	0.2 mg/L	0.052 mg/L (CCC)	WC1

3/26/2007	Lead	1.9 mg/L	0.065 mg/L (CMC)	WC1
3/26/2007	Lead	1.9 mg/L	0.0025 mg/L (CCC)	WC1
2/9/2007	Cadmium	0.026 mg/L	0.01 mg/L	WC1
2/9/2007	Chromium	0.29 mg/L	0.05 mg/L	WC1
2/9/2007	Lead	1.5 mg/L	0.05 mg/L	WC1
2/9/2007	"slight sheen" & ""slippery feel"		Narrative	WC1
2/9/2007	Copper	1.1 mg/L	0.013 mg/L (CMC)	WC1
2/9/2007	Copper	1.1 mg/L	0.009 mg/L (CCC)	WC1
2/9/2007	Cadmium	0.026 mg/L	0.0043 mg/L (CMC)	WC1
2/9/2007	Cadmium	0.026 mg/L	0.0022 mg/L (CCC)	WC1
2/9/2007	Chromium	0.29 mg/L	0.18 mg/L (CCC)	WC1
2/9/2007	Nickel	0.28 mg/L	0.052 mg/L (CCC)	WC1
2/9/2007	Lead	1.5 mg/L	0.065 mg/L (CMC)	WC1
2/9/2007	Lead	1.5 mg/L	0.0025 mg/L (CCC)	WC1
3/31/2006	pH	8.87	6.5 – 8.5	WC1
3/31/2006	Chromium	0.34 mg/L	0.05 mg/L	WC1
3/31/2006	Lead	0.12 mg/L	0.05 mg/L	WC1
3/31/2006	Copper	0.16 mg/L	0.013 mg/L (CMC)	WC1
3/31/2006	Copper	0.16 mg/L	0.009 mg/L (CCC)	WC1
3/31/2006	Chromium	0.34 mg/L	0.18 mg/L (CCC)	WC1
3/31/2006	Lead	0.12 mg/L	0.065 mg/L (CMC)	WC1
3/31/2006	Lead	0.12 mg/L	0.0025 mg/L (CCC)	WC1
2/1/2006	pH	8.87	6.5 – 8.5	WC1
2/1/2006	Specific Conductivity	2200 µmho/cm	285 – 375 µmho/cm	WC1

2/1/2006	Cadmium	0.023 mg/L	0.01 mg/L	WC1
2/1/2006	Chromium	0.37 mg/L	0.05 mg/L	WC1
2/1/2006	Lead	1.3 mg/L	0.05 mg/L	WC1
2/1/2006	Copper	1.2 mg/L	0.013 mg/L (CMC)	WC1
2/1/2006	Copper	1.2 mg/L	0.009 mg/L (CCC)	WC1
2/1/2006	Cadmium	0.023 mg/L	0.0043 mg/L (CMC)	WC1
2/1/2006	Cadmium	0.023 mg/L	0.0022 mg/L (CCC)	WC1
2/1/2006	Chromium	0.37 mg/L	0.18 mg/L (CCC)	WC1
2/1/2006	Lead	1.3 mg/L	0.065 mg/L (CMC)	WC1
2/1/2006	Lead	1.3 mg/L	0.0025 mg/L (CCC)	WC1

48. The levels of nickel in storm water detected by the Facility also have exceeded the freshwater numeric water quality standard of 0.052 mg/L (CCC) established by EPA. For example, on May 10, 2010, the level of nickel measured in the Facility's discharged storm water was 0.098 mg/L. That level of nickel is almost twice the CCC freshwater numeric water quality standard for nickel established by EPA.

49. The levels of copper in storm water detected by the Facility also have exceeded the freshwater numeric water quality standard of 0.013 mg/L (CMC) established by EPA. For example, on May 10, 2010, the level of copper measured in the Facility's discharged storm water was 0.64 mg/L. That level of copper is almost fifty times the CMC freshwater numeric water quality standard for copper established by EPA.

50. The levels of copper in storm water detected by the Facility also have exceeded the freshwater numeric water quality standard of 0.009 mg/L (CCC) established by EPA. For example, on May 10, 2010, the level of copper measured in the Facility's discharged storm water was 0.64 mg/L. That level of copper is over seventy times the CCC freshwater numeric water quality standard for copper established by EPA.

51. The levels of copper in storm water detected by the Facility have exceeded the benchmark value for copper of 0.0636 mg/L established by EPA. For example, on May 10,

2010, the level of copper measured by Defendant in the Facility's discharged storm water was 0.64 mg/L. That level of copper is over ten times the benchmark value for copper established by EPA. The Facility also has measured levels of copper in storm water discharged from the Facility in excess of EPA's benchmark value of 0.0636 mg/L in every storm water sample taken for the past five years, including the following dates: February 1, 2006; March 31, 2006; February 9, 2007; March 26, 2007; January 25, 2008; November 3, 2008; February 6, 2009; and October 13, 2009.

52. The levels of lead in storm water detected by the Facility have exceeded the numeric water quality objective of 0.05 mg/L established by the Regional Board's Basin Plan. For example, on May 10, 2010, the level of lead measured in the Facility's discharged storm water was 0.55 mg/L. That level of lead is eleven times the numeric water quality objective of 0.05 mg/L established in the Basin Plan.

53. The levels of chromium in storm water detected by the Facility have exceeded the numeric water quality objective of 0.05 mg/L established by the Regional Board's Basin Plan. For example, on May 10, 2010, the level of chromium measured in the Facility's discharged storm water was 0.084 mg/L. That level of chromium is over one and a half times the numeric water quality objective of 0.05 mg/L established in the Basin Plan.

54. The levels of chromium in storm water detected by the Facility also have exceeded the freshwater numeric water quality standard of 0.18 mg/L (CCC) established by EPA. For example, on March 9, 2007, the level of chromium measured in the Facility's discharged storm water was 0.29 mg/L. That level of chromium is over one and a half times the CCC freshwater numeric water quality standard for chromium established by EPA.

55. The levels of cadmium in storm water detected by the Facility have exceeded the numeric water quality objective of 0.01 mg/L established by the Regional Board's Basin Plan. For example, on March 26, 2007, the level of cadmium measured in the Facility's discharged storm water was 0.021 mg/L. That level of cadmium is over twice the numeric water quality objective of 0.01 mg/L established in the Basin Plan.

56. The levels of cadmium in storm water detected by the Facility also have

exceeded the freshwater numeric water quality standard of 0.0043 mg/L (CMC) established by EPA. For example, on March 26, 2007, the level of cadmium measured in the Facility's discharged storm water was 0.021 mg/L. That level of cadmium is almost five times the CMC freshwater numeric water quality standard for cadmium established by EPA.

57. The levels of cadmium in storm water detected by the Facility also have exceeded the freshwater numeric water quality standard of 0.0022 mg/L (CCC) established by EPA. For example, on March 26, 2007, the level of cadmium measured in the Facility's discharged storm water was 0.021 mg/L. That level of cadmium is over nine and a half times the CCC freshwater numeric water quality standard for cadmium established by EPA.

58. The levels of cadmium in storm water detected by the Facility have exceeded the benchmark value for cadmium of 0.0159 mg/L established by EPA. For example, on March 26, 2007, the level of cadmium measured by Defendant in the Facility's discharged storm water was 0.021 mg/L. That level of cadmium is almost one and a half times the benchmark value for cadmium established by EPA. The Facility also has measured levels of cadmium in storm water discharged from the Facility in excess of EPA's benchmark value of 00.0159 mg/L mg/L on February 9, 2007 and February 1, 2006.

59. The levels of lead in storm water detected by the Facility have exceeded the numeric water quality objective of 0.05 mg/L established by the Regional Board's Basin Plan. For example, on May 10, 2010, the level of lead measured in the Facility's discharged storm water was 0.55 mg/L. That level of lead is eleven times the numeric water quality objective of 0.05 mg/L established in the Basin Plan.

60. The levels of lead in storm water detected by the Facility also have exceeded the freshwater numeric water quality standard of 0.065 mg/L (CMC) established by EPA. For example, on May 10, 2010, the level of lead measured in the Facility's discharged storm water was 0.55 mg/L. That level of lead is almost eight and a half times the CMC freshwater numeric water quality standard for lead established by EPA.

61. The levels of lead in storm water detected by the Facility also have exceeded the freshwater numeric water quality standard of 0.0025 mg/L (CCC) established by EPA.

For example, on May 10, 2010, the level of lead measured in the Facility's discharged storm water was 0.55 mg/L. That level of lead is two hundred and twenty times the CCC freshwater numeric water quality standard for lead established by EPA.

62. The levels of lead in storm water detected by the Facility have also exceeded the benchmark value for lead of 0.0816 mg/L established by EPA. For example, on May 10, 2010, the level of lead measured by Defendant in the Facility's discharged storm water was 0.55 mg/L. That level of lead is nearly seven times the benchmark value for lead established by EPA. The Facility also has measured levels of lead in storm water discharged from the Facility in excess of EPA's benchmark value of 0.0816 mg/L in every storm water sample taken for the past five years, including the following dates: February 1, 2006; March 31, 2006; February 9, 2007; March 26, 2007; January 25, 2008; November 3, 2008; February 6, 2009; and October 13, 2009.

63. The levels of total suspended solids in storm water detected by the Facility have exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA. On information and belief, Plaintiff alleges that the levels of total suspended solids in storm water detected by the Facility have also exceeded the standard for suspended materials articulated in the Basin Plan. For example, on October 13, 2009, the level of total suspended solids measured by Defendant in the Facility's discharged storm water was 1800 mg/L. That level of total suspended solids is eighteen times the benchmark value for total suspended solids established by EPA. The Facility has also measured levels of total suspended solids in storm water discharged from the Facility in excess of EPA's benchmark value of 100 mg/L in every storm water sample taken for the past five years, including the following dates: February 1, 2006; March 31, 2006; February 9, 2007; March 26, 2007; January 25, 2008; November 3, 2008; February 6, 2009; and May 10, 2010.

64. The levels of chemical oxygen demand in storm water detected by the Facility have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established by EPA. For example, on May 10, 2010, the level of chemical oxygen demand measured by Defendant in the Facility's discharged storm water was 310 mg/L. That level of chemical

oxygen demand is over two and a half times the benchmark value for chemical oxygen demand established by EPA. The Facility also has measured levels of chemical oxygen demand in storm water discharged from the Facility in excess of EPA's benchmark value of 120 mg/L on March 26, 2007 and February 9, 2007.

65. The levels of oil & grease in storm water detected by the Facility have exceeded the benchmark value for oil & grease of 15 mg/L established by EPA. On February 9, 2007, the level of oil & grease measured by Defendant in the Facility's discharged storm water was 120 mg/L. That level of oil & grease is eight times the benchmark value for oil & grease established by EPA.

66. The levels of total organic carbon in storm water detected by the Facility have exceeded the benchmark value for total organic carbon of 110 mg/L established by EPA. On May 10, 2010, the level of total organic carbon measured by Defendant in the Facility's discharged storm water was 120 mg/L. That level of total organic carbon exceeds the benchmark value for total organic carbon established by EPA.

67. The level of pH in storm water detected by the Facility has exceeded the numeric value for pH of 6.5 – 8.5 established in the Basin Plan. On March 31, 2006, the level of pH measured by Defendant at one of the Facility's storm water discharge points was 8.87.

68. The level of electrical conductance in storm water detected by the Facility has exceeded the numeric value for electrical conductance of 285 – 375 µmho/cm established in the Basin Plan. On February 1, 2006, the level of pH measured by Defendant at one of the Facility's storm water discharge points was 2200 µmho/cm.

69. The electrical conductance levels detected by the Facility in its storm water have been greater than the benchmark value of 200 µmho/cm proposed by the State Board. For example, on May 10, 2010, the electrical conductance level measured by Defendant in the Facility's discharged storm water was 300 µmho/cm. That level of electrical conductance is one and a half times the State Board's proposed benchmark value. The Facility has also measured levels of electrical conductance in storm water discharged from

the Facility in excess of the proposed benchmark value of 200 µmho/cm on March 26, 2007 and February 1, 2006.

70. On information and belief, Plaintiff alleges that since at least January 22, 2006, Defendant has failed to implement BAT and BCT at the Facility for its discharges of total suspended solids, pH, electrical conductance, oil & grease, total organic carbon, copper, chemical oxygen demand, cadmium, chromium, lead, and other pollutants. Section B(3) of the General Permit requires that Defendant implement BAT for toxic and nonconventional pollutants and BCT for conventional pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has failed to implement BAT and BCT.

71. On information and belief, Plaintiff alleges that since at least January 22, 2006, Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not set forth site-specific best management practices for the Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an adequate assessment of potential pollutant sources, structural pollutant control measures employed by Defendant, a list of actual and potential areas of pollutant contact, or an adequate description of best management practices to be implemented at the Facility to reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, Defendant's SWPPP has not been evaluated to ensure its effectiveness and revised where necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not include each of the mandatory elements required by Section A of the General Permit.

72. Information available to Plaintiff indicates that as a result of these practices, storm water containing excessive pollutants is being discharged during rain events from the Facility to a channel that flows to Pool Creek, which joins Windsor Creek, which then joins the Laguna de Santa Rosa, which in turn flows into the Russian River.

73. On information and belief, Plaintiff alleges that Defendant has failed to comply

with Section B(4) of the General Permit for its failure to properly record its monthly visual observations on October 13, 2009; November 3, 2008; March 26, 2007; February 9, 2007; March 31, 2006; and February 1, 2006.

74. On information and belief, Plaintiff alleges that Defendant failed to analyze its storm water samples for iron, aluminum, and zinc as required by Section B(5)(c)(iii) of the General permit in every storm water sample taken from the storm water outfall at the Facility since January 22, 2006.

75. Plaintiff is informed and believes, and thereupon alleges, that Defendant has failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent with Section A(9) of the General Permit.

76. Plaintiff is informed and believes that Defendant failed to submit to the Regional Board a true and complete annual report certifying compliance with the General Permit since at least July 1, 2006. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the General Permit, Defendant must submit an annual report, that is signed and certified by the appropriate corporate officer, outlining the Facility's storm water controls and certifying compliance with the General Permit. Plaintiff is informed and believes, and thereupon alleges, that Defendant has signed incomplete annual reports that purported to comply with the General Permit when there was significant noncompliance at the Facility.

77. Information available to Plaintiff indicates that Defendant has not fulfilled the requirements set forth in the General Permit for discharges from the Facility due to the continued discharge of contaminated storm water. Plaintiff is informed and believes, and thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuing.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Failure to Implement the Best Available and Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

78. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully

set forth herein.

79. The General Permit's SWPPP requirements and Effluent Limitation B(3) require 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. Defendant has failed to implement BAT and BCT at the Facility for its discharges of total suspended solids, pH, electrical conductance, oil & grease, total organic carbon, copper, chemical oxygen demand, cadmium, chromium, lead, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

80. Each day since at least January 22, 2006, that Defendant has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

81. Defendant has been in violation of the BAT/BCT requirements every day since at least January 22, 2006. Defendant continues to be in violation of the BAT/BCT requirements each day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

SECOND CAUSE OF ACTION
Discharges of Contaminated Storm Water in Violation of Permit Conditions and the Act (Violations of 33 U.S.C. §§ 1311(a), 1342)

82. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

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

84. Plaintiff is informed and believes, and thereupon alleges, that since at least

January 22, 2006, Defendant has been discharging polluted storm water from the Facility in excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of the General Permit.

85. During every rain event, storm water flows freely over exposed materials, waste products, and other accumulated pollutants at the Facility, becoming contaminated with total suspended solids, pH, electrical conductance, oil & grease, total organic carbon, copper, chemical oxygen demand, cadmium, chromium, lead, and other unmonitored pollutants at levels above applicable water quality standards. The storm water then flows untreated from the Facility into Pool Creek, which joins Windsor Creek, which then joins the Laguna de Santa Rosa, which in turn flows into the Russian River.

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

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

88. Every day since at least January 22, 2006, that Defendant has discharged and continues to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

THIRD CAUSE OF ACTION
Failure to Prepare, Implement, Review, and Update an Adequate Storm Water Pollution Prevention Plan (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

89. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

90. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no

later than October 1, 1992.

91. Defendant has failed to develop and implement an adequate SWPPP for the Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various metals without appropriate best management practices; the continued exposure of significant quantities of various metals to storm water flows; the continued exposure and tracking of waste resulting from the operation or maintenance of vehicles at the site, including trucks; the failure to either treat storm water prior to discharge or to implement effective containment practices; and the continued discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark values and water quality standards.

92. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

93. Each day since at least January 22, 2006, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

94. Defendant has been in violation of the SWPPP requirements every day since at least January 22, 2006. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

FOURTH CAUSE OF ACTION
Failure to Develop and Implement an Adequate Monitoring and Reporting Program (Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

95. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

96. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

97. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendant's ongoing failure to develop and implement

an adequate monitoring and reporting program is evidenced by, *inter alia*, its failure to monitor all of its storm water samples for iron, aluminum, and zinc.

98. Each day since at least January 22, 2006, that Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

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

99. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

100. Defendant has falsely certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least January 22, 2006.

101. Each day since at least January 22, 2006 that Defendant has falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of the General Permit's certification requirement each day that it maintains its false certification of its compliance with the General Permit.

VII. RELIEF REQUESTED

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

a. Declare Defendant to have violated and to be in violation of the Act as alleged herein;

b. Enjoin Defendant from discharging polluted storm water from the Facility unless authorized by the Permit;

c. Enjoin Defendant from further violating the substantive and procedural requirements of the Permit;

d. Order Defendant to immediately implement storm water pollution control and treatment technologies and measures that are equivalent to BAT or BCT and prevent

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

e. Order Defendant to comply with the Permit's monitoring and reporting requirements, including ordering supplemental monitoring to compensate for past monitoring violations;

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

g. Order Defendant to provide Plaintiff with reports documenting the quality and quantity of their discharges to waters of the United States and their efforts to comply with the Act and the Court's orders;

h. Order Defendants to pay civil penalties of $32,500 per day per violation for all violations occurring through January 12, 2009, and $37,500 per day per violation for all violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

i. Order Defendant to take appropriate actions to restore the quality of waters impaired or adversely affected by their activities;

j. Award Plaintiff's costs (including reasonable investigative, attorney, witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

Dated: March 22, 2011

Respectfully submitted,

LOZEAU DRURY LLP

By: _____

Douglas J. Chermak
Attorneys for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

EXHIBIT A

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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 23, 2010

Jack Gardner, President & Owner
Jason Gardner, Manager
David Guzman
West Coast Metals
470 Caletti Ave.
Windsor, CA 95492

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

Dear Messrs. Gardner and Guzman:

I am writing on behalf of the California Sportfishing Protection Alliance and the Petaluma River Council ("PRC") (collectively "CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at West Coast Metals, Inc.'s facility located at 470 Caletti Ave. in Windsor, California ("Facility"). California Sportfishing Protection Alliance is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Russian River, Laguna de Santa Rosa, and other California waters. PRC is an unincorporated organization of concerned citizens committed to protecting and improving the health and character of the Petaluma River, Russian River, Laguna de Santa Rosa, and other North Coast watersheds and the surrounding environment. This letter is being sent to you as the responsible owners, officers, operators or managers of West Coast Metals.

This letter addresses West Coast Metals' unlawful discharge of pollutants from the Facility into Pool Creek, which flows into Windsor Creek and then flows into either the Russian River or Laguna de Santa Rosa. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the State Water Resources Control Board ("State Board") and California Regional Water Quality Control Board, North Coast Region ("Regional Board") is 149I018939.

The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

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

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, West Coast Metals is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against West Coast Metals under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On July 25, 2004, West Coast Metals filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). West Coast Metals certifies that the Facility is classified under SIC code 5093 ("scrap and waste materials"). The Facility collects and discharges storm water from its 3-acre industrial site through a series of storm drain drop inlets and at least one storm drain outfall located at the Facility. Based on the Facility's NOI, the storm water is discharged indirectly to Pool Creek. On information and belief, storm water and any pollutants from the Facility flow from the facility's drains to a nearby channel and then to Pool Creek. Pool Creek flows into Windsor Creek and then flows into either the Russian River or Laguna de Santa Rosa.

The Regional Board has identified beneficial uses of the North Coast Region's waters and established water quality standards for the Russian River, Laguna de Santa Rosa, and their tributaries including Pool Creek and Windsor Creek, in the "Water Quality Control Plan for the North Coast Region," generally referred to as the Basin Plan. *See* http://www.swrcb.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/070605_Basin_Plan.pdf. The beneficial uses of these waters, include, among others, water contact recreation, non-contact water recreation, commercial and sport fishing, municipal and domestic water supply, marine habitat, shellfish harvesting, and navigation. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, . ., camping, boating, . . ., hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at 2-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of Pool Creek, Windsor Creek, Laguna de Santa Rosa, and the Russian River for contact and non-contact water recreation as well as commercial and sport fishing.

The Basin Plan establishes water quality standards for the Russian River, Laguna de Santa Rosa, and their tributaries including Pool Creek and Windsor Creek. It contains a narrative toxicity standard that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at 3-4.00. It includes the following inorganic concentrations not to be exceeded in domestic or municipal supply: lead – 0.05 mg/L, chromium – 0.05 mg/L, and cadmium – 0.01 mg/L. *Id.* Table 3-2. It provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-3.00. It requires that "[w]aters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses." *Id.* It provides that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." *Id.* It establishes that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses." *Id.* For both the Laguna de Santa Rosa and the Russian River (downstream of confluence with Laguna de Santa Rosa), the Basin Plan limits pH to the range of 6.5 – 8.5. *Id.* at Table 3-1. For the Russian River (downstream of confluence with Laguna de Santa Rosa), the Basin Plan limits specific conductivity to the range of 285 – 375 (micromhos). *Id.*

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC") and 0.120 mg/L (Criteria Continuous Concentration – "CCC"); for copper of 0.013 mg/L (CMC) and 0.009 mg/L (CCC); for nickel of 0.47 mg/L (CMC) and 0.052 mg/L (CCC); for cadmium of 0.0043 mg/L (CMC) and 0.0022 mg/L (CCC); for chromium (III) of 0.55 mg/L (CMC) and 0.18 mg/L (CCC); and for lead of 0.065 mg/L (CMC) and 0.0025 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000).

The EPA has published benchmark levels 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 West Coast Metals: pH – 6.0-9.0 units; total suspended solids ("TSS") – 100 mg/L, oil & grease ("O&G") – 15 mg/L, total organic carbon – 110 mg/L, aluminum – 0.75 mg/L, lead – 0.0816 mg/L, copper – 0.0636 mg/L, zinc – 0.117 mg/L, chemical oxygen demand ("COD") – 120 mg/L, cadmium – 0.0159 mg/L. nickel – 1.417 mg/L, and iron – 1.0 mg/L. The State Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

West Coast Metals has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33

U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges 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, 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.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General 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.

West Coast Metals has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, specific conductivity, O&G, copper, COD, cadmium, chromium, lead, and other pollutants in violation of the General Permit. West Coast Metals' sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water 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 contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan and thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
5/10/2010	Chromium	0.084 mg/L	0.05 mg/L	WC1
5/10/2010	Lead	0.55 mg/L	0.05 mg/L	WC1
5/10/2010	Lead	0.55 mg/L	0.065 mg/L (CMC)	WC1
5/10/2010	Lead	0.55 mg/L	0.0025 mg/L (CCC)	WC1
5/10/2010	Copper	0.64 mg/L	0.013 mg/L (CMC)	WC1
5/10/2010	Copper	0.64 mg/L	0.009 mg/L (CCC)	WC1
5/10/2010	Nickel	0.098 mg/L	0.052 mg/L (CCC)	WC1
10/13/2009	Chromium	0.098 mg/L	0.05 mg/L	WC1
10/13/2009	Lead	0.43 mg/L	0.05 mg/L	WC1
10/13/2009	Lead	0.43 mg/L	0.065 mg/L (CMC)	WC1
10/13/2009	Lead	0.43 mg/L	0.0025 mg/L (CCC)	WC1
10/13/2009	Copper	0.31 mg/L	0.013 mg/L (CMC)	WC1
10/13/2009	Copper	0.31 mg/L	0.009 mg/L (CCC)	WC1
10/13/2009	Nickel	0.098 mg/L	0.052 mg/L (CCC)	WC1
2/6/2009	Chromium	0.064 mg/L	0.05 mg/L	WC1
2/6/2009	Lead	0.27 mg/L	0.05 mg/L	WC1
2/6/2009	Lead	0.27 mg/L	0.065 mg/L (CMC)	WC1
2/6/2009	Lead	0.27 mg/L	0.0025 mg/L (CCC)	WC1
2/6/2009	Copper	0.24 mg/L	0.013 mg/L (CMC)	WC1
2/6/2009	Copper	0.24 mg/L	0.009 mg/L (CCC)	WC1
2/6/2009	Nickel	0.057 mg/L	0.052 mg/L (CCC)	WC1
11/3/2008	Chromium	0.079 mg/L	0.05 mg/L	WC1
11/3/2008	Lead	0.57 mg/L	0.05 mg/L	WC1
11/3/2008	Lead	0.57 mg/L	0.065 mg/L (CMC)	WC1
11/3/2008	Lead	0.57 mg/L	0.0025 mg/L (CCC)	WC1
11/3/2008	Copper	0.55 mg/L	0.013 mg/L (CMC)	WC1
11/3/2008	Copper	0.55 mg/L	0.009 mg/L (CCC)	WC1
11/3/2008	Nickel	0.1 mg/L	0.052 mg/L (CCC)	WC1
1/25/2008	Cadmium	0.012 mg/L	0.01 mg/L	WC1
1/25/2008	Chromium	0.18 mg/L	0.05 mg/L	WC1
1/25/2008	Lead	0.82 mg/L	0.05 mg/L	WC1
1/25/2008	“water cloudy from sediment”		Narrative	WC1
1/25/2008	Copper	0.66 mg/L	0.013 mg/L (CMC)	WC1
1/25/2008	Copper	0.66 mg/L	0.009 mg/L (CCC)	WC1
1/25/2008	Cadmium	0.012 mg/L	0.0043 mg/L (CMC)	WC1
1/25/2008	Cadmium	0.012 mg/L	0.0022 mg/L (CCC)	WC1
1/25/2008	Lead	0.82 mg/L	0.065 mg/L (CMC)	WC1
1/25/2008	Lead	0.82 mg/L	0.0025 mg/L (CCC)	WC1

3/26/2007	Cadmium	0.021 mg/L	0.01 mg/L	WC1
3/26/2007	Chromium	0.2 mg/L	0.05 mg/L	WC1
3/26/2007	Lead	1.9 mg/L	0.05 mg/L	WC1
3/26/2007	Copper	0.76 mg/L	0.013 mg/L (CMC)	WC1
3/26/2007	Copper	0.76 mg/L	0.009 mg/L (CCC)	WC1
3/26/2007	Cadmium	0.021 mg/L	0.0043 mg/L (CMC)	WC1
3/26/2007	Cadmium	0.021 mg/L	0.0022 mg/L (CCC)	WC1
3/26/2007	Chromium	0.2 mg/L	0.18 mg/L (CCC)	WC1
3/26/2007	Nickel	0.2 mg/L	0.052 mg/L (CCC)	WC1
3/26/2007	Lead	1.9 mg/L	0.065 mg/L (CMC)	WC1
3/26/2007	Lead	1.9 mg/L	0.0025 mg/L (CCC)	WC1
2/9/2007	Cadmium	0.026 mg/L	0.01 mg/L	WC1
2/9/2007	Chromium	0.29 mg/L	0.05 mg/L	WC1
2/9/2007	Lead	1.5 mg/L	0.05 mg/L	WC1
2/9/2007	“slight sheen” & “”slippery feel”		Narrative	WC1
2/9/2007	Copper	1.1 mg/L	0.013 mg/L (CMC)	WC1
2/9/2007	Copper	1.1 mg/L	0.009 mg/L (CCC)	WC1
2/9/2007	Cadmium	0.026 mg/L	0.0043 mg/L (CMC)	WC1
2/9/2007	Cadmium	0.026 mg/L	0.0022 mg/L (CCC)	WC1
2/9/2007	Chromium	0.29 mg/L	0.18 mg/L (CCC)	WC1
2/9/2007	Nickel	0.28 mg/L	0.052 mg/L (CCC)	WC1
2/9/2007	Lead	1.5 mg/L	0.065 mg/L (CMC)	WC1
2/9/2007	Lead	1.5 mg/L	0.0025 mg/L (CCC)	WC1
3/31/2006	pH	8.87	6.5 – 8.5	WC1
3/31/2006	Chromium	0.34 mg/L	0.05 mg/L	WC1
3/31/2006	Lead	0.12 mg/L	0.05 mg/L	WC1
3/31/2006	Copper	0.16 mg/L	0.013 mg/L (CMC)	WC1
3/31/2006	Copper	0.16 mg/L	0.009 mg/L (CCC)	WC1
3/31/2006	Chromium	0.34 mg/L	0.18 mg/L (CCC)	WC1
3/31/2006	Lead	0.12 mg/L	0.065 mg/L (CMC)	WC1
3/31/2006	Lead	0.12 mg/L	0.0025 mg/L (CCC)	WC1
2/1/2006	pH	8.87	6.5 – 8.5	WC1
2/1/2006	Specific Conductivity	2200 µmho/cm	285 – 375 µmho/cm	WC1
2/1/2006	Cadmium	0.023 mg/L	0.01 mg/L	WC1
2/1/2006	Chromium	0.37 mg/L	0.05 mg/L	WC1
2/1/2006	Lead	1.3 mg/L	0.05 mg/L	WC1
2/1/2006	Copper	1.2 mg/L	0.013 mg/L (CMC)	WC1
2/1/2006	Copper	1.2 mg/L	0.009 mg/L (CCC)	WC1
2/1/2006	Cadmium	0.023 mg/L	0.0043 mg/L	WC1

			(CMC)	
2/1/2006	Cadmium	0.023 mg/L	0.0022 mg/L (CCC)	WC1
2/1/2006	Chromium	0.37 mg/L	0.18 mg/L (CCC)	WC1
2/1/2006	Lead	1.3 mg/L	0.065 mg/L (CMC)	WC1
2/1/2006	Lead	1.3 mg/L	0.0025 mg/L (CCC)	WC1

The following discharges of pollutants by West Coast Metals from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	**Parameter**	**Observed Concentration**	**EPA Benchmark Value**	**Location (as identified by the Facility)**
5/10/2010	Total Suspended Solids	640 mg/L	100 mg/L	WC1
5/10/2010	Specific Conductivity	300 µmho/cm	200 µmho/cm (proposed)	WC1
5/10/2010	Total Organic Carbon	120 mg/L	110 mg/L	WC1
5/10/2010	Copper	0.64 mg/L	0.0636 mg/L	WC1
5/10/2010	Chemical Oxygen Demand	310 mg/L	120 mg/L	WC1
5/10/2010	Lead	0.55 mg/L	0.0816 mg/L	WC1
10/13/2009	Total Suspended Solids	1800 mg/L	100 mg/L	WC1
10/13/2009	Copper	0.31 mg/L	0.0636 mg/L	WC1
10/13/2009	Lead	0.43 mg/L	0.0816 mg/L	WC1
2/6/2009	Total Suspended Solids	370 mg/L	100 mg/L	WC1
2/6/2009	Specific Conductivity	260 µmho/cm	200 µmho/cm (proposed)	WC1
2/6/2009	Copper	0.24 mg/L	0.0636 mg/L	WC1
2/6/2009	Lead	0.27 mg/L	0.0816 mg/L	WC1
11/3/2008	Total Suspended Solids	1100 mg/L	100 mg/L	WC1
11/3/2008	Copper	0.55 mg/L	0.0636 mg/L	WC1
11/3/2008	Lead	0.57 mg/L	0.0816 mg/L	WC1
1/25/2008	Total Suspended Solids	1100 mg/L	100 mg/L	WC1
1/25/2008	Copper	0.66 mg/L	0.0636 mg/L	WC1
1/25/2008	Lead	0.82 mg/L	0.0816 mg/L	WC1
3/26/2007	Total Suspended Solids	1500 mg/L	100 mg/L	WC1
3/26/2007	Specific Conductivity	310 µmho/cm	200 µmho/cm (proposed)	WC1
3/26/2007	Copper	0.76 mg/L	0.0636 mg/L	WC1
3/26/2007	Chemical Oxygen Demand	130 mg/L	120 mg/L	WC1
3/26/2007	Lead	1.9 mg/L	0.0816 mg/L	WC1

3/26/2007	Cadmium	0.021 mg/L	0.0159 mg/L	WC1
2/9/2007	Total Suspended Solids	3100 mg/L	100 mg/L	WC1
2/9/2007	Oil & Grease	120 mg/L	15 mg/L	WC1
2/9/2007	Copper	1.1 mg/L	0.0636 mg/L	WC1
2/9/2007	Chemical Oxygen Demand	180 mg/L	120 mg/L	WC1
2/9/2007	Lead	1.5 mg/L	0.0816 mg/L	WC1
2/9/2007	Cadmium	0.026 mg/L	0.0159 mg/L	WC1
3/31/2006	Total Suspended Solids	1500 mg/L	100 mg/L	WC1
3/31/2006	Copper	0.16 mg/L	0.0636 mg/L	WC1
3/31/2006	Lead	0.12 mg/L	0.0816 mg/L	WC1
2/1/2006	Total Suspended Solids	2500 mg/L	100 mg/L	WC1
2/1/2006	Specific Conductivity	2200 µmho/cm	200 µmho/cm (proposed)	WC1
2/1/2006	Copper	1.2 mg/L	0.0636 mg/L	WC1
2/1/2006	Lead	1.3 mg/L	0.0816 mg/L	WC1
2/1/2006	Cadmium	0.023 mg/L	0.0159 mg/L	WC1

CSPA's investigation, including its review of West Coast Metals' analytical results documenting pollutants discharged in excess of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that West Coast Metals has not implemented BAT and BCT for its discharges of pH, TSS, specific conductivity, O&G, copper, COD, cadmium, chromium, lead, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. West Coast Metals was required to have implemented BAT and BCT by no later than October 1, 1992, or the date on which West Coast Metals purchased or otherwise began operations at the Facility. Thus, West Coast Metals is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since December 23, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violations and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that West Coast Metals has discharged storm water containing impermissible levels of pH, TSS, specific conductivity, O&G, copper, COD, cadmium, chromium, lead, and other pollutants in violation of Effluent Limitation B(3), 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 each of these pollutants in storm water constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to

citizen enforcement actions brought pursuant to the federal Clean Water Act, West Coast Metals is subject to penalties for violations of the General Permit and the Act since December 23, 2005.

B. Failure to Sample and Analyze for Mandatory Parameters

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators 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." *Id*. "All storm water discharge locations shall be sampled." *Id*. "Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled." *Id*.

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id*. at Section B(5)(c)(i). Facilities also must analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id*. at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id*. at Section B(5)(c)(iii); *id.*, Table D. A facility within SIC Code 5093, including West Coast Metals, must analyze each of its storm water samples for iron, lead, aluminum, copper, zinc, and COD. *Id.*, Table D (Sector N). CSPA's review of West Coast Metals' monitoring data indicates that you have failed to analyze for iron, aluminum, and zinc in each sample taken at the Facility's outfall during the past five years. Specifically, there were six failures during the 2009-2010, 2008-2009, 2006-2007, and 2005-2006 wet seasons; and three failures during the 2007-2008 wet season, resulting in a total of 27 failures.

Each of the above listed failures to analyze for specific required parameters is a violation of General Permit, Section B(5)(c)(ii) and Section B(5)(c)(iii). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, West Coast Metals is subject to penalties for violations of the General Permit and the Act since December 23, 2005.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit 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 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)).

CSPA's investigation of the conditions at the Facility and review of West Coast Metals' Annual Reports and SWPPP indicates that West Coast Metals has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. West Coast Metals has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. The SWPPP on file with the Regional Board does not appropriately describe the BMPs and the map is inadequate. In addition, the SWPPP indicates that the Facility is 4.82 acres and 5% impervious, compared to 3 acres and 20% impervious as indicated on the NOI. West Coast Metals has been in continuous violation of Section A and Provision E(2) of the General Permit every day since December 23, 2005, and will continue to be in violation every day that West Coast Metals fails to prepare, implement, review, and update an effective SWPPP. West Coast Metals is subject to penalties for violations of the Order and the Act occurring since December 23, 2005.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must

represent the "quality and quantity of the facility's storm water discharges from the storm event." On information and belief, CSPA alleges that West Coast Metals failed to properly record its visual observations on October 13, 2009; November 3, 2008; March 26, 2007; February 9, 2007; March 31, 2006; and February 1, 2006. On these dates, West Coast Metals conducted observations of storm water discharges and did not report observing any pollutants indicative of increased sediments – such as cloudiness or muddy water. However, West Coast Metals' storm water sampling results for these dates indicate levels of TSS way above the benchmark value of 100 mg/L – levels at which West Coast Metals should be observing the presence of cloudiness in the storm water discharges.[1] On the dates listed above, these levels of TSS were 1800 mg/L, 1100 mg/L, 1500 mg/L, 3100 mg/L, 1500 mg/L, and 2500 mg/L, respectively. CSPA alleges that it is impossible for water with levels of TSS this high to be free of cloudiness. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, West Coast Metals is subject to penalties for violations of the General Permit and the Act since December 23, 2005.

The data referenced in the above sections was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by West Coast Metals is not representative of the quality of the Facility's various storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) 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, West Coast Metals is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 23, 2005, or the date on which West Coast Metals purchased or otherwise began operations at the Facility.

E. Failure to File True and Correct Annual Reports.

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

For at least the last five years, West Coast Metals and its agent, Jack Gardner, inaccurately certified in the Facility's Annual Reports that the Facility was in compliance with the General Permit. Consequently, West Coast Metals has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time West Coast Metals or its agent failed to submit a complete or correct report and every time West Coast Metals or its agent

[1] For example, on January 25, 2008, when the level of TSS was only 1100 mg/L, the Facility observed pollutants, noting that the "water [was] cloudy from sediment."

falsely purported to comply with the Act. West Coast Metals is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since at least June 28, 2006.

IV. Persons Responsible for the Violations.

CSPA puts West Coast Metals, Inc., Jack Gardner, Jason Gardner, and David Guzman 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 West Coast Metals, Inc., Jack Gardner, Jason Gardner, and David Guzman on notice that it intends to include those subsequently identified persons in this action.

V. Name and Address of Noticing Party.

The name, address and telephone number of CSPA and PRC are as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067

David Keller, Executive Director
Petaluma River Council
1327 I Street
Petaluma, CA 94952
Tel. (707) 338-3833

VI. Counsel.

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

Michael R. Lozeau
Douglas J. Chermak
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410 12th Street, Suite 250
Oakland, California 94607
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michael@lozeaudrury.com
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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 West Coast Metals to a penalty of up to $32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit through January 12, 2009, and a maximum of $37,500 per day per violation for all violations occurring after January 12, 2009. 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 West Coast Metals and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions 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,

Michael R. Lozeau
Attorney for California Sportfishing Protection Alliance
and Petaluma River Council

cc via First-Class mail: Jack Gardner, Agent for Service of Process for West Coast Metals, Inc.
10439 Old Redwood Hwy, Windsor, CA 95492

SERVICE LIST

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

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

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

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
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San Francisco, CA, 94105

Catherine Kuhlman, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

ATTACHMENT A

Rain Dates, West Coast Metals, Windsor, California

December 23, 2005
December 24, 2005
January 1, 2006
January 2, 2006
January 3, 2006
January 4, 2006
January 5, 2006
January 6, 2006
January 7, 2006
January 10, 2006
January 11, 2006
January 13, 2006
January 14, 2006
January 17, 2006
January 18, 2006
January 19, 2006
January 20, 2006
January 21, 2006
January 25, 2006
January 27, 2006
January 28, 2006
January 30, 2006
February 1, 2006
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February 4, 2006
February 17, 2006
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April 16, 2006
May 5, 2006
October 4, 2006
October 5, 2006
October 6, 2006
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November 1, 2006
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November 7, 2006
November 11, 2006
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February 7, 2007
February 8, 2007
February 9, 2007
February 10, 2007
February 11, 2007

ATTACHMENT A

Rain Dates, West Coast Metals, Windsor, California

February 12, 2007	November 10, 2007	January 27, 2008
February 20, 2007	November 11, 2007	January 28, 2008
February 21, 2007	November 13, 2007	January 29, 2008
February 22, 2007	November 17, 2007	January 30, 2008
February 24, 2007	November 18, 2007	January 31, 2008
February 25, 2007	November 19, 2007	February 1, 2008
February 26, 2007	December 2, 2007	February 2, 2008
February 27, 2007	December 3, 2007	February 13, 2008
March 1, 2007	December 4, 2007	February 19, 2008
March 18, 2007	December 5, 2007	February 20, 2008
March 19, 2007	December 6, 2007	February 21, 2008
March 20, 2007	December 7, 2007	February 22, 2008
March 26, 2007	December 16, 2007	February 23, 2008
April 7, 2007	December 17, 2007	February 24, 2008
April 11, 2007	December 18, 2007	February 29, 2008
April 14, 2007	December 19, 2007	March 12, 2008
April 19, 2007	December 20, 2007	March 13, 2008
April 20, 2007	December 27, 2007	March 14, 2008
April 21, 2007	December 28, 2007	March 15, 2008
April 22, 2007	December 29, 2007	March 28, 2008
May 1, 2007	December 30, 2007	April 22, 2008
May 2, 2007	December 31, 2007	April 23, 2008
May 3, 2007	January 3, 2008	October 3, 2008
May 4, 2007	January 4, 2008	October 4, 2008
September 22, 2007	January 5, 2008	October 7, 2008
October 1, 2007	January 6, 2008	October 28, 2008
October 9, 2007	January 7, 2008	October 31, 2008
October 10, 2007	January 8, 2008	November 1, 2008
October 11, 2007	January 9, 2008	November 2, 2008
October 12, 2007	January 10, 2008	November 3, 2008
October 15, 2007	January 12, 2008	November 4, 2008
October 16, 2007	January 14, 2008	November 7, 2008
October 17, 2007	January 15, 2008	November 8, 2008
October 18, 2007	January 21, 2008	November 9, 2008
October 19, 2007	January 22, 2008	November 19, 2008
October 20, 2007	January 23, 2008	November 20, 2008
November 6, 2007	January 24, 2008	November 23, 2008
November 7, 2007	January 25, 2008	November 29, 2008
November 8, 2007	January 26, 2008	November 30, 2008

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Rain Dates, West Coast Metals, Windsor, California

December 1, 2008	February 28, 2009	December 11, 2009
December 3, 2008	March 1, 2009	December 12, 2009
December 4, 2008	March 2, 2009	December 13, 2009
December 5, 2008	March 3, 2009	December 15, 2009
December 7, 2008	March 4, 2009	December 16, 2009
December 14, 2008	March 5, 2009	December 18, 2009
December 15, 2008	March 15, 2009	December 19, 2009
December 16, 2008	March 16, 2009	December 20, 2009
December 18, 2008	March 21, 2009	December 21, 2009
December 19, 2008	March 22, 2009	December 26, 2009
December 21, 2008	April 7, 2009	December 27, 2009
December 22, 2008	April 9, 2009	December 28, 2009
December 23, 2008	May 1, 2009	December 29, 2009
December 24, 2008	May 2, 2009	December 31, 2009
December 27, 2008	May 3, 2009	January 1, 2010
December 29, 2008	May 4, 2009	January 2, 2010
December 30, 2008	May 5, 2009	January 3, 2010
January 2, 2009	May 6, 2009	January 7, 2010
January 5, 2009	June 3, 2009	January 8, 2010
January 15, 2009	October 12, 2009	January 11, 2010
January 21, 2009	October 13, 2009	January 12, 2010
January 22, 2009	October 14, 2009	January 13, 2010
January 23, 2009	October 15, 2009	January 16, 2010
February 5, 2009	October 16, 2009	January 17, 2010
February 6, 2009	October 19, 2009	January 18, 2010
February 7, 2009	October 31, 2009	January 19, 2010
February 8, 2009	November 5, 2009	January 20, 2010
February 10, 2009	November 6, 2009	January 21, 2010
February 11, 2009	November 17, 2009	January 22, 2010
February 12, 2009	November 20, 2009	January 23, 2010
February 13, 2009	November 21, 2009	January 24, 2010
February 14, 2009	November 22, 2009	January 25, 2010
February 15, 2009	November 25, 2009	January 29, 2010
February 16, 2009	November 27, 2009	February 1, 2010
February 17, 2009	December 2, 2009	February 3, 2010
February 21, 2009	December 3, 2009	February 4, 2010
February 22, 2009	December 4, 2009	February 5, 2010
February 23, 2009	December 6, 2009	February 6, 2010
February 25, 2009	December 10, 2009	February 8, 2010

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Rain Dates, West Coast Metals, Windsor, California

February 9, 2010
February 10, 2010
February 11, 2010
February 12, 2010
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February 14, 2010
February 16, 2010
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December 22, 2010