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11
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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
13

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE EASTERN DISTRICT OF CALIFORNIA

16	CALIFORNIA SPORTFISHING)	Case No. _____
17	PROTECTION ALLIANCE, a nonprofit)	COMPLAINT FOR DECLARATORY AND
18	corporation)	INJUNCTIVE RELIEF AND CIVIL
)	PENALTIES
19	Plaintiff,)	
)	(Federal Water Pollution Control Act, 33
20	v.)	U.S.C. §§ 1251 to 1387)
)	
21	ALL STAR AUTO WRECKING, INC., a)	
22	California corporation, and JOE CREAM)	
	SR., an individual)	
23)	
	Defendants,)	
24)	

25
26 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA"), by and
27 through its counsel, hereby alleges:
28

1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit enforcement provisions of the
3 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act” or
4 “the Act”) against All Star Auto Wrecking, Inc. and Mr. Joe Cream Sr. (hereafter
5 “Defendants”). This Court has subject matter jurisdiction over the parties and the subject matter
6 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
7 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
8 authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in case of actual
9 controversy and further necessary relief based on such a declaration), 33 U.S.C. §§ 1319(b),
10 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil penalties).

11 2. On or about May 3, 2011, Plaintiff provided notice of Defendants’ violations of
12 the Act, and of its intention to file suit against Defendants, to the Administrator of the United
13 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
14 Executive Director of the State Water Resources Control Board (“State Board”); the Executive
15 Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional
16 Board”); the U.S. Attorney General; and to Defendants, as required by the Act, 33 U.S.C. §
17 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and is
18 incorporated by reference.

19 3. More than sixty days have passed since notice was served on Defendants and the
20 State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
21 neither the EPA nor the State of California has commenced or is diligently prosecuting a court
22 action to redress the violations alleged in this complaint. This action’s claim for civil penalties
23 is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. §
24 1319(g).

25 4. This action further seeks to remedy Defendant All Star Auto Wrecking, Inc.’s
26 continuing discharges or releases of lead and lead compounds into sources of drinking water in
27 violation of California Health & Safety Code Section 25249.5 (also referred to as “Proposition
28 65”). Defendant All Star Auto Wrecking, Inc.’s operation of the auto dismantling/scrap metal

1 recycling facility that is the subject of this action has caused, and continues to cause, the
2 discharge of lead and lead compounds to sources of drinking water in violation of Proposition
3 65.

4 5. Lead and lead compounds (the "Proposition 65-Listed Chemicals") are
5 chemicals known to the State of California to cause cancer and reproductive toxicity.

6 6. On or about May 3, 2011, Plaintiff provided notices of Defendant All Star Auto
7 Wrecking, Inc.'s violations of Proposition 65 ("Proposition 65 Notice Letter"), and of its
8 intention to file suit against All Star Auto Wrecking, Inc., to: the Proposition 65 Enforcement
9 Reporting section of the office of the California Attorney General ("California Attorney
10 General"); the District Attorney of each California county containing sources of drinking water
11 impacted by Defendant All Star Auto Wrecking, Inc.'s violations of Proposition 65; and to All
12 Star Auto Wrecking, Inc., as required by California Health & Safety Code Section 25249.5 *et*
13 *seq.* A true and correct copy of CSPA's Proposition 65 Notice Letter is attached hereto as
14 Exhibit B and is incorporated by reference.

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

19 **II. INTRODUCTION**

20 8. This complaint seeks relief for Defendants' discharges of pollutants from an
21 automobile salvage yard facility ("the Facility") owned and/or operated by Defendants All Star
22 Auto Wrecking, Inc. ("All Star") and Joe Cream Sr. The Facility discharges surface water to
23 Rice Creek, which flows into and joins Sour Grass Creek before the combined flows join Burch
24 Creek and ultimately drains into the Sacramento River and the Sacramento-San Joaquin Delta¹,
25 which are navigable waters of the United States. Defendants' discharges of pollutants from the
26

27 ¹ All Star's Notice of Intent to Comply with the general Permit, filed with the RWQCB on May
28 7, 2005, states that the Facility discharges into Sour Creek. Based on the information gather
during its investigation, CSPA is informed and believes that the Facility actually discharges
into Rice Creek, which flows into and joins Sour Creek.

1 Facility are in violation of the Act and the State of California's General Industrial Permit for
2 storm water discharges, State Water Resources Control Board ("State Board") Water Quality
3 Order No. 91-13-DWQ, as amended by Water Quality Order No. 92- 12-DWQ and Water
4 Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System ("NPDES")
5 General Permit No. CAS000001 (hereinafter "General Permit" or "Permit"). Defendants'
6 violations of the filing, monitoring, reporting, discharge and management practice
7 requirements, and other procedural and substantive requirements of the General Permit and the
8 Act are ongoing and continuous.

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

16 **III. PARTIES**

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

26 11. Members of CSPA reside in California and use and enjoy California's numerous
27 rivers for recreation and other activities. Members of CSPA use and enjoy the waters of the
28 Sacramento River, and the Sacramento-San Joaquin Delta, into which Defendants have caused,

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

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

11 13. Plaintiff is informed and believes, and thereupon alleges, that Defendant All Star
12 is a corporation organized under the laws of the State of California, and that Defendant Joe
13 Cream Sr. is the Operator of the Facility. Accordingly, Defendants own and/or operate the
14 Facility.

15 **IV. STATUTORY BACKGROUND**

16 **The Clean Water Act**

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

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

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

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

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

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

26 20. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or
27 prevent pollutants in its storm water discharges through implementation of the Best Available
28 Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and

1 the Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. BAT
2 and BCT include both nonstructural and structural measures. General Permit, Section A(8).

3 21. The EPA has established Benchmark Levels as guidelines for determining
4 whether a facility discharging industrial storm water has implemented the requisite BAT and
5 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
6 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids – 100
7 mg/L; oil & grease – 15.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L; and copper – 0.0636
8 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for
9 specific conductance of 200 μ mhos/cm.

10 22. Dischargers must develop and implement a Storm Water Pollution Prevention
11 Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the BAT and BCT
12 standards. (Section B(3)). The SWPPP must include, among other elements: (1) a narrative
13 description and summary of all industrial activity, potential sources of pollutants and potential
14 pollutants; (2) a site map showing facility boundaries, the storm water conveyance system,
15 associated points of discharge, direction of flow, areas of industrial activities, and areas of
16 actual and potential pollutant contact; (3) a description of storm water management practices,
17 best management practices ("BMPs") and preventive maintenance undertaken to avoid storm
18 water contamination that achieve BAT and BCT; (4) the location where Significant Materials
19 are being shipped, stored, received and handled, as well as the typical quantities of such
20 materials and the frequency with which they are handled; (5) a description of potential pollutant
21 sources including industrial processes, material handling and storage areas, dust and particulate
22 generating activities; (6) a summary of storm water sampling points; (7) a description of
23 individuals and their responsibilities for developing and implementing the SWPPP (Permit,
24 Section A(3)); (8) a description of potential pollutant sources including industrial processes,
25 material handling and storage areas, and dust and particulate generating activities; (9) a
26 description of significant spills and leaks; (10) a list of all non-storm water discharges and their
27 sources, and (11) a description of locations where soil erosion may occur (Section A(6)). The
28 SWPPP must also include an assessment of potential pollutant sources at the Facility and a

1 description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants
2 in storm water discharges and authorized non-storm water discharges, including structural
3 BMPs where non-structural BMPs are not effective (Section A(7), (8)).

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

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

21 25. The General Permit requires dischargers commencing industrial activities before
22 October 1, 1992 to develop and implement an adequate written Monitoring and Reporting
23 Program no later than October 1, 1992. Existing facilities covered under the General Permit
24 must implement all necessary revisions to their monitoring programs no later than August 1,
25 1997.

26 26. The General Permit also requires dischargers to submit yearly "Annual Reports"
27 to the Regional Board. As part of their monitoring program, dischargers must identify all storm
28 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 then 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. Dischargers must also collect and analyze storm water samples from at least two storms per year. Section B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids ("TSS"), specific conductance, and total organic content ("TOC") or oil and grease, certain industry-specific parameters, and toxic chemicals and other pollutants likely to be in the storm water discharged from the facility. Section B(5) and Table D of the General Permit requires dischargers whose industrial activities fall within SIC Code 5015 to analyze their storm water discharge samples for iron, lead, and copper. Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution. The monitoring and reporting program requires dischargers to certify, based upon the annual site inspections, that the facility is in compliance with the General Permit and report any non-compliance, and contains additional requirements as well.

27. 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.

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

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

30. "Navigable waters" means "the waters of the United States." 33 U.S.C. § 1362(7). Waters of the United States include tributaries to waters that are navigable in fact. Waters of the United States also include man-made water bodies that are tributary to waters

1 that are navigable in fact, as well as ephemeral waters that are tributary to waters that are
2 navigable in fact.

3 31. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement
4 actions against any "person," including individuals, corporations, or partnerships, for violations
5 of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C.
6 §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by
7 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of
8 up to \$32,500 per day for violations that occurred between March 15, 2004 and January 12,
9 2009, and an assessment of civil penalties of up to \$37,500 per day for violations occurring
10 after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d),
11 1365 and 40 C.F.R. §§ 19.1 - 19.4.

12 32. The Regional Board has established water quality standards for the Sacramento
13 River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan for the
14 Sacramento River and San Joaquin River Basins, generally referred to as the Basin Plan.

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

18 34. The Basin Plan establishes a standard for electrical conductivity in the Delta of
19 0.7 $\mu\text{mhos/cm}$ from April 1 through August 31 and 1.0 $\mu\text{mhos/cm}$ from September 1 through
20 March 31.

21 35. The Basin Plan provides that "[w]aters shall not contain chemical constituents in
22 concentrations that adversely affect beneficial uses."

23 36. The Basin Plan provides that "[a]t a minimum, water designated for use as
24 domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents
25 in excess of the maximum contaminant levels (MCLs)." The waters of the Feather River, the
26 Sacramento River and the Delta have been designated by the State Board for use as municipal
27 and domestic supply.
28

1 **Proposition 65**

2 37. The People of the State of California have declared in Proposition 65 their right
3 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
4 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

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

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

12 39. Proposition 65 provides that any person "violating or threatening to violate" the
13 statute may be enjoined in a court of competent jurisdiction. California Health & Safety Code
14 Section 25249.7. The phrase "threaten to violate" is defined to mean "to create a condition in
15 which there is a substantial likelihood that a violation will occur." California Health & Safety
16 Code Section 25249.11(e). Violators are liable for civil penalties of "up to \$2,500 per day for
17 each such violation." California Health & Safety Code Section 25249.7.

18 **V. STATEMENT OF FACTS**

19 40. Defendants operate an automobile salvage facility located at 22521 Capay Road
20 in Corning, California (the "Facility"). The Facility discharges surface water directly and
21 indirectly into Rice Creek, which flows into and joins Sour Grass Creek before the combined
22 flows join Burch Creek and ultimately drains into the Sacramento River and the Sacramento-
23 San Joaquin Delta.

24 41. The Facility is classified under Standard Industrial Classification ("SIC") Code
25 5015 ("Automobile Salvage Yard"). The main industrial activities occurring at the Facility
26 involve receiving, dismantling, storing, reclaiming, processing and recycling automotive
27 vehicles and automotive parts. The Facility also accepts vehicles for crushing and subsequent
28 recycling. Other activities at the facility include the use, storage, and maintenance of heavy

1 machinery. Many of these activities occur outside in areas that are exposed to storm water and
2 storm flows due to the lack of overhead coverage, functional berms and other storm water
3 controls. Plaintiff is informed and believes that Defendants' storm water controls, to the extent
4 any exist, fail to achieve BAT and BCT standards.

5 42. The management practices at the Facility are wholly inadequate to prevent the
6 sources of contamination described above from causing the discharge of pollutants to waters of
7 the United States and fail to meet BAT and BCT. The Facility lacks essential structural controls
8 such as grading, berming and roofing to prevent rainfall and storm water flows from coming
9 into contact with these and other sources of contaminants, thereby allowing storm water to flow
10 over and across these materials and become contaminated prior to leaving the Facility. In
11 addition, the Facility lacks structural controls to prevent the discharge of water once
12 contaminated. The Facility also lacks an adequate filtration system to treat water once it is
13 contaminated.

14 43. Vehicle traffic at the Facility tracks dust and particulate matter, increasing the
15 discharges of polluted water and mud into waters of the United States.

16 44. During rain events storm water laden with pollutants flows from the Facility into
17 Rice Creek, which flows into and joins Sour Grass Creek before the combined flows join Burch
18 Creek and ultimately drains into the Sacramento River and the Sacramento-San Joaquin Delta.

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

22 46. The Rice Creek, Sour Grass Creek, Burch Creek, the Sacramento River, and the
23 Sacramento-San Joaquin Delta are waters of the United States.

24 47. Information available to Plaintiff indicates that Defendants have not fulfilled the
25 requirements set forth in the General Permit for discharges from the Facility due to the
26 continued discharge of contaminated storm water.

27 48. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
28 failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

1 49. Information available to Plaintiff indicates the continued existence of unlawful
2 storm water discharges at the Facility.

3 50. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
4 failed to develop and implement adequate monitoring, reporting and sampling programs for the
5 Facility. Plaintiffs are informed and believe, and thereupon allege, that Defendants have not
6 sampled with adequate frequency, have not conducted visual monitoring, and have not
7 analyzed the samples collected for the required pollutant parameters.

8 51. On February 27, 1987, the State of California officially listed the chemical lead
9 under Proposition 65 as a chemical known to cause reproductive toxicity. Lead became subject
10 to Proposition 65's "discharge prohibition" on October 27, 1988. 27 California Code of
11 Regulations ("CCR") §12001, *et seq.*; California Health & Safety Code Section 25249.5, *et*
12 *seq.*

13 52. On October 1, 1992, the State of California officially listed the chemicals lead
14 and lead compounds under Proposition 65 as chemicals known to cause cancer. Lead and lead
15 compounds became subject to the Proposition 65 "discharge prohibition" on June 1, 1994. 27
16 CCR §12001, *et seq.*; California Health & Safety Code Section 25249.6, *et seq.*

17 53. Lead affects almost every organ and system in the human body. The most
18 sensitive is the central nervous system, particularly in children. Lead also damages the kidneys
19 and the immune system. The health effects are the same whether it is breathed or swallowed.
20 Lead is known to cross the placental barrier and cause damage to the developing fetus. Harmful
21 effects include premature births, smaller babies, decreased mental ability in the infant, learning
22 difficulties, hearing loss, tendencies toward violence and reduced growth in young children. In
23 adults, exposure to lead decreases cognitive ability and reaction time, causes weakness in
24 fingers, wrists, or ankles, and decreases memory abilities. Exposure to lead also causes
25 spontaneous abortions and anemia. It also permanently damages the male reproductive system
26 even at very low levels.

27

28

1 54. Defendant All Star Auto Wrecking, Inc. has discharged or released Proposition
2 Proposition 65-Listed Chemicals into sources of drinking water in violation of Proposition 65 since at least
3 May 2, 2008. Such discharges or releases of the Proposition 65-Listed Chemicals are ongoing.

4 55. As a proximate result of acts committed by All Star, as a person in the course of
5 doing business within the meaning of Health & Safety Code Section 25249.11, discharges or
6 releases of the Proposition 65-Listed Chemicals into sources of drinking water in violation of
7 Proposition 65 have occurred and continue to occur since at least May 2, 2008.

8 56. Defendant All Star Auto Wrecking, Inc. knew at all times relevant to this action
9 that the acts and omissions causing the discharges or releases of the Proposition 65-Listed
10 Chemicals were occurring.

11 57. Defendant All Star Auto Wrecking, Inc.'s discharges or releases of the
12 Proposition 65-Listed Chemicals have caused, are causing and will continue to cause a
13 significant amount of each of the Proposition 65-Listed Chemicals to be discharged or released
14 to sources of drinking water within the meaning of California Health & Safety Code Section
15 25249.9(b)(1).

16 58. Plaintiff is informed and believes, and thereupon alleges, that all of the
17 violations alleged in this Complaint are ongoing and continuing.

18 **VI. CLAIMS FOR RELIEF**

19 **FIRST CAUSE OF ACTION**

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

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

25 60. Discharge Prohibition A(2) of the General Permit requires that storm water
26 discharges and authorized non-storm water discharges shall not cause or threaten to cause
27 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
28 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

1 to a violation of any water quality standards contained in a Statewide Water Quality Control
2 Plan or the applicable Regional Board's Basin Plan.

3 61. Plaintiff is informed and believes, and thereupon alleges, that since at least May
4 16, 2005, Defendants have been discharging polluted storm water from the Facility into Rice
5 Creek, Sour Grass Creek, Burch Creek, the Sacramento River, and the Sacramento-San Joaquin
6 Delta in violation of the General Permit.

7 62. During every significant rain event, storm water flowing over and through
8 materials at the Facility becomes contaminated with pollutants, flowing untreated from the
9 Facility into Rice Creek, Sour Grass Creek, Burch Creek, the Sacramento River, and the
10 Sacramento-San Joaquin Delta.

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

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

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

21 66. Plaintiff is informed and believes, and thereupon alleges, that every day since
22 May 16, 2005, Defendants have discharged and continue to discharge polluted storm water
23 from the Facility in violation of the General Permit. Every day Defendants have discharged and
24 continue to discharge polluted storm water from the Facility in violation of the General Permit
25 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
26 violations are ongoing and continuous.

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

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

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

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

69. Defendants have failed to develop and implement an adequate SWPPP for the Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials, including waste materials, without appropriate best management practices; the continued exposure of significant quantities of industrial material to storm water flows; 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 other applicable water quality standards.

70. Defendants have further failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring as required by the General Permit.

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

72. Defendants have been in violation of the SWPPP requirement every day since May 16, 2005. Defendants continue to be in violation of the Act each day that they fail to develop and fully implement an adequate SWPPP for the Facility.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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THIRD CAUSE OF ACTION

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

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

74. 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.

75. Defendants have failed to implement BAT and BCT at the Facility for its discharges of total suspended solids, lead, zinc, copper, and unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

76. Each day since May 16, 2005 that Defendants have failed to develop and implement BAT and BCT 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).

77. Defendants have been in violation of the BAT and BCT requirements every day since at least May 16, 2005. Defendants continue to be in violation of the BAT and BCT requirements each day that they fail to develop and fully implement an adequate BAT and BCT for the Facility.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

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

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

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

SIXTH CAUSE OF ACTION

**Discharges of Proposition 65-Listed Chemicals
in Violation of the "Discharge Prohibition" in Proposition 65
(Violations of Cal. Health & Safety Code § 25249.5, *et seq.*)**

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

87. On or about May 3, 2010, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendant All Star Auto Wrecking, Inc. This notice ("Proposition 65 Notice Letter") was issued pursuant to, and in compliance with, the requirements of California Health & Safety Code Section 25249.7(d) and the statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violator. The Proposition 65 Notice Letter given included, *inter alia*, the following information: the name, address, and telephone number of the noticing individual; the name of the alleged violator; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations, including the chemicals involved, a general identification of the discharge or release and of the sources of drinking water in to which the discharges are alleged to have occurred, to be occurring or to be likely to occur. Defendant All Star Auto Wrecking, Inc. and the California Attorney General were provided copies of the Proposition 65 Notice Letter by Certified Mail. Additionally, Defendant All Star Auto Wrecking, Inc. was provided a copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of CCR §25903.

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

89. By committing the acts alleged in this Complaint, Defendant All Star Auto Wrecking, Inc., at all times relevant to this action and continuing throughout the present, has violated California Health & Safety Code Section 25249.5 by, in the course of doing business,

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

4 90. By the above-described acts, Defendant All Star, Inc. is liable, pursuant to
5 California Health & Safety Code Section 25249.7(b), for civil penalties of up to \$2,500 per day
6 for each violative discharge or release of Proposition 65-Listed Chemicals.

7 91. An action for injunctive relief under Proposition 65 is specifically authorized by
8 California Health & Safety Code Section 25249.7(a).

9 92. Defendant All Star's continuing commission of the acts alleged above will
10 irreparably harm the citizens of the State of California, a harm for which they have no plain,
11 speedy, or adequate remedy at law.

12 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13 **VII. RELIEF REQUESTED**

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

15 a. Declare Defendants to have violated and to be in violation of the Clean Water
16 Act and Proposition 65 as alleged herein;

17 b. Enjoin Defendants from discharging pollutants from the Facility and to the
18 surface waters surrounding and downstream from the Facility;

19 c. Enjoin Defendants from further violating the substantive and procedural
20 requirements of the General Permit and Proposition 65;

21 d. Order Defendants to immediately implement storm water pollution control and
22 treatment technologies and measures that are equivalent to BAT or BCT and prevent pollutants
23 in the Facility's storm water from contributing to violations of any water quality standards;

24 e. Order Defendants to pay civil penalties of \$32,500 per day per violation for all
25 violations of the Clean Water Act occurring after March 15, 2004, and \$37,500 per day per
26 violation for all violations of the Clean Water Act occurring after January 12, 2009, for each
27 violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d)
28 and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4 (pp. 200-202) (Dec. 31, 1996);

1 f. Order Defendant All Star Auto Wrecking, Inc., to pay \$2,500 per day for each
2 violative discharge or release of a Proposition 65-Listed Chemical;

3 g. Order Defendants to take appropriate actions to restore the quality of navigable
4 waters and sources of drinking water impaired by their activities;

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

7 i. Award any such other and further relief as this Court may deem appropriate.
8

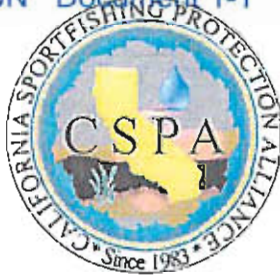
9 Dated: July 5, 2011

10 Respectfully submitted,

11 **JACKSON & TUERCK**

12
13 By: s/ Robert J. Tuerck
14 Robert J. Tuerck
15 Attorneys for Plaintiff
16 CALIFORNIA SPORTFISHING
17 PROTECTION ALLIANCE
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EXHIBIT A



May 2, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

All Star Auto Wrecking, Inc.
1130 Estate Circle
Reno, NV 89511

All Star Auto Wrecking, Inc.
22521 Capay Road
Corning, CA 96021

Mr. Joe Cream, Sr.
All Star Auto Wrecking, Inc.
22521 Capay Road
Corning, CA 96021

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

Dear Sir:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the All Star Auto Wrecking facility located at 22521 Capay Road, Corning, CA 96021 ("the Facility"). The Facility is owned and operated by All Star Auto Wrecking, Inc. and Mr. Joe Cream, Sr., collectively referred to herein as "All Star". The WDID identification number for the Facility is 5R52I019512. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento River, its tributaries, and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the All Star facility.

This letter addresses All Star's unlawful discharges of pollutants from the Facility directly and indirectly into Rice Creek, which flows into and joins Sour Grass Creek before the combined flows join Burch Creek and ultimately drains into the Sacramento River and the Sacramento-San Joaquin Delta.¹ This letter addresses the ongoing

¹ All Star's Notice of Intent to Comply with the general Permit, filed with the RWQCB on May 7, 2005, states that the Facility discharges into Sour Creek. Based on the information gathered during its investigation,

Notice of Violation and Intent To File Suit

May 2, 2011

Page 2 of 16

violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General Permit").

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

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

I. Background.

The All Star Auto Wrecking facility is classified as an automobile salvage yard under Standard Industrial Classification ("SIC") code 5015. The Facility receives, dismantles, stores, reclaims, processes and recycles automotive vehicles and automotive parts. The Facility also accepts vehicles for crushing and subsequent recycling. Other activities at the facility include the use, storage, and maintenance of heavy machinery. The Facility is a member of the NEST group monitoring plan. The Facility collects and discharges storm water from its industrial site through at least one discharge point to storm water drains which drain to Rice Creek, and ultimately, to the Delta. On May 7, 2005, All Star submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit.

Based on its review of available public documents, CSPA is informed and believes that All Star has failed to comply the terms of the General Permit by: (1) discharging storm water containing pollutants; (2) failing to implement an adequate monitoring and reporting plan; (3) failing to implement best management practices ("BMPs") using best available technology ("BAT") and best conventional technology ("BCT"); (4) failing to develop and implement an adequate Storm Water Pollution Prevention Plan; (5) failing to address discharges contributing to exceedances of Water Quality Standards; and (6) failing to file timely, true and correct annual reports with the

CSPA is informed and believes that the Facility actually discharges into Rice Creek, which flows into and joins Sour Creek.

Notice of Violation and Intent To File Suit
May 2, 2011
Page 3 of 16

Regional Water Quality Control Board. It is CSPA's intention, through this letter, to bring these violations to All Star's attention so that they may be resolved in a comprehensive and efficient manner.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L) 0.01 mg/L for arsenic, 0.1 mg/L for copper, 0.3 mg/L for iron, and 0.1 mg/L for zinc. *Id.* at III-4.00. The Basin Plan states that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L." *Id.* at III-3.00. The Basin Plan also provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-5.00

The Basin Plan also provides that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs)." *Id.*, at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; and iron – 0.3 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1.0 mg/L (primary) and 0.2 mg/L (secondary); arsenic – 0.01 mg/L (primary); cadmium – 0.005 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; mercury 0.002 mg/L (primary); selenium – 0.05 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

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

Notice of Violation and Intent To File Suit
May 2, 2011
Page 4 of 16

(maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

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

The General Industrial Storm Water Permit also incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by All Star: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; zinc – 0.117 mg/L; and copper – 0.0636 mg/L. The State Water Quality Control Board also proposed adding a benchmark level for specific conductance of 200 µmho/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

All Star 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 Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water 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 Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

The General Permit further prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional

Notice of Violation and Intent To File Suit
May 2, 2011
Page 5 of 16

pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD") and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

Based on its review of available public documents, CSPA is informed and believes that All Star failed to comply with the requirements of the General Permit and has continued to operate in violation of the General Permit. All Star's ongoing violations are discussed further below.

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

All Star has discharged, and continues to discharge, stormwater with unacceptable levels of total suspended solids, lead, zinc, and copper in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto. All Star's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

1. Confirmed Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/21/2010	Unknown	NW Corner of the Facility	TSS	140 mg/L	100 mg/L

Notice of Violation and Intent To File Suit
May 2, 2011
Page 6 of 16

2. Confirmed Discharge of Storm Water Containing Lead (Pb) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/21/2010	Unknown	NW Corner of the Facility	Pb	0.08 mg/L	0.0816 mg/L

4. Confirmed Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/21/2010	Unknown	NW Corner of the Facility	Zn	0.23 mg/L	0.117 mg/L

5. Confirmed Discharge of Storm Water Containing Copper (Cu) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/21/2010	Unknown	NW Corner of the Facility	Cu	0.091 mg/L	0.0636 mg/L

CSPA's investigation, including its review of All Star's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values indicates that All Star has not implemented BAT and BCT at the Facility for its discharges of total suspended solids (TSS), lead (Pb), zinc (Zn), copper (Cu), and other pollutants. These discharges are particularly troublesome in light of the fact that lead is listed as a chemical known to the State of California to cause cancer, or birth defects or other reproductive harm under the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65").

All Star was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations, but instead All Star is discharging polluted storm water associated with its industrial operations in violation of the General Permit without having implemented BAT and BCT. CSPA is informed and believes that All Star has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least May 2, 2006. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since May 2, 2006, and that

Notice of Violation and Intent To File Suit
May 2, 2011
Page 7 of 16

will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. The rain data attached hereto and incorporated herein as Attachment A, sets forth each of the specific rain dates on which CSPA alleges that All Star has discharged storm water containing impermissible levels of total suspended solids (TSS), lead (Pb), zinc (Zn), copper (Cu), and other pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, All Star is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since May 2, 2006.

B. All Star Has Failed to Implement an Adequate Monitoring & Reporting Plan.

CSPA is informed and believes that available documents demonstrate All Star's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, All Star is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since May 2, 2006.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities designated under SIC 5015, such as All Star, are also required to sample for iron, lead, and aluminum. In addition, section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities."

Notice of Violation and Intent To File Suit
May 2, 2011
Page 8 of 16

Based on its investigation, CSPA is informed and believes that All Star has failed to develop and implement an adequate Monitoring & Reporting Plan. First, All Star has failed to analyze its storm water for all of the pollutants required for facilities classified under SIC 5015. All Star has also failed to analyze its storm water for all of the pollutants likely to be present in significant quantities in its storm water discharge. Second, All Star has failed to conduct monthly wet season visual inspections as required by the General Permit. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, All Star is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since May 2, 2006. These violations are set forth in greater detail below.

1. All Star Has Failed to Analyze Its Storm Water for All Pollutants Likely to Be Present in Significant Quantities in Its Storm Water Discharge.

Section B(5)(c)(i) requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities designated under SIC 5015 such as All Star 5015 are also required to sample for iron, lead, and aluminum. Based on a review of All Star's Annual Reports submitted to the Regional Board, all Star has failed to test storm water samples for all of the required constituents. Specifically, All Star has not analyzed any of its storm water samples for iron or aluminum in the past five years.

In addition to the constituents that Section B(5)(c)(i) requires dischargers to test for, Section B(5)(c)(ii) of the General Permit also requires dischargers to analyze storm water samples for all "[t]oxic chemicals and other pollutants that are *likely to be present* in storm water discharges in significant quantities." Other pollutants likely to be present in the Facility's storm water discharges include: benzene, toluene, antimony, arsenic, boron, beryllium, cadmium, chromium, cobalt, manganese, mercury, molybdenum, nickel, selenium, silver, thallium and vanadium. All Star's failure to monitor these pollutants extends back to at least May 2, 2006. All Star's failure to monitor these other pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

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

Notice of Violation and Intent To File Suit
May 2, 2011
Page 9 of 16

2. All Star is Subject to Penalties for Its Failure to Conduct Monthly Wet Season Visual Inspections.

Sections B(3), B(4) and B(7) of the General Permit require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. According to Part G of each of the Annual Reports filed by All Star over the past five years, All Star has failed to conduct monthly wet season visual inspections as required by the permit. All Star's repeated failures constitute separate and ongoing violations of the General Permit and the Clean Water Act.

C. All Star Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that All Star has not implemented BAT and BCT at the Facility for its discharges of total suspended solids, lead, zinc, copper and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

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

All Star was required to have implemented BAT and BCT by no later than October 1, 1992, or the start of its operations. Therefore, All Star has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that All Star fails to implement BAT and BCT. All Star is subject to penalties for violations of the Order and the Act occurring since May 2, 2006.

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

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop,

Notice of Violation and Intent To File Suit
May 2, 2011
Page 10 of 16

implement, and update an adequate Storm Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992, or the start of its operations. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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

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

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

Notice of Violation and Intent To File Suit
May 2, 2011
Page 11 of 16

All Star is subject to penalties for violations of the Order and the Act occurring since May, 2, 2006.

E. All Star Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

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

As indicated above, All Star is discharging elevated levels of total suspended solids, lead, zinc, copper and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, All Star was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. All Star has failed to do so.

Based on CSPA's review of available documents, All Star was aware of high levels of these pollutants prior to May 2, 2006. Nevertheless, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). All Star has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since May 2, 2006, and will continue to be in violation every day that All Star fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. All Star is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since May 2, 2006.

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

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an

Notice of Violation and Intent To File Suit
May 2, 2011
Page 12 of 16

appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that All Star has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, All Star has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, All Star has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time All Star submitted an incomplete, untimely, or incorrect annual report, that falsely certified compliance with the Act in the past five years. All Star's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. All Star is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since May 2, 2006.

III. Persons Responsible for the Violations.

CSPA puts All Star Auto Wrecking, Inc. and Mr. Joe Cream, Sr. on notice that they are the persons or parties responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts All Star on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

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

V. Counsel.

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

Robert J. Tuerck
JACKSON & TUERCK
429 Main Street, Suite C
P.O. Box 148
Quincy, CA 95971
Tel: (530) 283-0406
Fax: (530) 283-0416
E-mail: Bob@jacksontuerck.com
(Counsel for Service)

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

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects All Star Auto Wrecking, Inc. and Mr. Joe Cream, Sr. to civil penalties of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. 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 All Star and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", with a stylized flourish at the end.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

**All Star Auto Wrecking, Inc.
1130 Estate Circle
Reno, NV 8951**

**All Star Auto Wrecking, Inc.
22521 Capay Road
Corning, CA 96021**

**Mr. Joe Cream, Sr.
All Star Auto Wrecking, Inc.
22521 Capay Road
Corning, CA 96021**

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

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

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

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

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

ATTACHMENT A
Notice of Intent to File Suit
All Star Auto Wrecking, Inc.
Significant Rain Events, May 2, 2006 – May 2, 2011

May 19, 2006	January 8, 2008	March 4, 2009
May 21, 2006	January 9, 2008	April 9, 2009
November 2, 2006	January 11, 2008	May 1, 2009
November 10, 2006	January 21, 2008	May 2, 2009
November 26, 2006	January 22, 2008	May 4, 2009
December 8, 2006	January 23, 2008	June 3, 2009
December 9, 2006	January 24, 2008	June 11, 2009
December 11, 2006	January 25, 2008	October 12, 2009
December 12, 2006	January 26, 2008	October 13, 2009
December 21, 2006	January 31, 2008	October 19, 2009
December 26, 2006	February 2, 2008	November 17, 2009
February 7, 2007	February 22, 2008	November 20, 2009
February 8, 2007	February 23, 2008	December 10, 2009
February 9, 2007	February 24, 2008	December 11, 2009
February 10, 2007	October 3, 2008	December 12, 2009
February 12, 2007	October 30, 2008	December 15, 2009
February 21, 2007	October 31, 2008	December 21, 2009
February 24, 2007	November 1, 2008	December 26, 2009
April 11, 2007	November 3, 2008	January 11, 2010
April 13, 2007	December 14, 2008	January 16, 2010
April 14, 2007	December 15, 2008	January 17, 2010
April 21, 2007	December 23, 2008	January 18, 2010
July 17, 2007	December 24, 2008	January 19, 2010
July 18, 2007	January 21, 2009	January 20, 2010
September 19, 2007	January 22, 2009	January 21, 2010
September 22, 2007	January 25, 2009	January 24, 2010
October 9, 2007	February 5, 2009	January 25, 2010
October 19, 2007	February 10, 2009	February 1, 2010
November 10, 2007	February 14, 2009	February 4, 2010
December 3, 2007	February 15, 2009	February 5, 2010
December 6, 2007	February 16, 2009	February 6, 2010
December 17, 2007	February 17, 2009	February 8, 2010
December 18, 2007	February 21, 2009	February 23, 2010
December 19, 2007	February 22, 2009	February 26, 2010
December 27, 2007	February 23, 2009	March 2, 2010
December 28, 2007	February 28, 2009	March 3, 2010
January 3, 2008	March 1, 2009	March 12, 2010
January 4, 2008	March 2, 2009	April 2, 2010

ATTACHMENT A

Notice of Intent to File Suit

All Star Auto Wrecking, Inc.

Significant Rain Events, May 2, 2006 – May 2, 2011

April 4, 2010	November 20, 2010	February 14, 2011
April 11, 2010	November 26, 2010	February 15, 2011
April 12, 2010	December 2, 2010	February 16, 2011
April 19, 2010	December 5, 2010	February 17, 2011
April 20, 2010	December 8, 2010	February 18, 2011
April 28, 2010	December 13, 2010	February 24, 2011
May 10, 2010	December 17, 2010	March 1, 2011
May 27, 2010	December 18, 2010	March 5, 2011
June 6, 2010	December 19, 2010	March 6, 2011
September 8, 2010	December 21, 2010	March 13, 2011
October 5, 2010	December 25, 2010	March 15, 2011
October 22, 2010	December 28, 2010	March 17, 2011
October 23, 2010	December 31, 2010	March 18, 2011
October 24, 2010	January 1, 2011	March 19, 2011
October 27, 2010	January 11, 2011	March 22, 2011
October 28, 2010	January 13, 2011	March 24, 2011
October 29, 2010	January 29, 2011	March 25, 2011
November 6, 2010	February 13, 2011	

EXHIBIT B

JACKSON & TUERCK
Attorneys at Law
429 Main Street
P.O. Box 148
Quincy, California 95971
tel. (530) 283-0406 fax (530) 283-0416

May 3, 2011

(See attached Certificate of Service)

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

Dear Public Enforcement Agencies and Mr. Cream:

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

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

The name of the violator covered by this notice is ALL STAR AUTO WRECKING, INC. (hereinafter referred to as "All Star"). These violations involve the discharge of lead and lead compounds. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by All Star from the facility located at 22521 Capay Road, in Corning, California ("the Facility") to Rice Creek, which ultimately flows to the Sacramento River. The Sacramento River is designated as a source of drinking water in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the "Basin Plan."

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at approximately 2006. As part of its public interest mission, and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation.

CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Robert J. Tuerck
Jackson & Tuerck
429 Main Street, Suite C
P.O. Box 148
Quincy, California 95971
Tel. (530) 283-0406
Fax. (530) 283-0416
Bob@jacksontuerck.com

Very Truly Yours,



Robert J. Tuerck
JACKSON & TUERCK
Attorneys for Plaintiff
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 429 Main Street, Suite C, Quincy, California 95971.

On May 2, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office for delivery by Certified Mail:

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

Mr. Joe Cream, Sr.
All Star Auto Wrecking, Inc.
22521 Capay Road
Corning, CA 96021

All Star Auto Wrecking, Inc.
22521 Capay Road
Corning, CA 96021

On May 3, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.***; on the following parties by placing a true and correct copy thereof in a sealed envelope, and depositing it in a U.S. Postal Service Office for delivery by First Class Mail:

Gregg Cohen
Tehama County District Attorney
444 Oak Street, Room 1.
Red Bluff, CA 96080

Executed on May 3, 2011, in Quincy, California.


Robert J. Tuerck



Proposition 65 in Plain Language

Office of Environmental Health Hazard Assessment
California Environmental Protection Agency

What is Proposition 65?

In 1986, California voters approved an initiative to address their growing concerns about exposure to toxic chemicals. That initiative became the Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name of Proposition 65.

Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, has grown to include over 800 chemicals since it was first published in 1987.

Proposition 65 requires businesses to notify Californians about significant amounts of chemicals in the products they purchase, in their homes or workplaces, or that are released into the environment. By providing this information, Proposition 65 enables Californians to make informed decisions about protecting themselves from exposure to these chemicals. Proposition 65 also prohibits California businesses from knowingly discharging significant amounts of listed chemicals into sources of drinking water.

The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program. OEHHA, which is part of the California Environmental Protection Agency (Cal/EPA), also evaluates all currently available scientific information on substances considered for placement on the Proposition 65 list.

What types of chemicals are on the Proposition 65 list?

The list contains a wide range of naturally occurring and synthetic chemicals that are known to cause cancer or birth defects or other reproductive harm. These chemicals include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Listed chemicals may also be used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust.

How is a chemical added to the list?

There are four principal ways for a chemical to be added to the Proposition 65 list. A chemical can be listed if either of two independent committees of scientists and health professionals finds that the chemical has been clearly shown to cause cancer or birth defects or other reproductive harm. These two committees—the Carcinogen Identification Committee (CIC) and the Developmental and Reproductive Toxicant (DART) Identification Committee—are part of OEHHA's Science Advisory Board. The

committee members are appointed by the Governor and are designated as the "State's Qualified Experts" for evaluating chemicals under Proposition 65. When determining whether a chemical should be placed on the list, the committees base their decisions on the most current scientific information available. OEHHA staff scientists compile all relevant scientific evidence on various chemicals for the committees to review. The committees also consider comments from the public before making their decisions.

A second way for a chemical to be listed is if an organization designated as an "authoritative body" by the CIC or DART Identification Committee has identified it as causing cancer or birth defects or other reproductive harm. The following organizations have been designated as authoritative bodies: the U.S. Environmental Protection Agency, U.S. Food and Drug Administration (U.S. FDA), National Institute for Occupational Safety and Health, National Toxicology Program, and International Agency for Research on Cancer.

A third way for a chemical to be listed is if an agency of the state or federal government requires that it be labeled or identified as causing cancer or birth defects or other reproductive harm. Most chemicals listed in this manner are prescription drugs that are required by the U.S. FDA to contain warnings relating to cancer or birth defects or other reproductive harm.

A fourth way requires the listing of chemicals meeting certain scientific criteria and identified in the California Labor Code as causing cancer or birth defects or other reproductive harm. This method established the initial chemical list following voter approval of Proposition 65 in 1986 and continues to be used as a basis for listing as appropriate.

What requirements does Proposition 65 place on companies doing business in California?

Businesses are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warning requirements.

Proposition 65 also prohibits companies that do business within California from knowingly discharging listed chemicals into sources of drinking water. Once a chemical is listed, businesses have 20 months to comply with the discharge prohibition.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm. Health risks are explained in more detail below.

What does a warning mean?

If a warning is placed on a product label or posted or distributed at the workplace, a business, or in rental housing, the business issuing the warning is aware or believes that one or more listed chemicals is present. By law, a warning must be given for listed chemicals unless exposure is low enough to pose no significant risk of cancer or is significantly below levels observed to cause birth defects or other reproductive harm.

For chemicals that are listed as causing cancer, the "no significant risk level" is defined as the level of exposure that would result in not more than one excess case of cancer in 100,000 individuals exposed to the chemical over a 70-year lifetime. In other words, a person exposed to the chemical at the "no significant risk level" for 70 years would not have more than a "one in 100,000" chance of developing cancer as a result of that exposure.

For chemicals that are listed as causing birth defects or reproductive harm, the "no observable effect level" is determined by identifying the level of exposure that has been shown to not pose any harm to humans or laboratory animals. Proposition 65 then requires this "no observable effect level" to be divided by 1,000 in order to provide an ample margin of safety. Businesses subject to Proposition 65 are required to provide a warning if they cause exposures to chemicals listed as causing birth defects or reproductive harm that exceed $1/1000^{\text{th}}$ of the "no observable effect level."

To further assist businesses, OEHHA develops numerical guidance levels, known as "safe harbor numbers" (described below) for determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited. However, a business may choose to provide a warning simply based on its knowledge, or assumption, about the presence of a listed chemical without attempting to evaluate the levels of exposure. Because businesses do not file reports with OEHHA regarding what warnings they have issued and why, OEHHA is not able to provide further information about any particular warning. The business issuing the warning should be contacted for specific information, such as what chemicals are present, and at what levels, as well as how exposure to them may occur.

What are safe harbor numbers?

As stated above, to guide businesses in determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited, OEHHA has developed safe harbor numbers. A business has "safe harbor" from Proposition 65 warning requirements or discharge prohibitions if exposure to a chemical occurs at or below these levels. These safe harbor numbers consist of no significant risk levels for chemicals listed as causing cancer and maximum allowable dose levels for chemicals listed as causing birth defects or other reproductive harm. OEHHA has established safe harbor numbers for nearly 300 chemicals to date and continues to develop safe harbor numbers for listed chemicals.

Who enforces Proposition 65?

The California Attorney General's Office enforces Proposition 65. Any district attorney or city attorney (for cities whose population exceeds 750,000) may also enforce

Proposition 65. In addition, any individual acting in the public interest may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law. Lawsuits have been filed by the Attorney General's Office, district attorneys, consumer advocacy groups, and private citizens and law firms. Penalties for violating Proposition 65 by failing to provide notices can be as high as \$2,500 per violation per day.

How is Proposition 65 meeting its goal of reducing exposure to hazardous chemicals in California?

Since it was passed in 1986, Proposition 65 has provided Californians with information they can use to reduce their exposures to listed chemicals that may not have been adequately controlled under other State or federal laws. This law has also increased public awareness about the adverse effects of exposures to listed chemicals. For example, Proposition 65 has resulted in greater awareness of the dangers of alcoholic beverage consumption during pregnancy. Alcohol consumption warnings are perhaps the most visible health warnings issued as a result of Proposition 65.

Proposition 65's warning requirement has provided an incentive for manufacturers to remove listed chemicals from their products. For example, trichloroethylene, which causes cancer, is no longer used in most correction fluids; reformulated paint strippers do not contain the carcinogen methylene chloride; and toluene, which causes birth defects or other reproductive harm, has been removed from many nail care products. In addition, a Proposition 65 enforcement action prompted manufacturers to decrease the lead content in ceramic tableware and wineries to eliminate the use of lead-containing foil caps on wine bottles.

Proposition 65 has also succeeded in spurring significant reductions in California of air emissions of listed chemicals, such as ethylene oxide, hexavalent chromium, and chloroform.

Although Proposition 65 has benefited Californians, it has come at a cost for companies doing business in the state. They have incurred expenses to test products, develop alternatives to listed chemicals, reduce discharges, provide warnings, and otherwise comply with this law. Recognizing that compliance with Proposition 65 comes at a price, OEHHA is working to make the law's regulatory requirements as clear as possible and ensure that chemicals are listed in accordance with rigorous science in an open public process.

Where can I get more information on Proposition 65?

For general information on the Proposition 65 list of chemicals, you may contact OEHHA's Proposition 65 program at (916) 445-6900, or visit <http://www.oehha.ca.gov/prop65.html>. For enforcement information, contact the California Attorney General's Office at (510) 622-2160, or visit <http://ag.ca.gov/prop65/>

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

California Sportfishing Protection Alliance

(b) County of Residence of First Listed Plaintiff San Joaquin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert J. Tuerck (Jackson & Tuerck, 429 Main Street, Ste. C, P.O. Box 148, Quincy, CA 95971, 530-283-0406)

DEFENDANTS

All Star Auto Recycling; Joe Cream, Sr.

County of Residence of First Listed Defendant Butte
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13951) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tons to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Federal Water Pollution Control Act, 33 U.S.C. sections 1251 et seq. and 1365.

Brief description of cause:

Citizen action to enforce requirements of a federal storm water discharge permit.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

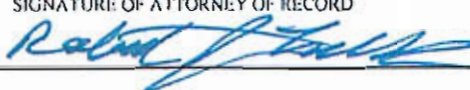
JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/05/2011



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____