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12 Attorneys for Plaintiff
 13 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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

16 CALIFORNIA SPORTFISHING
 17 PROTECTION ALLIANCE, a non-profit
 18 corporation,

19 Plaintiff,

20 vs.

21 SPECIALIZED PARTS PLANET, INC.,
 22 a California corporation, KERMIT
 23 GILMORE, an individual, and GALEN
 24 BAKER, an individual.

25 Defendants.

Case No.

COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF AND CIVIL
 PENALTIES

(Federal Water Pollution Control Act,
 33 U.S.C. §§ 1251 to 1387)

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

28 **I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act” or “the Act”) against Specialized Parts Planet, Inc., Mr. Kermit Gilmore and Mr. Galen Baker (hereafter “Defendants”). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United

1 States). The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue
2 declaratory relief in case of actual controversy and further necessary relief based on such a
3 declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d),
4 1365(a) (civil penalties).

5 2. On or about August 5, 2011, Plaintiff provided notices of Specialized Parts
6 Planet, Inc., Mr. Kermit Gilmore and Mr. Galen Baker’s violations of the Act (“CWA Notice
7 Letters”), and of its intention to file suit against Defendants Specialized Parts Planet, Inc.,
8 Mr. Kermit Gilmore and Mr. Galen Baker, to the Administrator of the United States
9 Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
10 Executive Director of the State Water Resources Control Board (“State Board”); the
11 Executive Officer of the Regional Water Quality Control Board, Central Valley Region
12 (“Regional Board”); and to Defendants Specialized Parts Planet, Inc., Mr. Kermit Gilmore
13 and Mr. Galen Baker, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). True and correct
14 copies of CSPA’s CWA Notice Letters are attached hereto as Exhibits A, B, C, D and E,
15 respectively, and are incorporated by reference.

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

23 4. Venue is proper in the Eastern District of California pursuant to Section
24 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are
25 located within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is
26 proper in Sacramento, California because the sources of the violations are located within
27 Sacramento County.

1 **II. INTRODUCTION**

2 5. This Complaint seeks relief for Defendants' discharges of pollutants from
3 five automobile salvage facilities owned and/or operated by Defendants.

4 6. The first of these five facilities is an approximately one-acre automobile
5 dismantling and recycling facility ("Facility 1") owned and/or operated by Defendants
6 Specialized Parts Planet, Inc., Mr. Kermit Gilmore and Mr. Galen Baker. Facility 1 is
7 located at 11315 Dismantle Court #2 in Rancho Cordova, California. Defendants are doing
8 business as SPP British at Facility 1. Facility 1 discharges surface water into the City of
9 Rancho Cordova's storm water drainage system, which then discharges storm water from
10 Facility 1 into an unnamed tributary of Morrison Creek, which then flows into Morrison
11 Creek, which flows to the Sacramento River and the Sacramento-San Joaquin Delta.

12 7. The second of these five facilities is an approximately 1.16-acre automobile
13 dismantling and recycling facility ("Facility 2") owned and/or operated by Defendants
14 Specialized Parts Planet, Inc., Mr. Kermit Gilmore and Mr. Galen Baker. Facility 2 is
15 located at 3450 Recycle Road in Rancho Cordova, California. Defendants are doing
16 business as SPP Ford at Facility 2. Facility 2 discharges surface water into the City of
17 Rancho Cordova's storm water drainage system, which then discharges storm water from
18 Facility 2 into an unnamed tributary of Morrison Creek, which then flows into Morrison
19 Creek, which flows to the Sacramento River and the Sacramento-San Joaquin Delta.

20 8. The third of these five facilities is an approximately seven-acre automobile
21 dismantling and recycling facility ("Facility 3") owned and/or operated by Defendants
22 Specialized Parts Planet, Inc., Mr. Kermit Gilmore and Mr. Galen Baker. Facility 3 is
23 located at 11355 Dismantle Court in Rancho Cordova, California. Defendants are doing
24 business as SPP Rancho CPDJ at Facility 3. Facility 3 discharges surface water into the City
25 of Rancho Cordova's storm water drainage system, which then discharges storm water from
26 Facility 3 into an unnamed tributary of Morrison Creek, which then flows into Morrison
27 Creek, which flows to the Sacramento River and the Sacramento-San Joaquin Delta.

28 9. The fourth of these five facilities is an approximately four-acre automobile

1 dismantling and recycling facility (“Facility 4”) owned and/or operated by Defendants
2 Specialized Parts Planet, Inc., Mr. Kermit Gilmore and Mr. Galen Baker. Facility 4 is
3 located at 3486 Recycle Road in Rancho Cordova, California. Defendants are doing
4 business as SPP Rancho Recycling at Facility 4. Facility 4 discharges surface water into the
5 City of Rancho Cordova’s storm water drainage system, which then discharges storm water
6 from Facility 4 into an unnamed tributary of Morrison Creek, which then flows into
7 Morrison Creek, which flows to the Sacramento River and the Sacramento-San Joaquin
8 Delta.

9 10. The fifth of these five facilities is an approximately two-acre automobile
10 dismantling and recycling facility (“Facility 5”) owned and/or operated by Defendants
11 Specialized Parts Planet, Inc., Mr. Kermit Gilmore and Mr. Galen Baker. Facility 5 is
12 located at 11337 Dismantle Court in Rancho Cordova, California. Defendants are doing
13 business as SPP TAP Recycling at Facility 5. Facility 5 discharges surface water into the
14 City of Rancho Cordova’s storm water drainage system, which then discharges storm water
15 from Facility 5 into an unnamed tributary of Morrison Creek, which then flows into
16 Morrison Creek, which flows to the Sacramento River and the Sacramento-San Joaquin
17 Delta.

18 11. Facility 1, Facility 2, Facility 3, Facility 4 and Facility 5 shall hereafter
19 collectively be referred to as “the Facilities” unless otherwise noted.

20 12. Defendants’ discharges of pollutants from the Facilities are in violation of the
21 Act and the State of California's General Industrial Permit for storm water discharges, State
22 Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as
23 amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-
24 DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit No.
25 CAS000001 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing,
26 monitoring, reporting, discharge and management practice requirements, and other
27 procedural and substantive requirements of the General Permit and the Act are ongoing and
28 continuous.

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

8 14. Defendants' discharges of pollutants from the Facilities are in violation of the
9 Act and the State of California's General Industrial Permit for storm water discharges, State
10 Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as
11 amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-
12 DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit No.
13 CAS000001 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing,
14 monitoring, reporting, discharge and management practice requirements, and other
15 procedural and substantive requirements of the General Permit and the Act are ongoing and
16 continuous.

17 **III. PARTIES**

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

27 16. Members of CSPA reside in California and use and enjoy California's
28 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the

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

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

13 18. Plaintiff is informed and believes, and thereupon alleges that Defendant
14 Specialized Parts Planet, Inc. is a corporation organized under the laws of the State of
15 California, and that Defendant Specialized Parts Planet, Inc. owns and/operates the Facilities.

16 19. Plaintiff is informed and believes, and thereupon alleges that Defendant
17 Kermit Gilmore is the Chief Financial Officer and/or Controller of Specialized Parts Planet,
18 Inc. and that in this capacity he has the authority necessary to change how storm water is
19 managed at the Facilities.

20 20. Plaintiff is informed and believes, and thereupon alleges that Defendant
21 Galen Baker is the Supervisor of Specialized Parts Planet, Inc. and that in this capacity he
22 supervises and directs the day to day operations and maintenance of the Facilities.

23 21. Accordingly, Defendants own and/or operate the Facilities.

24 **IV. STATUTORY BACKGROUND**

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

1 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

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

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

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

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

27 27. In addition to absolute prohibitions, the General Permit contains a variety of
28 substantive and procedural requirements that dischargers must meet. Facilities discharging,

1 or having the potential to discharge, storm water associated with industrial activity that have
2 not obtained an individual NPDES permit must apply for coverage under the State's General
3 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing
4 dischargers to file their NOIs before March 30, 1992.

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

11 29. EPA has established Benchmark Levels as guidelines for determining
12 whether a facility discharging industrial storm water has implemented the requisite BAT and
13 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
14 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –
15 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –
16 0.75 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L; and copper – 0.0636
17 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for
18 specific conductance of 200 μ mhos/cm.

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

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

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

28 32. The General Permit requires dischargers to eliminate all non-storm water

1 discharges to storm water conveyance systems other than those specifically set forth in
2 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth
3 in Special Condition D(1)(b).

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

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

28 35. In order to discharge storm water lawfully in California, industrial

1 dischargers must comply with the terms of the General Permit or have obtained and
2 complied with an individual NPDES permit.

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

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

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

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

24 40. The Regional Board has established water quality standards for the
25 Sacramento River and the Sacramento-San Joaquin Delta in the Water Quality Control Plan
26 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin
27 Plan.

28 41. The Basin Plan includes a narrative toxicity standard which states that “[a]ll

1 waters shall be maintained free of toxic substances in concentrations that produce
2 detrimental physiological responses in human, plant, animal, or aquatic life.”

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

6 43. The Basin Plan provides that “[w]aters shall not contain chemical constituents
7 in concentrations that adversely affect beneficial uses.”

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

13 **V. STATEMENT OF FACTS**

14 45. Each of the Facilities is classified as conforming to SIC Code 5015
15 (“Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling
16 or Resale and for Scrap”). Industrial activities occur throughout the Facilities. The
17 Facilities’ primary industrial activities are receiving, storing, dismantling, reclaiming,
18 processing and recycling automotive vehicles and/or their constituent parts for subsequent
19 recycling or resale and for scrap. Additionally, the Facilities accept salvage vehicles, scrap
20 materials, and other waste for subsequent recycling. Other current industrial activities
21 occurring at the Facilities involve the use, storage, and maintenance of heavy machinery.
22 Virtually all of these activities occur outside in areas that are exposed to storm water and
23 storm flows due to the lack of overhead coverage, functional berms and other storm water
24 controls. Plaintiff is informed and believes that Defendants’ storm water controls, to the
25 extent any exist, fail to achieve BAT and BCT standards.

26 46. The management practices at the Facilities are wholly inadequate to prevent
27 the sources of contamination described above from causing the discharge of pollutants to
28 waters of the United States and fail to meet BAT and BCT. The Facilities lack essential

1 structural controls such as grading, berming and roofing to prevent rainfall and storm water
2 flows from coming into contact with these and other sources of contaminants, thereby
3 allowing storm water to flow over and across these materials and become contaminated prior
4 to leaving the Facilities. In addition, the Facilities lack structural controls to prevent the
5 discharge of water once contaminated. The Facilities also lack an adequate filtration system
6 to treat water once it is contaminated.

7 47. Vehicle traffic at the Facilities tracks dust and particulate matter, increasing
8 the discharges of polluted water and mud into waters of the United States.

9 48. During rain events storm water laden with pollutants flows from the
10 Facilities to the City of Rancho Cordova's storm water drainage system, which then
11 discharges storm water from the Facilities into an unnamed tributary of Morrison Creek,
12 which then flows into Morrison Creek, the Sacramento River, and the Sacramento-San
13 Joaquin Delta.

14 49. Information available to Plaintiff indicates that as a result of these practices,
15 storm water containing pollutants harmful to fish, plant and bird life, and human health are
16 being discharged from the Facilities directly to these waters during significant rain events.

17 50. Information available to Plaintiff indicates that Defendants have not fulfilled
18 the requirements set forth in the General Permit for discharges from the Facilities due to the
19 continued discharge of contaminated storm water.

20 51. Plaintiff is informed and believes, and thereupon alleges, that Defendants
21 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan at
22 any of the five Facilities.

23 52. Information available to Plaintiff indicates the continued existence of
24 unlawful storm water discharges at each of the Facilities.

25 53. Plaintiff is informed and believes, and thereupon alleges, that Defendants
26 have failed to develop and implement adequate monitoring, reporting and sampling
27 programs for any of the five Facilities. Plaintiff is informed and believes, and thereupon
28 alleges, that Defendants have not sampled with adequate frequency, have not conducted

1 visual monitoring, and have not analyzed the samples collected for the required pollutant
2 parameters.

3 54. Plaintiff is informed and believes, and thereupon alleges, that all of the
4 violations alleged in this Complaint are ongoing and continuing.

5 **VI. CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**

7 **Discharges of Contaminated Storm Water From Facility 1**
8 **in Violation of Permit Conditions and the Act**
9 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

10 55. Plaintiff incorporates the allegations contained in the above paragraphs as
11 though fully set forth herein.

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

19 57. Plaintiff is informed and believes, and thereupon alleges, that since at least
20 October 1, 1992, Defendants have been discharging polluted storm water from Facility 1 to the
21 City of Rancho Cordova's storm water drainage system, which then discharges storm water
22 from Facility 1 into an unnamed tributary of Morrison Creek, which then flows into
23 Morrison Creek, the Sacramento River, and the Sacramento-San Joaquin Delta in violation
24 of the General Permit.

25 58. During every significant rain event, storm water flowing over and through
26 materials at Facility 1 becomes contaminated with pollutants, flowing untreated from Facility
27 1 to the City of Rancho Cordova's storm water drainage system, which then discharges
28 storm water from Facility 1 into an unnamed tributary of Morrison Creek, which then flows
into Morrison Creek, the Sacramento River, and the Sacramento-San Joaquin Delta.

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

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

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

11 62. Plaintiff is informed and believes, and thereupon alleges, that every day since
12 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
13 from Facility 1 in violation of the General Permit. Every day Defendants have discharged and
14 continue to discharge polluted storm water from Facility 1 in violation of the General Permit is
15 a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
16 violations are ongoing and continuous.

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

18 **SECOND CAUSE OF ACTION**

19 **Failure to Develop and Implement an Adequate**
20 **Storm Water Pollution Prevention Plan For Facility 1**
21 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

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

27 65. Defendants have failed to develop and implement an adequate SWPPP for
28 Facility 1. Defendants' ongoing failure to develop and implement an adequate SWPPP for
Facility 1 is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,

1 including waste materials, without appropriate best management practices; the continued
2 exposure of significant quantities of industrial material to storm water flows; the failure to
3 either treat storm water prior to discharge or to implement effective containment practices;
4 and the continued discharge of storm water pollutants from Facility 1 at levels in excess of
5 EPA benchmark values and other applicable water quality standards.

6 66. Defendants have further failed to update Facility 1's SWPPP in response to the
7 analytical results of Facility 1's storm water monitoring as required by the General Permit.

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

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

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

15 **THIRD CAUSE OF ACTION**

16 **Failure to Develop and Implement the Best Available
17 And Best Conventional Treatment Technologies At Facility 1
18 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

21 70. The General Permit's SWPPP requirements and Effluent Limitation B(3)
22 require dischargers to reduce or prevent pollutants in their storm water discharges through
23 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
24 pollutants.

25 71. Defendants have failed to implement BAT and BCT at Facility 1 for their
26 discharges of specific conductance, iron, aluminum, lead, and unmonitored pollutants in
27 violation of Effluent Limitation B(3) of the General Permit.

28 72. Each day that Defendants have failed to develop and implement BAT and BCT
at Facility 1 in violation of the General Permit is a separate and distinct violation of Section

1 301(a) of the Act, 33 U.S.C. § 1311(a).

2 73. Defendants have been in violation of the BAT and BCT requirements at
3 Facility 1 every day since at least August 05, 2006. Defendants continue to be in violation of
4 the BAT and BCT requirements each day that they fail to develop and fully implement an
5 adequate BAT and BCT for Facility 1.

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

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Develop and Implement an Adequate**
9 **Monitoring and Reporting Program For Facility 1**
10 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

11 74. Plaintiff incorporates the allegations contained in the above paragraphs as
12 though fully set forth herein.

13 75. Section B of the General Permit requires dischargers of storm water associated
14 with industrial activity to develop and implement a monitoring and reporting program
15 (including, among other things, sampling and analysis of discharges) no later than October 1,
16 1992.

17 76. Defendants have failed to develop and implement an adequate monitoring
18 and reporting program for Facility 1. Defendants' ongoing failures to develop and implement
19 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing
20 failure to collect and analyze storm water samples from all discharge locations, their
21 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants
22 likely to be present in Facility 1's storm water discharges in significant quantities, and their
23 failure to file required Annual Reports with the Regional Board which provide required
24 information concerning Facility 1's visual observations and storm water sampling and
25 analysis.

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

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

2 **FIFTH CAUSE OF ACTION**

3 **False Certification of Compliance in Annual Reports Filed For Facility 1**
4 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

7 79. Defendants have falsely certified compliance with the General Permit in each
8 of the Annual Reports for Facility 1 submitted to the Regional Board since August 05, 2006.

9 80. Each day since at least August 05, 2006, that Defendants have falsely
10 certified compliance with the General Permit is a separate and distinct violation of the
11 General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to
12 be in violation of the General Permit's verification requirement each day that they maintain
13 their false certification of their compliance with the General Permit at Facility 1.

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

15 **SIXTH CAUSE OF ACTION**

16 **Discharges of Contaminated Storm Water From Facility 2**
17 **in Violation of Permit Conditions and the Act**
18 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

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

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

28 83. Plaintiff is informed and believes, and thereupon alleges, that since at least
October 1, 1992, Defendants have been discharging polluted storm water from Facility 2 to the
City of Rancho Cordova's storm water drainage system, which then discharges storm water

1 from Facility 2 into an unnamed tributary of Morrison Creek, which then flows into
2 Morrison Creek, which flows into the Sacramento River, and the Sacramento-San Joaquin
3 Delta in violation of the General Permit.

4 84. During every significant rain event, storm water flowing over and through
5 materials at Facility 2 becomes contaminated with pollutants, flowing untreated from Facility
6 2 to the City of Rancho Cordova's storm water drainage system, which then discharges
7 storm water from Facility 2 into an unnamed tributary of Morrison Creek, which then flows
8 into Morrison Creek, which flows the Sacramento River, and the Sacramento-San Joaquin
9 Delta.

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

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

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

20 88. Plaintiff is informed and believes, and thereupon alleges, that every day since
21 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
22 from Facility 2 in violation of the General Permit. Every day Defendants have discharged and
23 continue to discharge polluted storm water from Facility 2 in violation of the General Permit is
24 a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
25 violations are ongoing and continuous.

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

27 //

28 //

SEVENTH CAUSE OF ACTION

**Failure to Develop and Implement an Adequate
Storm Water Pollution Prevention Plan For Facility 2
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

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

91. Defendants have failed to develop and implement an adequate SWPPP for Facility 2. Defendants’ ongoing failure to develop and implement an adequate SWPPP for Facility 2 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 Facility 2 at levels in excess of EPA benchmark values and other applicable water quality standards.

92. Defendants have further failed to update Facility 2’s SWPPP in response to the analytical results of Facility 2’s storm water monitoring as required by the General Permit.

93. Each day since October 1, 1992 that Defendants have failed to develop and implement an adequate SWPPP for Facility 2 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).

94. Defendants have been in violation of the SWPPP requirement every day since October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to develop and fully implement an adequate SWPPP for Facility 2.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

EIGHTH CAUSE OF ACTION

**Failure to Develop and Implement the Best Available
And Best Conventional Treatment Technologies At Facility 2
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

95. Plaintiff incorporates the allegations contained in the above paragraphs as

1 though fully set forth herein.

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

6 97. Defendants have failed to implement BAT and BCT at Facility 2 for their
7 discharges of oil and grease, specific conductance, total suspended solids, iron, aluminum,
8 and unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

9 98. Each day since August 05, 2006 that Defendants have failed to develop and
10 implement BAT and BCT at Facility 2 in violation of the General Permit is a separate and
11 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12 99. Defendants have been in violation of the BAT and BCT requirements at Facility
13 2 every day since at least August 05, 2006. Defendants continue to be in violation of the BAT
14 and BCT requirements each day that they fail to develop and fully implement an adequate
15 BAT and BCT for Facility 2.

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

17 **NINTH CAUSE OF ACTION**

18 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**
19 **For Facility 2 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

20 100. Plaintiff incorporates the allegations contained in the above paragraphs as
21 though fully set forth herein.

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

26 102. Defendants have failed to develop and implement an adequate monitoring
27 and reporting program for Facility 2. Defendants' ongoing failures to develop and implement
28 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing

1 failure to collect and analyze storm water samples from all discharge locations, their
2 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants
3 likely to be present in Facility 2's storm water discharges in significant quantities, and their
4 failure to file required Annual Reports with the Regional Board which provide required
5 information concerning Facility 2's visual observations and storm water sampling and
6 analysis.

7 103. Each day since October 1, 1992 that Defendants have failed to develop and
8 implement an adequate monitoring and reporting program for Facility 2 in violation of the
9 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.
10 § 1311(a). These violations are ongoing and continuous.

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

12 **TENTH CAUSE OF ACTION**

13 **False Certification of Compliance in Annual Reports Filed For Facility 2**
14 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

17 105. Defendants have falsely certified compliance with the General Permit in each
18 of the Annual Reports for Facility 2 submitted to the Regional Board since August 05, 2006.

19 106. Each day since at least August 05, 2006, that Defendants have falsely
20 certified compliance with the General Permit is a separate and distinct violation of the
21 General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to
22 be in violation of the General Permit's verification requirement each day that they maintain
23 their false certification of their compliance with the General Permit at Facility 2.

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

25 **ELEVENTH CAUSE OF ACTION**

26 **Discharges of Contaminated Storm Water From Facility 3**
27 **in Violation of Permit Conditions and the Act**
28 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

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

108. Discharge Prohibition A(2) of the General Permit requires that storm water

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

7 109. Plaintiff is informed and believes, and thereupon alleges, that since at least
8 October 1, 1992, Defendants have been discharging polluted storm water from Facility 3 into
9 the City of Rancho Cordova's storm water drainage system, which then discharges storm
10 water from Facility 3 into an unnamed tributary of Morrison Creek, which then flows into
11 Morrison Creek, which in turn ultimately discharges and flows into the Sacramento River,
12 and the Sacramento-San Joaquin Delta in violation of the General Permit.

13 110. During every significant rain event, storm water flowing over and through
14 materials at Facility 3 becomes contaminated with pollutants, flowing untreated from Facility
15 3 to the City of Rancho Cordova's storm water drainage system, which then discharges
16 storm water from Facility 3 into an unnamed tributary of Morrison Creek, which then flows
17 into Morrison Creek, which in turn ultimately discharges and flows into the Sacramento
18 River, and the Sacramento-San Joaquin Delta.

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

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

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

1 114. Plaintiff is informed and believes, and thereupon alleges, that every day since
2 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
3 from Facility 3 in violation of the General Permit. Every day Defendants have discharged and
4 continue to discharge polluted storm water from Facility 3 in violation of the General Permit is
5 a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
6 violations are ongoing and continuous.

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

8 **TWELFTH CAUSE OF ACTION**
9 **Failure to Develop and Implement an Adequate**
10 **Storm Water Pollution Prevention Plan For Facility 3**
11 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

12 115. Plaintiff incorporates the allegations contained in the above paragraphs as
13 though fully set forth herein.

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

17 117. Defendants have failed to develop and implement an adequate SWPPP for
18 Facility 3. Defendants’ ongoing failure to develop and implement an adequate SWPPP for
19 Facility 3 is evidenced by, *inter alia*, Defendants’ outdoor storage of industrial materials,
20 including waste materials, without appropriate best management practices; the continued
21 exposure of significant quantities of industrial material to storm water flows; the failure to
22 either treat storm water prior to discharge or to implement effective containment practices;
23 and the continued discharge of storm water pollutants from Facility 3 at levels in excess of
24 EPA benchmark values and other applicable water quality standards.

25 118. Defendants have further failed to update Facility 3’s SWPPP in response to the
26 analytical results of Facility 3’s storm water monitoring as required by the General Permit.

27 119. Each day since October 1, 1992 that Defendants have failed to develop and
28 implement an adequate SWPPP for Facility 3 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).

1 120. Defendants have been in violation of the SWPPP requirement every day since
2 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to
3 develop and fully implement an adequate SWPPP for Facility 3.

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

5 **THIRTEENTH CAUSE OF ACTION**
6 **Failure to Develop and Implement the Best Available**
7 **And Best Conventional Treatment Technologies At Facility 3**
8 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

9 121. Plaintiff incorporates the allegations contained in the above paragraphs as
10 though fully set forth herein.

11 122. The General Permit's SWPPP requirements and Effluent Limitation B(3)
12 require dischargers to reduce or prevent pollutants in their storm water discharges through
13 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
14 pollutants.

15 123. Defendants have failed to implement BAT and BCT at Facility 3 for their
16 discharges of total suspended solids, iron, aluminum, lead, and unmonitored pollutants in
17 violation of Effluent Limitation B(3) of the General Permit.

18 124. Each day since August 05, 2006 that Defendants have failed to develop and
19 implement BAT and BCT at Facility 3 in violation of the General Permit is a separate and
20 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

21 125. Defendants have been in violation of the BAT and BCT requirements at
22 Facility 3 every day since at least August 05, 2006. Defendants continue to be in violation of
23 the BAT and BCT requirements each day that they fail to develop and fully implement an
24 adequate BAT and BCT for Facility 3.

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

26 **FOURTEENTH CAUSE OF ACTION**
27 **Failure to Develop and Implement an Adequate**
28 **Monitoring and Reporting Program For Facility 3**
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

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

1 127. Section B of the General Permit requires dischargers of storm water associated
2 with industrial activity to develop and implement a monitoring and reporting program
3 (including, among other things, sampling and analysis of discharges) no later than October 1,
4 1992.

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

14 129. Each day since October 1, 1992 that Defendants have failed to develop and
15 implement an adequate monitoring and reporting program for Facility 3 in violation of the
16 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.
17 § 1311(a). These violations are ongoing and continuous.

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

19 **FIFTEENTH CAUSE OF ACTION**

20 **False Certification of Compliance in Annual Report From Facility 3**
21 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

24 131. Defendants have falsely certified compliance with the General Permit in each
25 of the Annual Reports for Facility 3 submitted to the Regional Board since August 05, 2006.

26 132. Each day since at least August 05, 2006, that Defendants have falsely
27 certified compliance with the General Permit is a separate and distinct violation of the
28 General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to
be in violation of the General Permit's verification requirement each day that they maintain

1 their false certification of their compliance with the General Permit at Facility 3.

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

3 **SIXTEENTH CAUSE OF ACTION**

4 **Discharges of Contaminated Storm Water From Facility 4**
5 **in Violation of Permit Conditions and the Act**
6 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

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

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

16 135. Plaintiff is informed and believes, and thereupon alleges, that since at least
17 October 1, 1992, Defendants have been discharging polluted storm water from Facility 4 into
18 the City of Rancho Cordova's storm water drainage system, which then discharges storm
19 water from Facility 4 into an unnamed tributary of Morrison Creek, which then flows into
20 Morrison Creek, which in turn ultimately discharges and flows into the Sacramento River,
21 and the Sacramento-San Joaquin Delta in violation of the General Permit.

22 136. During every significant rain event, storm water flowing over and through
23 materials at Facility 4 becomes contaminated with pollutants, flowing untreated from Facility
24 4 to the City of Rancho Cordova's storm water drainage system, which then discharges
25 storm water from Facility 4 into an unnamed tributary of Morrison Creek, which then flows
26 into Morrison Creek, which in turn ultimately discharges and flows into the Sacramento
27 River, and the Sacramento-San Joaquin Delta.

28 137. Plaintiff is informed and believes, and thereupon alleges, that these discharges
of contaminated storm water are causing pollution and contamination of the waters of the

1 United States in violation of Discharge Prohibition A(2) of the General Permit.

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

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

9 140. Plaintiff is informed and believes, and thereupon alleges, that every day since
10 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
11 from Facility 4 in violation of the General Permit. Every day Defendants have discharged and
12 continue to discharge polluted storm water from the Facility in violation of the General Permit
13 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
14 violations are ongoing and continuous.

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

16 **SEVENTEENTH CAUSE OF ACTION**

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

20 141. Plaintiff incorporates the allegations contained in the above paragraphs as
21 though fully set forth herein.

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

25 143. Defendants have failed to develop and implement an adequate SWPPP for
26 Facility 4. Defendants' ongoing failure to develop and implement an adequate SWPPP for
27 Facility 4 is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,
28 including waste materials, without appropriate best management practices; the continued
exposure of significant quantities of industrial material to storm water flows; the failure to

1 either treat storm water prior to discharge or to implement effective containment practices;
2 and the continued discharge of storm water pollutants from Facility 4 at levels in excess of
3 EPA benchmark values and other applicable water quality standards.

4 144. Defendants have further failed to update Facility 4's SWPPP in response to the
5 analytical results of Facility 4's storm water monitoring as required by the General Permit.

6 145. Each day since October 1, 1992 that Defendants have failed to develop and
7 implement an adequate SWPPP for Facility 4 in violation of the General Permit is a separate
8 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

9 146. Defendants have been in violation of the SWPPP requirement every day since
10 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to
11 develop and fully implement an adequate SWPPP for Facility 4.

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

13 **EIGHTEENTH CAUSE OF ACTION**

14 **Failure to Develop and Implement the Best Available**
15 **And Best Conventional Treatment Technologies At Facility 4**
16 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

19 148. The General Permit's SWPPP requirements and Effluent Limitation B(3)
20 require dischargers to reduce or prevent pollutants in their storm water discharges through
21 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
22 pollutants.

23 149. Defendants have failed to implement BAT and BCT at Facility 4 for their
24 discharges of total suspended solids, oil and grease, iron, aluminum, and unmonitored
25 pollutants in violation of Effluent Limitation B(3) of the General Permit.

26 150. Each day since August 05, 2006 that Defendants have failed to develop and
27 implement BAT and BCT at Facility 4 in violation of the General Permit is a separate and
28 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

151. Defendants have been in violation of the BAT and BCT requirements at

1 Facility 4 every day since at least August 05, 2006. Defendants continue to be in violation of
2 the BAT and BCT requirements each day that they fail to develop and fully implement an
3 adequate BAT and BCT for Facility 4.

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

5 **NINETEENTH CAUSE OF ACTION**

6 **Failure to Develop and Implement an Adequate
Monitoring and Reporting Program For Facility 4**

7 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

8 152. Plaintiff incorporates the allegations contained in the above paragraphs as
9 though fully set forth herein.

10 153. Section B of the General Permit requires dischargers of storm water associated
11 with industrial activity to develop and implement a monitoring and reporting program
12 (including, among other things, sampling and analysis of discharges) no later than October 1,
13 1992.

14 154. Defendants have failed to develop and implement an adequate monitoring
15 and reporting program for Facility 4. Defendants' ongoing failures to develop and implement
16 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing
17 failure to collect and analyze storm water samples from all discharge locations, their
18 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants
19 likely to be present in Facility 4's storm water discharges in significant quantities, and their
20 failure to file required Annual Reports with the Regional Board which provide required
21 information concerning Facility 4's visual observations and storm water sampling and
22 analysis.

23 155. Each day since October 1, 1992 that Defendants have failed to develop and
24 implement an adequate monitoring and reporting program for Facility 4 in violation of the
25 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.
26 § 1311(a). These violations are ongoing and continuous.

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

28 //

TWENTIETH CAUSE OF ACTION

**False Certification of Compliance in Annual Report From Facility 4
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

157. Defendants have falsely certified compliance with the General Permit in each of the Annual Reports for Facility 4 submitted to the Regional Board since August 05, 2006.

158. Each day since at least August 05, 2006, that Defendants have falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the General Permit's verification requirement each day that they maintain their false certification of their compliance with the General Permit at Facility 4.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

TWENTY-FIRST CAUSE OF ACTION

**Discharges of Contaminated Storm Water From Facility 5
in Violation of Permit Conditions and the Act
(Violations of 33 U.S.C. §§ 1311(a), 1342)**

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

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

161. Plaintiff is informed and believes, and thereupon alleges, that since at least October 1, 1992, Defendants have been discharging polluted storm water from Facility 5 into the City of Rancho Cordova's storm water drainage system, which then discharges storm water from Facility 5 into an unnamed tributary of Morrison Creek, which then flows into

1 Morrison Creek, which in turn ultimately discharges and flows into the Sacramento River,
2 and the Sacramento-San Joaquin Delta in violation of the General Permit.

3 162. During every significant rain event, storm water flowing over and through
4 materials at Facility 5 becomes contaminated with pollutants, flowing untreated from Facility
5 5 to the City of Rancho Cordova's storm water drainage system, which then discharges
6 storm water from Facility 5 into an unnamed tributary of Morrison Creek, which then flows
7 into Morrison Creek, which in turn ultimately discharges and flows into the Sacramento
8 River, and the Sacramento-San Joaquin Delta.

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

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

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

19 166. Plaintiff is informed and believes, and thereupon alleges, that every day since
20 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
21 from Facility 5 in violation of the General Permit. Every day Defendants have discharged and
22 continue to discharge polluted storm water from the Facility in violation of the General Permit
23 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
24 violations are ongoing and continuous.

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

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TWENTY-SECOND CAUSE OF ACTION
Failure to Develop and Implement an Adequate
Storm Water Pollution Prevention Plan For Facility 5
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

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

168. 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.

169. Defendants have failed to develop and implement an adequate SWPPP for Facility 5. Defendants’ ongoing failure to develop and implement an adequate SWPPP for Facility 5 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 Facility 5 at levels in excess of EPA benchmark values and other applicable water quality standards.

170. Defendants have further failed to update Facility 5’s SWPPP in response to the analytical results of Facility 5’s storm water monitoring as required by the General Permit.

171. Each day since October 1, 1992 that Defendants have failed to develop and implement an adequate SWPPP for Facility 5 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).

172. Defendants have been in violation of the SWPPP requirement every day since October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to develop and fully implement an adequate SWPPP for Facility 5.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

TWENTY-THIRD CAUSE OF ACTION
Failure to Develop and Implement the Best Available
And Best Conventional Treatment Technologies At Facility 5
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

173. Plaintiff incorporates the allegations contained in the above paragraphs as

1 though fully set forth herein.

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

6 175. Defendants have failed to implement BAT and BCT at Facility 5 for their
7 discharges of total suspended solids, oil and grease, iron, aluminum, lead, and unmonitored
8 pollutants in violation of Effluent Limitation B(3) of the General Permit.

9 176. Each day since August 05, 2006 that Defendants have failed to develop and
10 implement BAT and BCT at Facility 5 in violation of the General Permit is a separate and
11 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12 177. Defendants have been in violation of the BAT and BCT requirements at
13 Facility 5 every day since at least August 05, 2006. Defendants continue to be in violation of
14 the BAT and BCT requirements each day that they fail to develop and fully implement an
15 adequate BAT and BCT for Facility 5.

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

17 **TWENTY-FOURTH CAUSE OF ACTION**

18 **Failure to Develop and Implement an Adequate
Monitoring and Reporting Program For Facility 5**

19 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

20 178. Plaintiff incorporates the allegations contained in the above paragraphs as
21 though fully set forth herein.

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

26 180. Defendants have failed to develop and implement an adequate monitoring
27 and reporting program for Facility 5. Defendants' ongoing failures to develop and implement
28 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing

1 failure to collect and analyze storm water samples from all discharge locations, their
2 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants
3 likely to be present in Facility 5's storm water discharges in significant quantities, and their
4 failure to file required Annual Reports with the Regional Board which provide required
5 information concerning Facility 3's visual observations and storm water sampling and
6 analysis.

7 181. Each day since October 1, 1992 that Defendants have failed to develop and
8 implement an adequate monitoring and reporting program for Facility 5 in violation of the
9 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.
10 § 1311(a). These violations are ongoing and continuous.

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

12 **TWENTY-FIFTH CAUSE OF ACTION**

13 **False Certification of Compliance in Annual Report From Facility 5**
14 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

17 183. Defendants have falsely certified compliance with the General Permit in each
18 of the Annual Reports for Facility 5 submitted to the Regional Board since August 05, 2006.

19 184. Each day since at least August 05, 2006, that Defendants have falsely
20 certified compliance with the General Permit is a separate and distinct violation of the
21 General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to
22 be in violation of the General Permit's verification requirement each day that they maintain
23 their false certification of their compliance with the General Permit at Facility 5.

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

25 **VII. RELIEF REQUESTED**

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

27 a. Declare Defendants to have violated and to be in violation of the Act, as
28 alleged herein;

b. Enjoin Defendants from discharging pollutants from the Facilities and to

1 the surface waters surrounding and downstream from the Facilities;

2 c. Enjoin Defendants from further violating the substantive and procedural
3 requirements of the General Permit;

4 d. Order Defendants to pay civil penalties of \$32,500 per day per violation for
5 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all
6 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
7 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4
8 (pp. 200-202) (Dec. 31, 1996);

9 e. Order Defendants to take appropriate actions to restore the quality of
10 navigable waters and sources of drinking water impaired by their activities;

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

13 g. Award any such other and further relief as this Court may deem appropriate.
14

15 Dated: October 04, 2011

Respectfully Submitted,

16 LAW OFFICES OF ANDREW L. PACKARD
17

18 By: /s/ Emily J. Brand

19 Emily J. Brand
20 Attorneys for Plaintiff
21 CALIFORNIA SPORTFISHING
22 PROTECTION ALLIANCE
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EXHIBIT A



August 5, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Johnson, Manager
Galen Baker, Supervisor
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.
Specialized Parts Planet, Inc., dba, SPP British
11315 Dismantle Court #2
Rancho Cordova, CA 95742

Darin D. Moore, Agent for Service of Process
Specialized Parts Planet, Inc.
3590 Sunrise Blvd #9
Rancho Cordova, CA 95742

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

Dear Mssrs. Johnson, Baker, Gilmore and Moore:

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 Specialized Parts Planet, Inc. facility doing business as SPP British, located at 11315 Dismantle Court #2 in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I022015. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Morrison Creek, the Sacramento River, the Sacramento-San Joaquin River Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Specialized Parts Planet, Inc., Rick Johnson, Galen Baker and Kermit Gilmore shall hereinafter be collectively referred to as SPP British.

This letter addresses SPP British’s unlawful discharges of pollutants from the Facility to Morrison Creek, the Sacramento River and the Sacramento-San Joaquin Delta.

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This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “General Industrial Storm Water Permit”).

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

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

I. Background.

SPP British owns and operates an auto dismantling facility located in Rancho Cordova, California. The facility is used to dismantle and recycle decommissioned vehicles and automotive parts.

SPP British discharges storm water from its approximately 1-acre Facility through at least one (1) discharge point into an unnamed tributary of Morrison Creek, thence to Morrison Creek itself, from which the water ultimately flows into the Sacramento River and the Sacramento-San Joaquin River Delta (“the Delta”). The Delta and its tributaries are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin

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Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

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

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks

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have been established for pollutants discharged by SPP British: iron – 1.0 mg/L; and aluminum – 0.75 mg/L; lead – 0.0816 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 μ mhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

II. SPP British is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Sacramento River and the Delta and its tributaries are waters of the United States. Accordingly, SPP British’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

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

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actions brought pursuant to the federal Clean Water Act, SPP British is subject to penalties for violations of the Act since August 5, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

SPP British has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

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

As recently as October 14, 2010, the Regional Water Quality Control Board, Region 5, sent SPP British a letter (“the October 2010 letter”) conveying its conclusion that, among other things, SPP British’s 2009-2010 Annual Report contained evidence that the BMPs then in effect were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2010 letter informed SPP British that its 2009-2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered SPP British to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of

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pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered SPP British to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

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

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

SPP British has discharged and continues to discharge stormwater with unacceptable levels of Specific Conductivity (SC), Aluminum (Al), Lead (Pb), and Iron (Fe) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. SPP British's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
04/12/2010	Collection Point	SC	220 µmhos/cm	200 µmhos/cm

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
02/26/2010	Collection Point	Fe	4.7 mg/L	1.0 mg/L
12/18/2007	Yard Slope	Fe	1.9 mg/L	1.0 mg/L
03/20/2006	Yard Runoff Slope	Fe	3.6 mg/L	1.0 mg/L

3. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
02/26/2010	Collection Point	Al	4.1 mg/L	0.75 mg/L
12/18/2007	Yard Slope	Al	1.5 mg/L	0.75 mg/L
03/20/2006	Yard Runoff Slope	Al	2.6 mg/L	0.75 mg/L

4. Discharges of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
12/18/2007	Yard Slope	Pb	0.096 mg/L	0.0816 mg/L
03/20/2006	Yard Runoff Slope	Pb	0.089 mg/L	0.0816 mg/L

CSPA's investigation, including its review of SPP British's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for specific conductivity, indicates that SPP British has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity (SC), Aluminum (Al), Lead (Pb), and Iron (Fe) and other pollutants, in violation of Effluent Limitation B(3) of the General

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Permit. SPP British was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPP British is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPP British has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least August 5, 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 August 5, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that SPP British has discharged storm water containing impermissible levels of Specific Conductivity (SC), Aluminum (Al), Lead (Pb), and Iron (Fe) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP British is subject to penalties for violations of the General Permit and the Act since August 5, 2006.

B. SPP British Has Failed to Implement an Adequate Monitoring & Reporting Plan.

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

Based on its investigation, CSPA is informed and believes that SPP British has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that SPP

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British has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that SPP British has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past five years. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP British is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since August 5, 2006. These violations are set forth in greater detail below:

1. SPP British Has Failed to Collect Storm Water Samples During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that SPP British has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that while the Annual Report filed by SPP British for the Facility for the 2009-2010 Wet Season reported that SPP British analyzed samples of storm water discharged during two qualifying storm events that season, upon closer scrutiny it turns out that neither of those storms were qualifying storm events within the meaning of the General Permit (discussed further below). Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the three sampling/discharge points currently designated by SPP British. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. SPP British Has Failed to Conduct The Monthly Wet Season Observations of Storm Water Discharges and the Quarterly Visual Observations of Non-Authorized Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B.4.a. The General Permit also requires dischargers to “visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges.” General Permit, Section B.3.a. The annual reports filed by SPP British at the Regional Board required SPP British to document these required visual observations on Forms 3 and 4, contained therein. As evidenced by the lack of entries on Forms 3 and 4 contained in the annual reports SPP British has filed for the Facility over the last five (5) Wet Seasons (i.e., 2006-2007 Wet Season), CSPA is informed and believes that SPP British has failed to conduct the monthly Wet Season visual monitoring of storm water discharges and the quarterly visual monitoring of non-storm water

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discharges required under the General Permit. SPP British's failure to conduct this required monthly Wet Season visual monitoring extends back to at least August 5, 2006. SPP British's failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. SPP British Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since August 5, 2006.

CSPA is informed and believes that available documents demonstrate SPP British's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2009-2010 Annual Report SPP British reported having collected samples of storm water discharged during two qualifying storm events, neither of those dates were qualifying storm events. First, with respect to the storm that occurred at the Facility on February 26, 2010, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on February 26, 2010 was not a qualifying storm event because enough rain fell on the Facility three days prior to likely result in a discharge of storm water from the Facility, thereby invalidating the February 26, 2010 storm as a qualifying storm event. Second, with respect to the storm that occurred at the Facility on April 12, 2010, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on April 12, 2010 was not a qualifying storm event because enough rain fell on the Facility the day prior to likely result in a discharge of storm water from the Facility, thereby invalidating the April 12, 2010 storm as a qualifying storm event.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP British is subject to penalties for these violations of the General Permit and the Act since August 5, 2006.

C. SPP British Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that SPP British has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity (SC), Aluminum (Al), Lead (Pb), and Iron (Fe) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, SPP British must evaluate all pollutant sources at the Facility and implement the best structural and non-

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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 SPP British 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. SPP British has failed to adequately implement such measures.

SPP British was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPP British has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. SPP British is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 5, 1997.

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

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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 SPP British has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPP British has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, SPP British has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. SPP British is subject to penalties for violations of the Order and the Act occurring since August 5, 2006.

E. SPP British 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, SPP British is discharging elevated levels Specific Conductivity (SC), Aluminum (Al), Lead (Pb), and Iron (Fe) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPP British was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware

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of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, SPP British was aware of high levels of these pollutants prior to August 5, 2006. Likewise, SPP British has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). SPP British has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since August 5, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. SPP British is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

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

CSPA's investigation indicates that SPP British has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2007-2008 Annual Report filed by SPP British for the Facility reports that (1) SPP British collected samples of storm water discharged from the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours and (2) that the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours occurred on December 18, 2007. However, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that December 18, 2007 was the first storm event of the 2007-2008 Wet Season that produced a storm water discharge during scheduled facility operating hours. To wit, publicly available rainfall data for the area indicates that on that Wednesday, October 10, 2007, i.e. when 0.58" of rain was recorded as having fallen on the Facility, was actually the first qualifying storm event of that season. Further calling the validity of the December 18th storm into question as a qualifying storm event, let alone the first one of the season, is the fact that publicly available rainfall data demonstrates that 0.24" of rain fell on the facility on December 17, 2007, i.e., less than three days prior to the December 18th storm. The General Permit defines a qualifying storm event as one where storm water discharges from the facility during its operating hours on a date preceded by at least three (3) working days without storm water discharge.

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Here, assuming that 0.24" of rainfall is enough to generate a storm water discharge at the Facility then there would have been storm water discharging from the Facility less than three days before the date of the reported "First Storm Event" thereby rendering December 18, 2007 a non-qualifying storm event. Furthermore, assuming again that 0.24" of rain is enough to generate a storm water discharge at the Facility, December 18, 2007 was not the first qualifying storm event of the 2007-2008 Wet Season. That distinction belongs to October 10, 2007 (when 0.58" of rain fell on the Facility following at least three days without rain).

Finally, perhaps the most egregious example of SPP British's demonstrated tendency to file false reports is found in its 2009-2010 Annual Reports. In its 2009-2010 Annual Report, SPP British reported having collected samples of storm water discharged from the Facility during qualifying storm events that occurred at the Facility on February 26, 2010 and, on April 12, 2010. However, CSPA's review of publicly available rain data reveals that the storm events on February 26, 2010 and April 12, 2010 were not qualifying storm events within the meaning of the General Permit.

With respect to the storm that occurred at the Facility on February 26, 2010, that was not a qualifying storm event because publicly available rainfall data demonstrates that storm water discharged from the Facility three days before on February 23, 2010 when 0.60" of rain fell on the Facility. Thus, given that the February 26th storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the February 26th storm was not a qualifying storm event.

With respect to the storm that occurred at the Facility on April 12, 2010, that was not a qualifying storm event because publicly available rainfall data demonstrates that storm water discharged from the Facility the day before on April 11, 2010 when 0.49" of rain fell on the Facility. Thus, given that the April 12th storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the April 12th storm was not a qualifying storm event.

These are only a few examples of how SPP British has failed to file completely true and accurate reports. As indicated above, SPP British has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SPP British has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time SPP British submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. SPP British's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPP British is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since August 5, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Specialized Parts Planet, Inc., Rick Johnson, Galen Baker and Kermit

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Gilmore on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Specialized Parts Planet, Inc., Rick Johnson, Galen Baker and Kermit Gilmore on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

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

And to:

Drevet J. Hunt
Lawyers For Clean Water, Inc.
1004 O'Reilly Ave.
San Francisco, CA 94129
Tel: (415) 440-6520
Fax: (415) 440-4155
E-mail: drev@lawyersforcleanwater.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects SPP Specialized Parts Planet, Inc., Rick Johnson, Galen Baker and Kermit Gilmore to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and

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(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 Specialized Parts Planet, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
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, SPP British (Rancho Cordova, CA)
Significant Rain Events,* August 5, 2006 – August 5, 2011**

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

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

EXHIBIT B



August 5, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Craig Northam, Facility Manager
Ron Sims, Manager
Galen Baker, Supervisor
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.
Specialized Parts Planet, Inc., dba, SPP Ford
3450 Recycle Rd.
Rancho Cordova, CA 95742

Darin D. Moore, Agent for Service of Process
Specialized Parts Planet, Inc.
3590 Sunrise Blvd #9
Rancho Cordova, CA 95742

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

Dear Mssrs. Northam, Sims, Baker, Gilmore and Moore:

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 Specialized Parts Planet, Inc. facility doing business as SPP Ford, located at 3450 Recycle Rd. in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I022013. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Morrison Creek, the Sacramento River, the Sacramento-San Joaquin River Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Specialized Parts Planet, Inc., Craig Northam, Ron Sims, Galen Baker and Kermit Gilmore shall hereinafter be collectively referred to as SPP Ford.

This letter addresses SPP Ford’s unlawful discharges of pollutants from the

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Facility to Morrison Creek, the Sacramento River and the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “General Industrial Storm Water Permit”).

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

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

I. Background.

SPP Ford owns and operates an auto dismantling facility located in Rancho Cordova, California. The facility is used to dismantle and recycle decommissioned vehicles and automotive parts.

SPP Ford discharges storm water from its approximately 1.16-acre Facility through at least two (2) discharge points into an unnamed tributary of Morrison Creek, thence to Morrison Creek itself, from which the water ultimately flows into the Sacramento River and the Sacramento-San Joaquin River Delta (“the Delta”). The Sacramento River and the Delta and its tributaries are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin

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Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

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

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has

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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 SPP Ford: total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; and aluminum – 0.75 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

II. SPP Ford is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Sacramento River and the Delta and its tributaries are waters of the United States. Accordingly, SPP Ford’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that SPP Ford has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of

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Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP Ford is subject to penalties for violations of the Act since August 5, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

SPP Ford has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

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

As recently as October 14, 2010, the Regional Water Quality Control Board, Region 5, sent SPP Ford a letter (“the October 2010 letter”) conveying its conclusion that, among other things, SPP Ford’s 2009-2010 Annual Report contained evidence that the BMPs then in effect were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2010 letter informed SPP Ford that its 2009-2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered SPP Ford to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the

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Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered SPP Ford to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

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

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

SPP Ford has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. SPP Ford's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

1. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/12/2010	Collection Point	TSS	230 mg/L	100 mg/L
01/22/2009	Yard Drain	TSS	120 mg/L	100 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/12/2010	Collection Point	SC	210 µmhos/cm	200 µmhos/cm

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/12/2010	Collection Point	O&G	18 mg/L	15 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/12/2010	Collection Point	Fe	19 mg/L	1.0 mg/L
03/12/2010	Collection Point	Fe	23 mg/L	1.0 mg/L
01/22/2009	Yard Drain	Fe	11 mg/L	1.0 mg/L

5. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
04/12/2010	Collection Point	Al	19 mg/L	0.75 mg/L
03/12/2010	Collection Point	Al	29 mg/L	0.75 mg/L
01/22/2009	Yard Drain	Al	8.1 mg/L	0.75 mg/L

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CSPA's investigation, including its review of SPP Ford's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for specific conductivity, indicates that SPP Ford has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SPP Ford was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPP Ford is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPP Ford has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least August 5, 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 August 5, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that SPP Ford has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP Ford is subject to penalties for violations of the General Permit and the Act since August 5, 2006.

B. SPP Ford Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon.

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Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that SPP Ford has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that SPP Ford has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that SPP Ford has failed to conduct the monthly visual monitoring of storm water discharges required under the General Permit during each of the past five years. Third, based on its review of publicly available documents, CSPA is informed and believes that SPP Ford has failed to file the required annual report for the Facility for the recently concluded 2010-2011 Wet Season. 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, SPP Ford is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since August 5, 2006. These violations are set forth in greater detail below:

1. SPP Ford Has Failed to Collect Storm Water Samples During at least Two Qualifying Storm Events In Each of the Last Five Years.

CSPA is informed and believes that available documents demonstrate SPP Ford’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. Based on its review of publicly available documents, CSPA is informed and believes that SPP Ford has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five years. For example, while in its 2009-2010 Annual Report SPP Ford reported having collected samples of storm water discharged during two qualifying storm events, one of the two dates that SPP Ford reported having collected samples of storm water was not a qualifying storm event. With respect to the storm that occurred at the Facility on April 12, 2010, based on CSPA’s review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on April 12, 2010 was not a qualifying storm event because enough rain fell on the Facility the day prior to likely result in a discharge of storm water from the Facility, thereby invalidating the April 12, 2010 storm as a qualifying storm event. Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the three sampling/discharge points currently designated by SPP Ford. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

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2. SPP Ford Has Failed to Conduct The Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B.4.a. The annual reports filed by SPP Ford at the Regional Board required SPP Ford to document these required visual observations on Form 4 contained therein. As evidenced by the lack of entries on Form 4 contained in the annual reports SPP Ford has filed for the Facility over the last five (5) Wet Seasons (i.e., 2007-2008 Wet Season), CSPA is informed and believes that SPP Ford has failed to conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit. SPP Ford’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least August 5, 2006. SPP Ford’s failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. SPP Ford Is Subject to Penalties for Its Failure to Timely File the Required Annual Report for the Facility for the 2010-2011 Wet Season.

CSPA is informed and believes that SPP Ford has failed to timely file the Annual Report for the Facility for the 2010-2011 Wet Season as required by the General Permit.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP Ford is subject to penalties for these violations of the General Permit and the Act since August 5, 2006.

C. SPP Ford Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA’s investigation indicates that SPP Ford has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, SPP Ford 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 SPP

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Ford 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. SPP Ford has failed to adequately implement such measures.

SPP Ford was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPP Ford has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. SPP Ford is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 5, 1997.

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

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective

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(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 SPP Ford has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPP Ford has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, SPP Ford has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. SPP Ford is subject to penalties for violations of the Order and the Act occurring since August 5, 2006.

E. SPP Ford 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, SPP Ford is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPP Ford was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, SPP Ford was aware of high levels of these pollutants prior to August 5, 2006. Likewise, SPP Ford has generally

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failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). SPP Ford has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since August 5, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. SPP Ford is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

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

CSPA's investigation indicates that SPP Ford has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2009-2010 Annual Report filed by SPP Ford for the Facility reports that SPP Ford failed to collect samples of storm water discharged from the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours. However, SPP Ford did not attach an explanation as required in E(2) of the Annual Report.

Finally, perhaps the most egregious example of SPP Ford's demonstrated tendency to file false reports is found in its 2009-2010 and 2008-2009 Annual Reports. In its 2009-2010 Annual Report, SPP Ford reported having collected samples of storm water discharged from the Facility during qualifying storm events that occurred at the Facility on March 12, 2010 and, on April 12, 2010; in its 2008-2009 Annual Report, SPP Ford reported having collected samples of storm water discharged from the Facility during a qualifying storm event that occurred at the Facility on January 22, 2009. However, CSPA's review of publicly available rain data reveals that the storm events on April 12, 2010 and January 22, 2009 were not qualifying storm events within the meaning of the General Permit.

With respect to the storm that occurred at the Facility on April 12, 2010, that was not a qualifying storm event because publicly available rainfall data demonstrates that storm water discharged from the Facility the day before on April 11, 2010 when 0.49" of rain fell on the Facility. Thus, given that the April 12th storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the April 12th storm was not a qualifying storm event.

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With respect to the storm that occurred at the Facility on January 22, 2009, that was not a qualifying storm event because publicly available rainfall data demonstrates that storm water discharged from the Facility the day before on January 21, 2009 when 0.14" of rain fell on the Facility. Thus, given that the January 22nd storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the January 22nd storm was not a qualifying storm event.

These are only a few examples of how SPP Ford has failed to file completely true and accurate reports. As indicated above, SPP Ford has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SPP Ford has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time SPP Ford submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. SPP Ford's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPP Ford is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since August 5, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Specialized Parts Planet, Inc., Craig Northam, Ron Sims, Galen Baker and Kermit Gilmore on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Specialized Parts Planet, Inc., Craig Northam, Ron Sims, Galen Baker and Kermit Gilmore on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

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Notice of Violation and Intent To File Suit

August 5, 2011

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And to:

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E-mail: drev@lawyersforcleanwater.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Specialized Parts Planet, Inc., Craig Northam, Ron Sims, Galen Baker and Kermit Gilmore to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Specialized Parts Planet, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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ATTACHMENT A

**Notice of Intent to File Suit, SPP Ford (Rancho Cordova, CA)
Significant Rain Events,* August 5, 2006 – August 5, 2011**

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

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

EXHIBIT C



August 5, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert "Robert "Bob"" Brittian, Manager
Galen Baker, Supervisor
Chris Orsolini, Environmental Administrator
Dave Stroh, Safety and Environmental Manager
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.
Specialized Parts Planet, Inc., dba, SPP Rancho CPDJ
11355 Dismantle Court
Rancho Cordova, CA 95742

Darin D. Moore, Agent for Service of Process
Specialized Parts Planet, Inc.
3590 Sunrise Blvd #9
Rancho Cordova, CA 95742

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

Dear Mssrs. Brittian, Baker, Orsolini, Stroh, Gilmore and Moore:

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 Specialized Parts Planet, Inc facility doing business as SPP Rancho CPDJ, located at 11355 Dismantle Court in Rancho Cordova, California ("the Facility"). The WDID identification number for the Facility is 5S34I022533. Specialized Parts Planet, Inc. operates this facility as SPP Rancho CPDJ ("Rancho CPDJ"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Morrison Creek, the Sacramento River, the Sacramento-San Joaquin River Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Specialized Parts Planet, Inc., Robert "Bob" Brittian, Galen Baker, Chris Orsolini,

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Dave Stroh, and Kermit Gilmore shall hereinafter be collectively referred to as Rancho CPDJ.

This letter addresses Rancho CPDJ's unlawful discharges of pollutants from the Facility to Morrison Creek, the Sacramento River and the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

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

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Specialized Parts Planet, Inc., Robert "Bob" Brittian, Galen Baker, Chris Orsolini, Dave Stroh, and Kermit Gilmore are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Specialized Parts Planet, Inc., Robert "Bob" Brittian, Galen Baker, Chris Orsolini, Dave Stroh, and Kermit Gilmore under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

Rancho CPDJ owns and operates an auto dismantling facility located in Rancho Cordova, California. The facility is used to dismantle and recycle decommissioned vehicles and automotive parts.

Rancho CPDJ discharges storm water from its approximately 7-acre Facility through at least one (1) discharge point into an unnamed tributary of Morrison Creek, thence to Morrison Creek itself, which then flows into the American River, from which the water ultimately flows into the Sacramento River and the Sacramento-San Joaquin River Delta ("the Delta"). The Sacramento River and the Delta and its tributaries are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative

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toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

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

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General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Rancho CPDJ: total suspended solids – 100 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; and lead – 0.0816 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 μ mhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

II. Rancho CPDJ is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Sacramento River and the Delta and its tributaries are waters of the United States. Accordingly, Rancho CPDJ’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

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CSPA is informed and believes, and thereupon alleges, that Rancho CPDJ has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Rancho CPDJ is subject to penalties for violations of the Act since August 5, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

Rancho CPDJ has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

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

As recently as October 14, 2010, the Regional Water Quality Control Board, Region 5, sent Rancho CPDJ a letter (“the October 2010 letter”) conveying its conclusion that, among other things, Rancho CPDJ’s 2009-2010 Annual Report contained evidence that the BMPs then in effect were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2010 letter informed Rancho CPDJ that its 2009-

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2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered Rancho CPDJ to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered Rancho CPDJ to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

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

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

Rancho CPDJ has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), and Iron (Fe) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Rancho CPDJ's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

1. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Levels in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/12/2010	Collection Point	TSS	130 mg/L	100 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/20/2010	Collection Point	Fe	4.3 mg/L	1.0 mg/L
04/12/2010	Collection Point	Fe	8.6 mg/L	1.0 mg/L

3. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/20/2010	Collection Point	Al	3.1 mg/L	0.75 mg/L
04/12/2010	Collection Point	Al	6.2 mg/L	0.75 mg/L

4. Discharges of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
05/17/2011	Collection Point	Pb	0.1 mg/L	0.0816 mg/L
03/18/2011	Collection Point	Pb	0.1 mg/L	0.0816 mg/L

CSPA's investigation, including its review of Rancho CPDJ's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for specific conductivity, indicates that Rancho CPDJ has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), and Iron (Fe) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Rancho CPDJ was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Rancho CPDJ is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Rancho CPDJ has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least August 5, 2006. CSPA alleges that such violations also have occurred and

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will occur on other rain dates, including during every single significant rain event that has occurred since August 5, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Rancho CPDJ has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), and Iron (Fe) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Rancho CPDJ is subject to penalties for violations of the General Permit and the Act since August 5, 2006.

B. Rancho CPDJ Has Failed to Implement an Adequate Monitoring & Reporting Plan.

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

Based on its investigation, CSPA is informed and believes that Rancho CPDJ has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that Rancho CPDJ has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that Rancho CPDJ has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during each of the past five years. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement

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actions brought pursuant to the federal Clean Water Act, Rancho CPDJ is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since August 5, 2006. These violations are set forth in greater detail below:

1. Rancho CPDJ Has Failed to Collect Storm Water Samples During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that Rancho CPDJ has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that while the Annual Report filed by Rancho CPDJ for the Facility for the 2009-2010 Wet Season reported that Rancho CPDJ analyzed samples of storm water discharged during two qualifying storm events that season, upon closer scrutiny it turns out that one of those storms was not a qualifying storm event within the meaning of the General Permit (discussed further below). Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the sampling/discharge points currently designated by Rancho CPDJ. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. Rancho CPDJ Has Failed to Conduct The Monthly Wet Season Observations of Storm Water Discharges and the Quarterly Visual Observations of Non-Authorized Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B.4.a. The General Permit also requires dischargers to “visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges.” General Permit, Section B.3.a. The annual reports filed by Rancho CPDJ at the Regional Board required Rancho CPDJ to document these required visual observations on Forms 3 and 4, contained therein. As evidenced by the lack of entries on Forms 3 and 4 contained in the annual reports Rancho CPDJ has filed for the Facility over the last five (5) Wet Seasons (i.e., 2006-2007 Wet Season), CSPA is informed and believes that Rancho CPDJ has failed to conduct the monthly Wet Season visual monitoring of storm water discharges and the quarterly visual monitoring of non-storm water discharges required under the General Permit. Rancho CPDJ’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least August 5, 2006. Rancho CPDJ’s failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

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3. Rancho CPDJ Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since August 5, 2006.

CSPA is informed and believes that available documents demonstrate Rancho CPDJ's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2009-2010 Annual Report Rancho CPDJ reported having collected samples of storm water discharged during two qualifying storm events, one of those dates was not a qualifying storm event. With respect to the storm that occurred at the Facility on April 12, 2010, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on April 12, 2010 was not a qualifying storm event because enough rain fell on the Facility the day prior to likely result in a discharge of storm water from the Facility, thereby invalidating the April 12, 2010 storm as a qualifying storm event.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Rancho CPDJ is subject to penalties for these violations of the General Permit and the Act since August 5, 2006.

C. Rancho CPDJ Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Rancho CPDJ has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Aluminum (Al), Lead (Pb), and Iron (Fe) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

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

Rancho CPDJ was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Rancho CPDJ has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in

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violation every day that it fails to implement BAT and BCT. Rancho CPDJ is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 5, 1997.

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

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

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CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Rancho CPDJ has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Rancho CPDJ has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Rancho CPDJ has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Rancho CPDJ is subject to penalties for violations of the Order and the Act occurring since August 5, 2006.

E. Rancho CPDJ 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, Rancho CPDJ is discharging elevated levels Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), and Iron (Fe) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Rancho CPDJ was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Rancho CPDJ was aware of high levels of these pollutants prior to August 5, 2006. Likewise, Rancho CPDJ has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Rancho CPDJ has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since August 5, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include

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approved BMPs. Rancho CPDJ is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

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

CSPA's investigation indicates that Rancho CPDJ has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2009-2010 Annual Report filed by Rancho CPDJ for the Facility reports that (1) Rancho CPDJ collected samples of storm water discharged from the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours and (2) that the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours occurred on April 12, 2010. However, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that April 12, 2010 was the first storm event of the 2009-2010 Wet Season that produced a storm water discharge during scheduled facility operating hours. To wit, publicly available rainfall data for the area indicates that October 13, 2009, i.e. when 2.94" of rain was recorded as having fallen on the Facility, was actually the first qualifying storm event of that season. Further calling the validity of the April 12th storm into question as a qualifying storm event, let alone the first one of the season, is the fact that publicly available rainfall data demonstrates that 0.49" of rain fell on the facility on April 11, 2010, i.e., less than three days prior to April 12th storm. The General Permit defines a qualifying storm event as one where storm water discharges from the facility during its operating hours on a date preceded by at least three (3) working days without storm water discharge.

Here, assuming that 0.49" of rainfall is enough to generate a storm water discharge at the Facility, then there would have been storm water discharging from the Facility less than three days before the date of the reported "First Storm Event" thereby rendering April 12, 2010 a non-qualifying storm event. Furthermore, assuming again that 0.49" of rain is enough to generate a storm water discharge at the Facility, April 12, 2010 was not the first qualifying storm event of the 2009-2010 Wet Season. That distinction belongs to October 13, 2009 (when 2.94" of rain fell on the Facility following at least three days without rain).

These are only a few examples of how Rancho CPDJ has failed to file completely true and accurate reports. As indicated above, Rancho CPDJ has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Rancho

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CPDJ has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Rancho CPDJ submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Rancho CPDJ's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Rancho CPDJ is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since August 5, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Specialized Parts Planet, Inc., Robert "Bob" Brittian, Galen Baker, Chris Orsolini, Dave Stroh, and Kermit Gilmore on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Specialized Parts Planet, Inc., Robert "Bob" Brittian, Galen Baker, Chris Orsolini, Dave Stroh, and Kermit Gilmore on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

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

Drevet J. Hunt
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San Francisco, CA 94129
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VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Specialized Parts Planet, Inc., Robert “Bob” Brittian, Galen Baker, Chris Orsolini, Dave Stroh, and Kermit Gilmore to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys’ fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Specialized Parts Planet, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
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, Rancho CPDJ (Rancho Cordova, CA)
Significant Rain Events,* August 5, 2006 – August 5, 2011**

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

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

EXHIBIT D



August 5, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul Smith, Manager
Galen Baker, Supervisor
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.
Specialized Parts Planet, Inc., dba, SPP Rancho Recycling
3486 Recycle Road
Rancho Cordova, CA 95742

Darin D. Moore, Agent for Service of Process
Specialized Parts Planet, Inc.
3590 Sunrise Blvd #9
Rancho Cordova, CA 95742

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

Dear Mssrs. Smith, Baker, Gilmore and Moore:

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 Specialized Parts Planet, Inc. facility doing business as SPP Rancho Recycling, located at 3486 Recycle Road in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I02206. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Morrison Creek, the Sacramento River, the Sacramento-San Joaquin River Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Specialized Parts Planet, Inc., Paul Smith, Galen Baker, and Kermit Gilmore shall hereinafter be collectively referred to as SPP Rancho Recycling.

This letter addresses SPP Rancho Recycling’s unlawful discharges of pollutants from the Facility to Morrison Creek, the Sacramento River and the Sacramento-San

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Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “General Industrial Storm Water Permit”).

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

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

I. Background.

SPP Rancho Recycling owns and operates an auto dismantling Facility located in Rancho Cordova, California. The facility is used to dismantle and recycle decommissioned vehicles and automotive parts.

SPP Rancho Recycling discharges storm water from its approximately 4-acre Facility through at least one (1) discharge point into an unnamed tributary of Morrison Creek, thence to Morrison Creek itself, from which the water ultimately flows into the Sacramento River and the Sacramento-San Joaquin River Delta (“the Delta”). The Sacramento River and the Delta and its tributaries are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal

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supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

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

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”)

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and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by SPP Rancho Recycling: total suspended solids – 100 mg/L; oil and grease – 15 mg/L; iron – 1.0 mg/L; and aluminum – 0.75 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 μ mhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

II. SPP Rancho Recycling is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Delta and its tributaries are waters of the United States. Accordingly, SPP Rancho Recycling’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that SPP Rancho Recycling has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges

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are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP Rancho Recycling is subject to penalties for violations of the Act since August 5, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

SPP Rancho Recycling has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

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

Based on its review of available public documents, CSPA is informed and believes: (1) that SPP Rancho Recycling continues to discharge pollutants in excess of benchmarks; and, (2) that SPP Rancho Recycling has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. SPP Rancho Recycling’s ongoing violations are discussed further below.

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A. SPP Rancho Recycling Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

SPP Rancho Recycling has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. SPP Rancho Recycling’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

1. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Levels in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
12/19/2007	Not Specified	TSS	200 mg/L	100 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
12/19/2007	Not Specified	O&G	24 mg/L	15 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/12/2010	Collection Point	Fe	2.9 mg/L	1.0 mg/L
12/19/2007	Not Specified	Fe	8.8 mg/L	1.0 mg/L

4. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
01/12/2010	Collection Point	Al	3.2 mg/L	0.75 mg/L
12/19/2007	Not Specified	Al	8.0 mg/L	0.75 mg/L

CSPA’s investigation, including its review of SPP Rancho Recycling’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for specific conductivity, indicates that SPP Rancho Recycling has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SPP Rancho Recycling was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPP Rancho Recycling is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPP Rancho Recycling has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least August 5, 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 August 5, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that SPP Rancho Recycling has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

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These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP Rancho Recycling is subject to penalties for violations of the General Permit and the Act since August 5, 2006.

B. SPP Rancho Recycling Has Failed to Implement an Adequate Monitoring & Reporting Plan.

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

Based on its investigation, CSPA is informed and believes that SPP Rancho Recycling has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that SPP Rancho Recycling has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that SPP Rancho Recycling has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past five years. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP Rancho Recycling is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since August 5, 2006. These violations are set forth in greater detail below:

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1. SPP Rancho Recycling Has Failed to Collect Storm Water During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that SPP Rancho Recycling has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that the Annual Report filed by SPP Rancho Recycling for the Facility for the 2009-2010 Wet Season reported that SPP Rancho Recycling only analyzed samples of storm water discharged during one qualifying storm event that season. Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the three sampling/discharge points currently designated by SPP Rancho Recycling. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. SPP Rancho Recycling Has Failed to Conduct The Monthly Wet Season Observations of Storm Water Discharges and the Quarterly Visual Observations of Non-Authorized Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B.4.a. The General Permit also requires dischargers to “visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges.” General Permit, Section B.3.a. The annual reports filed by SPP Rancho Recycling at the Regional Board required SPP Rancho Recycling to document these required visual observations on Forms 3 and 4, contained therein. As evidenced by the lack of entries on Forms 3 and 4 contained in the annual reports SPP Rancho Recycling has filed for the Facility over the last five (5) Wet Seasons (i.e., 2006-2009 Wet Season), CSPA is informed and believes that SPP Rancho Recycling has failed to conduct the monthly Wet Season visual monitoring of storm water discharges and the quarterly visual monitoring of non-storm water discharges required under the General Permit. SPP Rancho Recycling’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least August 5, 2006. SPP Rancho Recycling’s failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. SPP Rancho Recycling Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since August 5, 2006.

CSPA is informed and believes that available documents demonstrate SPP Rancho Recycling’s consistent and ongoing failure to implement an adequate Monitoring

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Reporting Plan in violation of Section B of the General Permit. For example, while in its 2007-2008 Annual Report SPP Rancho Recycling reported having collected samples of storm water discharged during one qualifying storm events, the date recorded was not a qualifying storm event. Based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on December 19, 2007 was not a qualifying storm event because enough rain fell on the Facility during the two days prior to likely result in a discharge of storm water from the Facility, thereby invalidating the December 19, 2007 storm as a qualifying storm event.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPP Rancho Recycling is subject to penalties for these violations of the General Permit and the Act since August 5, 2006.

C. SPP Rancho Recycling Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that SPP Rancho Recycling has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

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

SPP Rancho Recycling was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPP Rancho Recycling has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. SPP Rancho Recycling is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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D. SPP Rancho Recycling Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 5, 1997.

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

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

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that SPP Rancho Recycling has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPP

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Rancho Recycling has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, SPP Rancho Recycling has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. SPP Rancho Recycling is subject to penalties for violations of the Order and the Act occurring since August 5, 2006.

E. SPP Rancho Recycling 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, SPP Rancho Recycling is discharging elevated levels of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), and Iron (Fe) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPP Rancho Recycling was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, SPP Rancho Recycling was aware of high levels of these pollutants prior to August 5, 2006. Likewise, SPP Rancho Recycling has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). SPP Rancho Recycling has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since August 5, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. SPP Rancho Recycling is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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F. SPP Rancho Recycling Has Failed to File Timely, True and Correct Reports.

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

CSPA's investigation indicates that SPP Rancho Recycling has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2007-2008 Annual Report filed by SPP Rancho Recycling for the Facility reports that (1) SPP Rancho Recycling collected samples of storm water discharged from the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours and (2) that the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours occurred on December 19, 2007. However, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that December 19, 2007 was the first storm event of the 2007-2008 Wet Season that produced a storm water discharge during scheduled facility operating hours. To wit, publicly available rainfall data for the area indicates that on that Wednesday, October 10, 2007, i.e. when 0.58" of rain was recorded as having fallen on the Facility, was actually the first qualifying storm event of that season. Further calling the validity of the December 19th storm into question as a qualifying storm event, let alone the first one of the season, is the fact that publicly available rainfall data demonstrates that 0.72" of rain fell on the facility on December 18, 2007, and 0.24" of rain fell on the facility on December 17, 2007, i.e., less than three days prior to the December 19th storm. The General Permit defines a qualifying storm event as one where storm water discharges from the facility during its operating hours on a date preceded by at least three (3) working days without storm water discharge.

Here, assuming that 0.24" in addition to 0.72" of rainfall is enough to generate a storm water discharge at the Facility then there would have been storm water discharging from the Facility less than three days before the date of the reported "First Storm Event" thereby rendering December 19, 2007 a non-qualifying storm event. Furthermore, assuming again that there was enough previous rainfall to generate a storm water discharge at the Facility, December 19, 2007 was not the first qualifying storm event of the 2007-2008 Wet Season. That distinction belongs to October 10, 2007 (when 0.58" of rain fell on the Facility following at least three days without rain).

These are only a few examples of how SPP Rancho Recycling has failed to file completely true and accurate reports. As indicated above, SPP Rancho Recycling has failed to comply with the Permit and the Act consistently for at least the past five years;

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therefore, SPP Rancho Recycling has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time SPP Rancho Recycling submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. SPP Rancho Recycling's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPP Rancho Recycling is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since August 5, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Specialized Parts Planet, Inc., Paul Smith, Galen Baker, and Kermit Gilmore on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Specialized Parts Planet, Inc., Paul Smith, Galen Baker, and Kermit Gilmore on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

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

And to:

Drevet J. Hunt
Lawyers For Clean Water, Inc.
1004 O'Reilly Ave.
San Francisco, CA 94129
Tel: (415) 440-6520
Fax: (415) 440-4155

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E-mail: drev@lawyersforcleanwater.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Specialized Parts Planet, Inc., Paul Smith, Galen Baker, and Kermit Gilmore to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Specialized Parts Planet, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

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

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

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

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

ATTACHMENT A

**Notice of Intent to File Suit, SPP Rancho Recycling (Rancho Cordova, CA)
Significant Rain Events,* August 5, 2006 – August 5, 2011**

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

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

EXHIBIT E



August 5, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rick Johnson, Facility Manager
Galen Baker, Supervisor
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.
Specialized Parts Planet, Inc., dba, SPP TAP Recycling
11337 Dismantle Court
Rancho Cordova, CA 95742

Darin D. Moore, Agent for Service of Process
Specialized Parts Planet, Inc.
3590 Sunrise Blvd #9
Rancho Cordova, CA 95742

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

Dear Mssrs. Johnson, Baker, Gilmore and Moore:

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 Specialized Parts Planet, Inc. facility doing business as SPP TAP Recycling (“TAP”), located at 11337 Dismantle Court. in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I022017. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Morrison Creek, the Sacramento River, the Sacramento-San Joaquin River Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Specialized Parts Planet, Inc., Rick Johnson, Galen Baker, and Kermit Gilmore shall hereinafter be collectively referred to as TAP.

This letter addresses TAP’s unlawful discharges of pollutants from the Facility to Morrison Creek, the Sacramento River and the Sacramento-San Joaquin Delta. This

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letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “General Industrial Storm Water Permit”).

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

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

I. Background.

TAP owns and operates an auto dismantling Facility located in Rancho Cordova, California. The facility is used to dismantle and recycle decommissioned vehicles and automotive parts.

TAP collects and discharges storm water from its approximately two-acre Facility through at least one (1) discharge point into an unnamed tributary of Morrison Creek, thence to Morrison Creek itself, from which the water ultimately flows into the Sacramento River and the Sacramento-San Joaquin River Delta (“the Delta”). The Delta and its tributaries are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal

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supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

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

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”)

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and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by TAP: total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; and, lead – 0.0816 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 μ mhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

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

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Sacramento River and the Delta and its tributaries are waters of the United States. Accordingly, TAP’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that TAP has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with

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the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TAP is subject to penalties for violations of the Act since August 5, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

TAP has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

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

As recently as October 14, 2010, the Regional Water Quality Control Board, Region 5, sent TAP a letter (“the October 2010 letter”) conveying its conclusion that, among other things, TAP’s 2009-2010 Annual Report contained evidence that the BMPs then in effect were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2010 letter informed TAP that its 2009-2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered TAP to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or

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implement additional BMPs to reduce or eliminate discharge of pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered TAP to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

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

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

TAP has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), and Lead (Pb) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. TAP's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

1. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/12/2010	Collection Point	TSS	410 mg/L	100 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
04/12/2010	Collection Point	O&G	64 mg/L	15 mg/L

3. Discharges of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/12/2010	Collection Point	Pb	0.28 mg/L	0.0816 mg/L
03/20/2006	Yard Runoff Slope	Pb	0.14 mg/L	0.0816 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
04/12/2010	Collection Point	Fe	16 mg/L	1.0 mg/L
12/18/2007	Yard Slope	Fe	2.1 mg/L	1.0 mg/L
03/20/2006	Yard Runoff Slope	Fe	2.5 mg/L	1.0 mg/L

5. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
04/12/2010	Collection Point	Al	11 mg/L	0.75 mg/L
12/18/2007	Yard Slope	Al	1.6 mg/L	0.75 mg/L
03/20/2006	Yard	Al	1.7 mg/L	0.75 mg/L

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	Runoff Slope			
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CSPA’s investigation, including its review of TAP’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for specific conductivity, indicates that TAP has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Lead (Pb), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. TAP was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, TAP is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that TAP has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least August 5, 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 August 5, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that TAP has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Lead (Pb), and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TAP is subject to penalties for violations of the General Permit and the Act since August 5, 2006.

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

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All

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storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that TAP has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that TAP has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that TAP has failed to conduct the monthly visual monitoring of storm water discharges required under the General Permit during each of the past five years. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TAP is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since August 5, 2006. These violations are set forth in greater detail below:

1. TAP Has Failed to Collect Storm Water Samples During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that TAP has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that while the Annual Report filed by TAP for the Facility for the 2009-2010 Wet Season reported that TAP analyzed samples of storm water discharged during two qualifying storm events that season, upon closer scrutiny it turns out that neither of those storms were qualifying storm events within the meaning of the General Permit (discussed further below). Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the three sampling/discharge points currently designated by TAP. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. TAP Has Failed to Conduct The Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B.4.a. The annual reports filed by TAP at the Regional Board required TAP to document these required visual observations on Form 4 contained

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therein. As evidenced by the lack of entries on Form 4 contained in the annual reports TAP has filed for the Facility over the last five (5) Wet Seasons (i.e., 2008-2009 Wet Season), CSPA is informed and believes that TAP has failed to conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit. TAP's failure to conduct this required monthly Wet Season visual monitoring extends back to at least August 5, 2006. TAP's failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. TAP Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since August 5, 2006.

CSPA is informed and believes that available documents demonstrate TAP's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2009-2010 Annual Report TAP reported having collected samples of storm water discharged during two qualifying storm events, neither of the two dates that TAP reported having collected samples of storm water were qualifying storm events. First, as discussed above, with respect to the reported storm that "occurred" on February 26, 2010, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on February 26, 2010 was not a qualifying storm event because enough rain fell on the Facility three days prior to likely result in a discharge of storm water from the Facility, thereby invalidating the February 26, 2010 storm as a qualifying storm event. Second, with respect to the storm that occurred at the Facility on April 12, 2010, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on April 12, 2010 was not a qualifying storm event because enough rain fell on the Facility the day prior to likely result in a discharge of storm water from the Facility, thereby invalidating the April 12, 2010 storm as a qualifying storm event.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TAP is subject to penalties for these violations of the General Permit and the Act since August 5, 2006.

C. TAP Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that TAP has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Lead (Pb) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

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

TAP was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, TAP has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. TAP is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 5, 1997.

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

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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 TAP has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. TAP has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, TAP has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. TAP is subject to penalties for violations of the Order and the Act occurring since August 5, 2006.

E. TAP 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, TAP is discharging elevated levels of Total Suspended Solids (TSS), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Lead (Pb) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, TAP was required to

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submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, TAP was aware of high levels of these pollutants prior to August 5, 2006. Likewise, TAP has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). TAP has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since August 5, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. TAP is subject to penalties for violations of the General Permit and the Act occurring since August 5, 2006.

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

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

CSPA's investigation indicates that TAP has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2007-2008 Annual Report filed by TAP for the Facility reports that (1) TAP collected samples of storm water discharged from the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours and (2) that the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours occurred on December 18, 2007. However, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that December 18, 2007 was the first storm event of the 2007-2008 Wet Season that produced a storm water discharge during scheduled facility operating hours. To wit, publicly available rainfall data for the area indicates that October 10, 2007, i.e., when 0.58" of rain was recorded as having fallen on the Facility, was actually the first qualifying storm event of that season. Further calling the validity of the December 18th storm into question as a qualifying storm event, let alone the first one of the season, is the fact that publicly available rainfall data demonstrates that storm water discharged from the Facility on December 17, 2007, i.e., less than three days prior to the December 18st storm. The General Permit defines a qualifying storm event as one where storm water discharges from the facility during its operating hours on a date preceded by at least three (3) working days without storm water

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discharge.

Here, assuming that 0.24" of rainfall is enough to generate a storm water discharge at the Facility then there would have been storm water discharging from the Facility less than three days before the date of the reported "First Storm Event" thereby rendering December 18, 2007 a non-qualifying storm event. Furthermore, assuming again that 0.24" of rain is enough to generate a storm water discharge at the Facility, December 18, 2007 was not the first qualifying storm event of the 2007-2008 Wet Season. That distinction belongs to October 10, 2007 (when 0.58" of rain fell on the Facility following at least three days without rain).

Finally, perhaps the most egregious example of TAP's demonstrated tendency to file false reports is found in its 2009-2010 Annual Report. In its 2009-2010 Annual Report, TAP reported having collected samples of storm water discharged from the Facility during qualifying storm events that occurred at the Facility on February 26, 2010, and, on April 12, 2010. However, CSPA's review of publicly available rain data reveals that neither of these storms were qualifying storm events within the meaning of the General Permit.

With respect to the storm that occurred at the Facility on February 26, 2010, that was not a qualifying storm event because publicly available rainfall data demonstrate that storm water discharged from the Facility three days prior on February 23, 2010 when 0.60" of rain fell on the Facility. Thus, given that the February 26th storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the February 26th storm was not a qualifying storm event.

Similarly, the storm that occurred at the Facility on April 12, 2010 was not a qualifying storm event because publicly available rainfall data demonstrate that storm water discharged from the Facility the day prior on April 11, 2010 when 0.49" of rain fell on the Facility. Thus, given that the April 12th storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the April 12th storm was not a qualifying storm event.

These are only a few examples of how TAP has failed to file completely true and accurate reports. As indicated above, TAP has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, TAP has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time TAP submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. TAP's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. TAP is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since August 5, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Specialized Parts Planet, Inc., Rick Johnson, Galen Baker, and Kermit

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Gilmore on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Specialized Parts Planet, Inc., Rick Johnson, Galen Baker, and Kermit Gilmore on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

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

Drevet J. Hunt
Lawyers For Clean Water, Inc.
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Tel: (415) 440-6520
Fax: (415) 440-4155
E-mail: drev@lawyersforcleanwater.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Specialized Parts Planet, Inc., Rick Johnson, Galen Baker, and Kermit Gilmore to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek

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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 Specialized Parts Planet, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
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Eric Holder
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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, SPP TAP Recycling (Rancho Cordova, CA)
Significant Rain Events,* August 5, 2006 – August 5, 2011**

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

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