



September 21, 2011

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Doug Axt, Facility Manager  
Galen Baker, Yard Foreman  
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.  
Specialized Parts Planet, Inc., dba, European Luxury  
11301 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 Messrs. Axt, 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 European Luxury, located at 11301 Dismantle Court in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I022010. 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., Doug Axt, Galen Baker and Kermit Gilmore shall hereinafter be collectively referred to as European Luxury.

This letter addresses European Luxury’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., Doug Axt, 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., Doug Axt, 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.**

European Luxury owns and operates an automobile salvage facility located in Rancho Cordova, California. The Facility falls under Standard Industrial Classification (“SIC”) Code 5015 (“Automobile Salvage Yards”). The Facility is used to receive, store, handle, dismantle and recycle decommissioned vehicles and automotive parts.

European Luxury discharges storm water from its approximately four-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 mg/L; iron – 0.3 mg/L; 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 criterion 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 5.0 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 mg/L (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

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

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

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

implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by European Luxury: iron – 1.0 mg/L; 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, lead – 0.0816 mg/L; 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. European Luxury 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, European Luxury’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 European Luxury 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 three 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, European Luxury is subject to penalties for violations of the Act since December 9, 2008.

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

European Luxury 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 European Luxury a letter (“the October 2010 letter”) conveying its conclusion that, among other things, European Luxury’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 European Luxury 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 European Luxury 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 European Luxury 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 European Luxury failed to provide the Board the ordered written response by November 19, 2010; (2) that European Luxury continues to discharge these very same pollutants in excess of benchmarks; and, (3) that European Luxury has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. European Luxury's ongoing violations are discussed further below.

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

European Luxury has discharged and continues to discharge storm water with unacceptable levels of Aluminum (Al), Iron (Fe) and Specific Conductivity (SC) 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. European Luxury'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 Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value.**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
03/18/2011	Collection Point	Al	1.9 mg/L	0.75 mg/L
02/26/2010	Collection Point	Al	4.1 mg/L	0.75 mg/L

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

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
03/18/2011	Collection Point	Fe	2.6 mg/L	1.0 mg/L
02/26/2010	Collection Point	Fe	4.7 mg/L	1.0 mg/L

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

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

CSPA's investigation, including its review of European Luxury'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 European Luxury has not implemented BAT and BCT at the Facility for its discharges of Aluminum (Al), Iron (Fe), Specific Conductivity (SC) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. European Luxury was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, European Luxury is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that European Luxury has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least December 9, 2008. 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 December 9, 2008, 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 European Luxury has discharged storm water containing impermissible levels of Aluminum (Al), Iron (Fe) and Specific Conductivity (SC) 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 storm water 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, European Luxury is subject to penalties for violations of the General Permit and the Act since December 9, 2008.

**B. European Luxury 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.” Section B(10) of the General Permit provides that “facility operators shall explain how the facility’s monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2.”<sup>1</sup>

Based on its investigation, CSPA is informed and believes that European Luxury 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 European Luxury 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 three years. Second, based on its review of publicly available documents, CSPA is informed and believes that European Luxury has failed to conduct the monthly visual monitoring of

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<sup>1</sup> General Permit Section B(2) provides, in relevant part, that:  
The objectives of the monitoring program are to: (a) Ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit; (b) Ensure practices at the facility to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges are evaluated and revised to meet changing conditions; (c) Aid in the implementation and revision of the SWPPP required by Section A of this General Permit; and, (d) Measure the effectiveness of best management practices (BMPs) to prevent or reduce pollutants in storm water discharges and authorized non-storm water discharges.

storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past three years. Third, based on its review of publicly available documents, CSPA is informed and believes that European Luxury has failed to collect samples of storm water discharge during the first qualifying storm event of the 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, European Luxury is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since December 9, 2008. These violations are set forth in greater detail below:

**1. European Luxury Has Failed to Collect Storm Water Samples During at least Two Rain Events In Each of the Last Three Years.**

Based on its review of publicly available documents, CSPA is informed and believes that European Luxury 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 three years. For example, CSPA notes that while the Annual Report filed by European Luxury for the Facility for the 2010-2011 Wet Season reported that European Luxury analyzed samples of storm water discharged during two qualifying storm events that season, upon closer scrutiny it turns out that neither storm recorded was 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 one sampling/discharge point currently designated by European Luxury. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. European Luxury 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 European Luxury at the Regional Board required European Luxury to document these required visual observations on Form 4, contained therein. As evidenced by the entries on Form 4 contained in the annual reports European Luxury has filed for the Facility over the last three (3) Wet Seasons (e.g., 2008-2009 Wet Season), CSPA is informed and believes that European Luxury has failed to properly conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit. European Luxury’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least December 9, 2008. European Luxury’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. European Luxury Has Failed to Collect Samples of Storm Water Discharge During the First Qualifying Storm Event of the Season.**

Based on its review of publicly available documents, CSPA is informed and believes that European Luxury has failed to collect samples of storm water discharge during the first qualifying storm event of the season. The General Permit requires that “[f]acility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season.” General Permit, Section B.5.a. The General Permit defines the wet season as October 1 – May 30. General Permit, Section B.4.a. CSPA notes that in the 2010-2011 Annual Report filed by European Luxury for the Facility, European Luxury reported that it took its first sample near the end of the Wet Season, on March 18, 2011. Based on CSPA’s review of publicly available rainfall data, the first qualifying storm of the 2010-2011 Wet Season occurred at least as early as Friday, November 19, 2010, when 0.88” of rain was recorded as having fallen on the Facility. European Luxury missed the first qualifying storm of the Wet Season by at least four months.

Notwithstanding the fact that European Luxury admitted in its 2010-2011 Annual Report that it did not sample the first qualifying storm event of the Wet Season, European Luxury failed to provide the required explanation as to why it failed. If a Facility fails to sample the first qualifying storm of the Wet Season, the Facility “shall explain in the Annual Report why the first storm event was not sampled.” General Permit, Section B.5.a. Not only did European Luxury fail to provide the requisite explanation, it also failed to explain why it waited until the last three months of the eight-month Wet Season to take the first sample at all. In the section of the annual permit in which the Facility is required to explain why it did not sample the first qualifying storm, European Luxury discussed other Facility failures instead. Failing to sample any storm during the first five months of the eight-month wet season and failing to provide any explanation for this failure demonstrates a gross disregard for General Permit requirements. Further, European Luxury has demonstrated a pattern of such noncompliance and gross disregard, as it also failed to sample the first storm of the 2009-2010 Wet Season and failed to provide an explanation for this failure in its 2009-2010 Annual Report. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**4. European Luxury Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since December 9, 2008.**

CSPA is informed and believes that available documents demonstrate European Luxury’s consistent and ongoing failure to implement an adequate Monitoring Reporting

Plan in violation of Section B of the General Permit. For example, European Luxury reported in its 2010-2011 Annual Report that it collected samples of storm water discharged during two qualifying storm events, but neither storm date recorded was a qualifying storm event. Based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the first storm event sampled at the Facility, on March 18, 2011, was not a qualifying storm event. This is because enough rain fell on the Facility the day prior to sampling, 0.22", which likely resulted in a discharge of storm water from the Facility, thereby invalidating the March 18, 2011 storm as a qualifying storm event. In fact, it rained every day for four days prior to sampling, each day with enough rainfall likely to result in a discharge of storm water from the Facility prior to the sample taken on March 18, 2011. With respect to the second storm European Luxury sampled for the 2010-2011 Wet Season, which occurred at the Facility on May 16, 2011, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that this storm event was also not a qualifying storm event. This is because over half an inch of rain fell on the Facility the day prior to sampling, on May 15, 2011, surely resulting in a storm water discharge at the Facility the day before European Luxury took a storm water discharge sample.

Additionally, European Luxury is in violation of the General Permit's requirement that the method detection limits employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit Section B.10.a.iii. This conclusion is compelled by the following: (1) the Facility falls under SIC Code 5015; (2) Table D of the General Permit provides that facilities falling under SIC Code 5015 are required to analyze their samples of discharged storm water for the presence and concentration of, among other things, lead; (3) the USEPA benchmark value for lead is 0.0816 mg/L; however, (4) as demonstrated by European Luxury's annual reports filed for the past two wet seasons, the method detection limit employed by the laboratory utilized by European Luxury to analyze the concentration of lead in the storm water discharged from its Facility was only 0.1 mg/L. In short, this method detection limit is too high to reliably detect lead at levels of concern. Accordingly, European Luxury is in violation of the General Permit for failing to employ laboratory method detection limits that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." General Permit Section B.2.a. ("Monitoring Program Objectives").

Moreover, European Luxury made the same failures the year before in the 2009-2010 Wet Season, as reported in European Luxury's 2009-2010 Annual Report. European Luxury reported collecting samples of storm water discharged during two qualifying storm events, but neither storm date recorded was 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 February 26, 2010 and the storm that occurred at the Facility on April 12, 2010 were both not qualifying storm events. This is because enough rain fell on the Facility within three days prior to each sample,

which likely resulted in a discharge of storm water from the Facility, thereby invalidating each storm water discharge sampled.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, European Luxury is subject to penalties for these violations of the General Permit and the Act since December 9, 2008.

**C. European Luxury 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 European Luxury has not implemented BAT and BCT at the Facility for its discharges of Aluminum (Al), Iron (Fe) and Specific Conductivity) (SC) 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, European Luxury 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 European Luxury 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. European Luxury has failed to adequately implement such measures.

European Luxury was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, European Luxury 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. European Luxury is subject to penalties for violations of the General Permit and the Act occurring since December 9, 2008.

**D. European Luxury 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 9, 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 European Luxury has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. European Luxury has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, European Luxury 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. European Luxury is subject to penalties for violations of the Order and the Act occurring since December 9, 2008.

**E. European Luxury 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, European Luxury is discharging elevated levels of Aluminum (Al), Iron (Fe), Specific Conductivity (SC) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, European Luxury 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, European Luxury was aware of high levels of these pollutants prior to December 9, 2008. Likewise, European Luxury 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). European Luxury 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 December 9, 2008, 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. European Luxury is subject to penalties for violations of the General Permit and the Act occurring since December 9, 2008.

**F. European Luxury 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 European Luxury has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, European Luxury reported in both the 2009-2010 and the 2010-2011 Annual Reports for the Facility that European Luxury collected samples of storm water discharged from the Facility from qualifying storm events. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that the storms European Luxury sampled from during these wet seasons were qualifying storm events.

European Luxury's demonstrated tendency to file false reports is also found in its reporting of its monthly visual storm water discharge observations. For all three years that European Luxury has filed Annual Reports for the Facility, 2008-2009, 2009-2010 and 2010-2011, European Luxury has falsely asserted that it complied with the requirements of the monthly visual storm water discharge observations. Based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that European Luxury made false statements in each Annual Report to the effect that it observed qualifying storm events, when at least four storms for each of the three wet seasons were not qualifying storm events.

Finally, perhaps the most egregious example of European Luxury's demonstrated tendency to file false reports is found in both its 2009-2010 and 2010-2011 Annual Report. In both Annual Reports, European Luxury reported missing the first storm of the season, but failed to provide the mandatory explanation as to why it was not able to meet this requirement. This is a failure to provide an explanation as required by the General Permit. General Permit B.5.a.

In its 2009-2010 Annual Report, European Luxury not only failed to sample the first storm or report why it did not do so, it also failed to explain why it was not able to sample until five months into the eight-month wet season, on February 26, 2010. Most brazenly, in lieu of the required explanation, European Luxury discussed how the Facility will improve its discharge in light of failing to meet benchmarks for both samples. Despite these purported efforts to comply, European Luxury failed to meet the same benchmarks in the first sample of the 2010-2011 Wet Season and repeated its failure to sample the first storm of the wet season or explain why it failed this requirement, again. For the 2010-2011 Wet Season, European Luxury actually sampled 2.5 weeks *later* into the Wet Season, now six months into the eight-month wet season.

For both the 2009-2010 and 2010-2011 Wet Seasons, European Luxury missed the first storm of the season by at least four months. This is especially egregious considering that European Luxury reported in each of the 2009-2010 and 2010-2011 Annual Reports that it was aware of five earlier storms during each wet season that produced storm water discharge at the Facility, as it reported both years that it visually observed these storms for the monthly visual observations requirement.

These are only a few examples of how European Luxury has failed to file completely true and accurate reports. As indicated above, European Luxury has failed to comply with the Permit and the Act consistently for at least the past three years; therefore, European Luxury has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time European Luxury submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. European Luxury's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. European Luxury is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since December 9, 2008.

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

CSPA puts Specialized Parts Planet, Inc., Doug Axt, 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., Doug Axt, 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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Erik M. Roper  
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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., Doug Axt, 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,

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**

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U.S. Environmental Protection Agency  
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Washington, D.C. 20460

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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, European Luxury Recycling (Rancho Cordova, CA)**  
**Significant Rain Events,\* December 9, 2008 – September 21, 2011**

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

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