



September 21, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeff Morgan, Facility Manager
Galen Baker, Yard Foreman
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.
Specialized Parts Planet, Inc., dba, SPP HAP Recycling
3379 Sunrise Blvd.
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. Morgan, 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 HAP Recycling, located at 3379 Sunrise Blvd. in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I022012. 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., Jeff Morgan, Galen Baker and Kermit Gilmore shall hereinafter be collectively referred to as SPP HAP Recycling.

This letter addresses SPP HAP Recycling’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., Jeff Morgan, 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., Jeff Morgan, 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 HAP Recycling 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.

SPP HAP Recycling discharges storm water from its approximately 1.5-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 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 SPP HAP Recycling: 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. SPP HAP 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 Sacramento River and the Delta and its tributaries are waters of the United States. Accordingly, SPP HAP 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 HAP 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 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, SPP HAP Recycling is subject to penalties for violations of the Act since December 9, 2008.

III. Pollutant Discharges in Violation of the NPDES Permit.

SPP HAP 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 HAP Recycling continues to discharge pollutants in excess of benchmarks; and, (2) that SPP HAP Recycling has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. SPP HAP Recycling’s ongoing violations are discussed further below.

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

SPP HAP Recycling has discharged and continues to discharge storm water with unacceptable levels of 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 HAP 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. Discharge of Storm Water Containing Aluminum (Al) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
01/23/2009	Yard Drain	Al	0.98 mg/L	0.75 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
01/23/2009	Yard Drain	Fe	1.3 mg/L	1.0 mg/L

CSPA’s investigation, including its review of SPP HAP 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 HAP Recycling has not implemented BAT and BCT at the Facility for its discharges of Aluminum (Al) and Iron (Fe) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SPP HAP Recycling was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPP HAP Recycling is discharging polluted

storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPP HAP Recycling 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 SPP HAP Recycling has discharged storm water containing impermissible levels of Aluminum (Al) and Iron (Fe) and other unmonitored pollutants (e.g., Nickel) 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, SPP HAP Recycling is subject to penalties for violations of the General Permit and the Act since December 9, 2008.

B. SPP HAP 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.” 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.2.¹”

¹ 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

Based on its investigation, CSPA is informed and believes that SPP HAP 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 HAP 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 three years. Second, based on its review of publicly available documents, CSPA is informed and believes that SPP HAP 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 three years. Third, based on its review of publicly available documents, CSPA is informed and believes that SPP HAP Recycling 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, SPP HAP Recycling 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. SPP HAP Recycling 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 SPP HAP 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 three years. For example, CSPA notes that the Annual Report filed by SPP HAP Recycling for the Facility for the 2010-2011 Wet Season reported that SPP HAP Recycling analyzed only one storm water discharge sample during one qualifying storm event that wet season. Not only did SPP HAP Recycling only sample one storm for the 2010-2011 Wet Season, but upon closer scrutiny, it turns out that the one storm recorded 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 one sampling/discharge point currently designated by SPP HAP Recycling. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

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.

2. SPP HAP Recycling 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 HAP Recycling at the Regional Board required SPP HAP Recycling to document these required visual observations on Form 4, contained therein. As evidenced by the entries on Form 4 Monthly Visual Inspections contained in the annual reports SPP HAP Recycling filed for the Facility over the last three (3) Wet Seasons (i.e., 2008-2009 Wet Season; 2009-2010 Wet Season; and, 2010-2011 Wet Season), CSPA is informed and believes that SPP HAP Recycling has failed to properly conduct the monthly Wet Season visual monitoring of storm water discharges required in the General Permit. Specifically, SPP HAP Recycling failed to observe discharges from qualifying storm events for many of the reported observations (discussed further below). SPP HAP Recycling’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least December 9, 2008. SPP HAP 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 HAP Recycling 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 SPP HAP Recycling 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 SPP HAP Recycling for the Facility, SPP HAP Recycling reported that it took its first sample in the *last two weeks* of the Wet Season, on May 16, 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. SPP HAP Recycling missed the first qualifying storm of the 2010-2011 Wet Season by at least six months.

In the prior Annual Report, for the 2009-2010 Wet Season, SPP HAP Recycling also failed to sample the first storm of the season because the Facility failed to sample any storms at all. Notwithstanding the fact that SPP HAP Recycling admitted in its 2009-2010 Annual Report that it did not sample the first qualifying storm event of the Wet Season, SPP HAP Recycling also 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. Based on publicly available documents, CSPA is informed and believes that SPP HAP Recycling has failed to sample every first qualifying storm event of the wet season for every year in operation, demonstrating a gross disregard for General Permit requirements. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

4. SPP HAP Recycling Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since December 9, 2008.

CSPA is informed and believes that publicly available documents demonstrate SPP HAP Recycling’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, SPP HAP Recycling has yet to report sampling a qualifying storm event in any of its Annual Reports. Specifically, SPP HAP Recycling reported in its 2010-2011 Annual Report that it collected a sample from storm water discharged during a qualifying storm event, but 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 May 16, 2011, was not a qualifying storm event. This is because enough rain fell on the Facility the day prior to sampling, 0.56”, which likely resulted in a discharge of storm water from the Facility, thereby invalidating the May 16, 2011 storm as a qualifying storm event. In its 2008-2009 Annual Report, SPP HAP Recycling reported that it collected a sample of storm water discharged during one qualifying storm event on January 23, 2009, but based on CSPA’s review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on January 23, 2009 was not a qualifying storm event. CSPA believes January 23, 2009 was not a qualifying storm event because 1.14” of rain fell on the Facility one day prior to the sample, which likely resulted in a discharge of storm water from the Facility, thereby invalidating the storm water discharge sampled on January 23, 2009.

Additionally, SPP HAP Recycling 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 SPP HAP Recycling’s annual report filed for the past wet season, the method detection limit employed by the laboratory utilized by SPP HAP Recycling 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, SPP HAP Recycling 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”).

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

C. SPP HAP 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 HAP Recycling has not implemented BAT and BCT at the Facility for its discharges of 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 HAP 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 HAP 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 HAP Recycling has failed to adequately implement such measures.

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

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

E. SPP HAP 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 HAP Recycling is discharging elevated levels of 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 HAP 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 HAP Recycling was aware of high levels of these pollutants prior to December 9, 2008. Likewise, SPP HAP 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 HAP 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 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. SPP HAP Recycling is subject to penalties for violations of the General Permit and the Act occurring since December 9, 2008.

F. SPP HAP 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 HAP Recycling has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, SPP HAP Recycling reported two discharge locations at the Facility. Without explanation, SPP HAP Recycling reported in its 2009-2010 Annual Report that the Facility only had one discharge location.

Further, SPP HAP Recycling reported in every single Annual Report filed for the Facility that it 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 SPP HAP Recycling sampled from during these wet seasons were qualifying storm events.

SPP HAP Recycling's demonstrated tendency to file false reports is also found in its reporting of its monthly visual storm water discharge observations. SPP HAP Recycling reported that it complied with the requirements of the monthly visual storm water discharge observations. However, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that SPP HAP Recycling made false statements in each Annual Report because it reported that it observed qualifying storm events, when many of the storm events reported for each of the wet seasons were not qualifying storm events. For example, in its 2008-2009 Annual Report, SPP HAP Recycling reported a monthly visual storm water discharge observation on March 03, 2009, which was not a qualifying storm event because it rained 0.38" on the Facility the day before, on March 02, 2009. Further, in its 2009-2010 Annual Report, SPP HAP Recycling reported six monthly observations that were not observed from qualifying storm events due to rainfall on the Facility within three days prior to sampling.

Finally, perhaps the most egregious example of SPP HAP Recycling's demonstrated tendency to file false reports is found in all of its Annual Reports, SPP HAP Recycling's utter disregard for the General Permit requirement to sample the first storm of the season. In demonstration of further indifference to the General Permit requirement to sample the first storm of the season, SPP HAP Recycling "explained" its lack of compliance by reporting additional false statements. For example, in its 2008-2009 Annual Report, SPP HAP Recycling explained that it was not able to sample until *four months into* the 2008-2009 Wet Season, on January 23, 2009, because "earlier storms did not meet criterion sampling." However, based on publicly available information, CSPA is informed and believes that there were at least four sufficient storm events earlier in the season. Further, as stated above, the storm SPP HAP Recycling did sample was not even a qualifying storm event. Therefore, SPP HAP Recycling reported that it waited until January 23, 2009 to sample the first storm of the season because the previous storms did not meet the storm criterion, but in fact sampled a storm that did not

meet the storm criterion.

Most brazenly, in the 2009-2010 Wet Season, SPP HAP Recycling failed to sample a single storm or provide the required explanation. In lieu of the required explanation, SPP HAP Recycling asserted that, “[w]e will diligently sample next year.” Despite this purported promise to comply “next year,” the 2010-2011 Wet Season, SPP HAP Recycling reported in its 2010-2011 Annual Report that it sampled only once. And not only did SPP HAP Recycling only sample once, but it waited until May 16, 2011, *the second to last week* of the Wet Season, on a non-qualifying storm event. These actions are especially egregious considering that SPP HAP Recycling reported in each of its Annual Reports that it was aware of earlier storms that produced storm water discharge at the Facility. SPP HAP Recycling demonstrated this knowledge by reporting in each of its Annual Reports that it visually observed these storms for the monthly visual observations requirement.

These are only a few examples of how SPP HAP Recycling has failed to file completely true and accurate reports. As indicated above, SPP HAP Recycling has failed to comply with the Permit and the Act consistently for at least the past three years; therefore, SPP HAP Recycling has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time SPP HAP Recycling submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. SPP HAP Recycling’s failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPP HAP Recycling 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., Jeff Morgan, 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., Jeff Morgan, 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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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., Jeff Morgan, 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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Pamela Creedon, Executive Officer
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Central Valley Region
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ATTACHMENT A
Notice of Intent to File Suit, SPP HAP Recycling 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.