



September 21, 2011

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jim Bitcon, Facility Manager  
Galen Baker, Yard Foreman  
Tony Gulermovich, Supervisor  
Kermit Gilmore, Chief Financial Officer for Specialized Parts Planet, Inc.  
Specialized Parts Planet, Inc., dba, SPP Rancho Subaru Suzuki Recycling  
3590 Sunrise Blvd. Ste. 5  
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. Bitcon, Baker, Gulermovich, Gilmore and Moore:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“the Act”) occurring at the Specialized Parts Planet, Inc. facility doing business as SPP Rancho Subaru Suzuki Recycling (“SPP Rancho Subaru”), located at 3590 Sunrise Blvd. Ste. 5 in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I021874. 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., Jim Bitcon, Galen Baker, Tony Gulermovich and Kermit Gilmore shall hereinafter be collectively referred to as SPP Rancho Subaru.

This letter addresses SPP Rancho Subaru’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., Jim Bitcon, Galen Baker, Tony Gulermovich 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., Jim Bitcon, Galen Baker, Tony Gulermovich and Kermit Gilmore under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

## **I. Background.**

SPP Rancho Subaru 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 Rancho Subaru discharges storm water from its approximately one-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 Rancho Subaru: iron – 1.0 mg/L; aluminum – 0.75 mg/L; and, total suspended solids – 100.0 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 Rancho Subaru 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 Rancho Subaru’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that SPP Rancho Subaru 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 Rancho Subaru is subject to penalties for violations of the Act since October 6, 2008.

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

SPP Rancho Subaru 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 23, 2009, the Regional Water Quality Control Board, Region 5, sent SPP Rancho Subaru a letter (“the October 2009 letter”) conveying its conclusion that, among other things, SPP Rancho Subaru’s 2008-2009 Annual Report contained evidence that the BMPs then in effect were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2009 letter informed SPP Rancho Subaru that its 2008-2009 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered SPP Rancho Subaru 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 SPP Rancho Subaru to respond to these concerns by providing the Board a written response by no later than December 1, 2009.

Based on its review of available public documents, CSPA is informed and believes: (1) that SPP Rancho Subaru failed to provide the Board the ordered written response by December 1, 2009; (2) that SPP Rancho Subaru continues to discharge pollutants in excess of benchmarks; and, (3) that SPP Rancho Subaru has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. SPP Rancho Subaru's ongoing violations are discussed further below.

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

SPP Rancho Subaru has discharged and continues to discharge storm water with unacceptable levels of Aluminum (Al), Iron (Fe), and Total Suspended Solids (TSS) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. SPP Rancho Subaru'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.**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
12/21/2009	Collection Point	Al	1.2 mg/L	0.75 mg/L

**2. Discharge of Storm Water Containing Iron (Fe) at Concentration 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>
12/21/2009	Collection Point	Fe	1.4 mg/L	1.0 mg/L

**3. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration 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>
02/17/2009	Yard Drain	TSS	180.0 mg/L	100.0 mg/L

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

CSPA is informed and believes that SPP Rancho Subaru has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 6, 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 October 6, 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 Rancho Subaru has discharged storm water containing impermissible levels of Aluminum (Al), Iron (Fe), Total Suspended Solids (TSS) 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, SPP Rancho Subaru is subject to penalties for violations of the General Permit and the Act since October 6, 2008.

**B. SPP Rancho Subaru 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 SPP Rancho Subaru has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that SPP Rancho Subaru 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 Rancho Subaru 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 Rancho Subaru has failed to collect samples of storm

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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.



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 Rancho Subaru is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 6, 2008. These violations are set forth in greater detail below:

**1. SPP Rancho Subaru 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 Rancho Subaru 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 Rancho Subaru for the Facility for the 2010-2011 Wet Season reported that SPP Rancho Subaru analyzed only one storm water discharge sample during one qualifying storm event that wet season. Not only did SPP Rancho Subaru 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 Rancho Subaru. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. SPP Rancho Subaru 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 Rancho Subaru at the Regional Board required SPP Rancho Subaru 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 Rancho Subaru has 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 Rancho Subaru has failed to properly conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit. Specifically, SPP Rancho Subaru failed to observe discharges from qualifying storm events for many of the reported observations (discussed further below). SPP Rancho Subaru’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least October 6, 2008. SPP Rancho Subaru’s failure to conduct this required monthly Wet Season visual

monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

**3. SPP Rancho Subaru 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 Rancho Subaru 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 Rancho Subaru for the Facility, SPP Rancho Subaru reported that it took its first sample in the *fifth month* of the Wet Season, on February 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 07, 2010, when 0.49” of rain was recorded as having fallen on the Facility. SPP Rancho Subaru missed the first qualifying storm of the Wet Season by *at least three months*.

Based on publicly available documents, CSPA is informed and believes that SPP Rancho Subaru has failed to sample every first qualifying storm event of the wet season for every year in operation (i.e., 2008-2009 Wet Season; 2009-2010 Wet Season; and, 2010-2011 Wet Season). This outright failure to meet General Permit requirements demonstrates 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 Rancho Subaru Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since October 6, 2008.**

CSPA is informed and believes that publicly available documents demonstrate SPP Rancho Subaru’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, SPP Rancho Subaru has reported sampling only one qualifying storm event in total from all of its Annual Reports. Specifically, SPP Rancho Subaru reported in its 2008-2009 Annual Report that it collected a sample from storm water discharged during a qualifying storm event, but the storm date recorded was not a qualifying storm event. Based on CSPA’s review of publicly available rainfall data, CSPA is informed and believes that the first storm event sampled at the Facility, on February 17, 2009, was not a qualifying storm event. This is because enough rain fell on the Facility the day prior to sampling, 0.55”, which likely resulted in a discharge of storm water from the Facility, thereby invalidating the February 17, 2009 storm as a qualifying storm event. In its 2009-2010

Annual Report, SPP Rancho Subaru reported that it collected a sample of storm water discharged from a qualifying storm event on January 19, 2010, 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 19, 2010 was not a qualifying storm event. This is because 0.78" 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.

Additionally, SPP Rancho Subaru 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 Rancho Subaru's annual report filed for the past wet season, the method detection limit employed by the laboratory utilized by SPP Rancho Subaru 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 Rancho Subaru 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 Rancho Subaru is subject to penalties for these violations of the General Permit and the Act since October 6, 2008.

### **C. SPP Rancho Subaru Has Failed to Implement BAT and BCT.**

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

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

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

SPP Rancho Subaru was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPP Rancho Subaru has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. SPP Rancho Subaru is subject to penalties for violations of the General Permit and the Act occurring since October 6, 2008.

**D. SPP Rancho Subaru 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 Rancho Subaru has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPP Rancho Subaru has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, SPP Rancho Subaru has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. SPP Rancho Subaru is subject to penalties for violations of the Order and the Act occurring since October 6, 2008.

**E. SPP Rancho Subaru Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

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

As indicated above, SPP Rancho Subaru is discharging elevated levels of Aluminum (Al), Iron (Fe), Total Suspended Solids (TSS) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPP Rancho Subaru was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of

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

Based on CSPA's review of available documents, SPP Rancho Subaru was aware of high levels of these pollutants prior to October 6, 2008. Likewise, SPP Rancho Subaru has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). SPP Rancho Subaru 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 October 6, 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 Rancho Subaru is subject to penalties for violations of the General Permit and the Act occurring since October 6, 2008.

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

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

CSPA's investigation indicates that SPP Rancho Subaru has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, SPP Rancho Subaru 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 all the storms SPP Rancho Subaru sampled from during those wet seasons were qualifying storm events.

SPP Rancho Subaru's demonstrated tendency to file false reports is also found in its reporting of its monthly visual storm water discharge observations. SPP Rancho Subaru 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 Rancho Subaru 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 Rancho Subaru reported a monthly visual storm water discharge observation on November 01, 2008, which was not a qualifying storm event because it rained 0.29" on the Facility the day before, on

October 31, 2008. SPP Rancho Subaru reported three other monthly visual storm water discharge observations in the 2008-2009 Annual Report that depended on storm events that did not qualify because it rained one day prior to the observation. Further, in its 2009-2010 Annual Report, SPP Rancho Subaru reported five 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 Rancho Subaru's demonstrated tendency to file false reports is found in all of its Annual Reports, SPP Rancho Subaru'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 Rancho Subaru "explained" its lack of compliance by reporting additional false statements. For example, in its 2008-2009 Annual Report, SPP Rancho Subaru explained that it was not able to sample until *five months into* the 2008-2009 Wet Season, on February 17, 2009, because "earlier storms did not meet the criteria for sampling." However, based on publicly available information, CSPA is informed and believes that there were at least six sufficient storm events earlier in the season. Further, as stated above, the storm SPP Rancho Subaru did sample was not even a qualifying storm event. Therefore, SPP Rancho Subaru reported that it waited until February 17, 2009 to sample the first storm of the season because the previous storms did not meet the storm criterion, but sampled a storm that did not meet the storm criterion. In the 2009-2010 Annual Report, SPP Rancho Subaru failed to provide any explanation at all as to why it failed to sample the first storm of the wet season. In the 2010-2011 Annual Report, SPP Rancho Subaru reported that it did not sample until *five months into* the wet season, on February 18, 2011.

SPP Rancho Subaru failed to sample the first storm of the wet season for every wet season in operation. These actions are especially egregious considering that SPP Rancho Subaru reported in each of its Annual Reports that it was aware of earlier storms that produced storm water discharge at the Facility. SPP Rancho Subaru 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 Rancho Subaru has failed to file completely true and accurate reports. As indicated above, SPP Rancho Subaru has failed to comply with the Permit and the Act consistently for at least the past three years; therefore, SPP Rancho Subaru has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time SPP Rancho Subaru submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. SPP Rancho Subaru's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPP Rancho Subaru is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since October 6, 2008.

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

CSPA puts Specialized Parts Planet, Inc., Jim Bitcon, Galen Baker, Tony Gulermovich 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., Jim Bitcon, Galen Baker, Tony Gulermovich and Kermit Gilmore on notice that it intends to include those persons in this action.

**V. Name and Address of Noticing Party.**

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

**VI. Counsel.**

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

Andrew L. Packard  
Erik M. Roper  
Emily J. Brand  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
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Emily@PackardLawOffices.com

**VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Specialized Parts Planet, Inc., Jim Bitcon, Galen Baker, Tony Gulermovich 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.



Notice of Violation and Intent To File Suit

September 21, 2011

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

Sincerely,

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

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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

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

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
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Washington, DC 20530-0001

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

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

**ATTACHMENT A**

**Notice of Intent to File Suit, SPP Rancho Subaru Suzuki Recycling (Rancho Cordova, CA)  
Significant Rain Events,\* October 6, 2008 – September 21, 2011**

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

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