



September 16, 2011

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert Schaffner, Owner  
M & M Recycling, Inc., dba, Specialized German Recycling  
3600 Recycle Road  
Rancho Cordova, CA 95742

Robert Schaffner, a.k.a., Robert Schaffer, Agent for Service of Process  
M & M Recycling, Inc.  
3600 Recycle Road  
Rancho Cordova, CA 95742

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

Dear Mr. Schaffner,

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 M & M Recycling, Inc. facility doing business as Specialized German Recycling, located at 3600 Recycle Road in Rancho Cordova, California (“the Facility”). The WDID identification number for the Facility is 5S34I019980. 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, M & M Recycling, Inc. and Robert Schaffner shall hereinafter be collectively referred to as Specialized German.

This letter addresses Specialized German’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, M & M Recycling, Inc. and Robert Schaffner 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 M & M Recycling, Inc. and Robert Schaffner 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.**

Specialized German owns and operates an auto dismantling 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.

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

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.”

*Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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

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

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

have been established for pollutants discharged by Specialized German: iron – 1.0 mg/L; aluminum – 0.75 mg/L; and total suspended solids – 100 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. Specialized German 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, Specialized German’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 Specialized German has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen

enforcement actions brought pursuant to the federal Clean Water Act, Specialized German is subject to penalties for violations of the Act since September 16, 2006.

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

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

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

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

As recently as October 14, 2010, the Regional Water Quality Control Board, Region 5, sent Specialized German a letter (“the October 2010 letter”) conveying its conclusion that, among other things, Specialized German’s 2009-2010 Annual Report contained evidence that the BMPs then in effect were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2010 letter informed Specialized German that its 2009-2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered Specialized German 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 Specialized German to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

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

**A. Specialized German Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

Specialized German has discharged and continues to discharge stormwater 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. Specialized German's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

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

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
05/16/2011	Collection Point	Al	1.3 mg/L	0.75 mg/L
04/04/2010	Collection Point	Al	8.5 mg/L	0.75 mg/L
03/20/2006	Storm Drain	Al	4.6 mg/L	0.75 mg/L

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

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
05/16/2011	Collection Point	Fe	1.2 mg/L	1.0 mg/L
04/04/2010	Collection Point	Fe	9.9 mg/L	1.0 mg/L
03/20/2006	Storm Drain	Fe	4.8 mg/L	1.0 mg/L

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

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
04/04/2010	Collection Point	TSS	150.0 mg/L	100.0 mg/L

CSPA's investigation, including its review of Specialized German'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 Specialized German 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. Specialized German was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Specialized German is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Specialized German has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least August 9, 2006. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since September 16, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Specialized German has discharged storm water containing impermissible levels of Aluminum (Al), Iron (Fe) and Total Suspended Solids (TSS) 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 stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Specialized German is subject to penalties for violations of the General Permit and the Act since September 16, 2006.

**B. Specialized German 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 Specialized German 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 Specialized German 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

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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.

five years. Second, based on its review of publicly available documents, CSPA is informed and believes that Specialized German has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past five years. Third, based on its review of publicly available documents, CSPA is informed and believes that Specialized German 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, Specialized German is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 16, 2006.

These violations are set forth in greater detail below:

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

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

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

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B.4.a. The General Permit also requires dischargers to “visually observe all drainage areas within their facilities for the presence of unauthorized non-storm water discharges.” General Permit, Section B.3.a. The annual reports filed by

Specialized German at the Regional Board required Specialized German to document these required visual observations on Forms 3 and 4, contained therein. For example, as evidenced by the lack of entries on Form 3 contained in the annual report filed by Specialized German for the Facility for the 2006-2007 Wet Season, CSPA is informed and believes that Specialized German has failed to conduct the quarterly visual monitoring of non-storm water discharges required under the General Permit.

As evidenced by the pervasive lack of qualifying storm events reported for the monthly Wet Season visual monitoring, CSPA is informed and believes that Specialized German has failed to conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit. Each annual report filed by Specialized German in the last five years includes at least one invalid monthly wet season visual observation. For example, in its 2010-2011 Annual Report, Specialized German reported monthly visual monitoring for at least five dates that fail to meet General Permit requirements. Publicly available rain data demonstrates that enough rain fell on the Facility the day before each of these dates to produce a storm water discharge on the Facility. As the General Permit requires that visual observations are preceded by at least three days without storm water discharges, these five reported storm events were invalid. For the 2009-2010 Wet Season, Specialized German reported six invalid storm water discharge visual observation on days which publicly available rain fall data demonstrates that storm water discharges occurred at the Facility at least three days prior to the observation. Specialized German's failure to conduct this required monthly Wet Season visual monitoring extends back to at least September 16, 2006. Specialized German'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. Specialized German 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 Specialized German 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 Annual Report filed by Specialized German for the Facility for the 2010-2011 Wet Season, Specialized German reported that it took its first sample near the very end 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 0.9” of rain was recorded as having fallen on the Facility. Specialized German missed the first qualifying storm of the Wet Season by at least six months.

Notwithstanding the fact that Specialized German admitted in its 2010-2011 Annual Report that it did not sample the first qualifying storm event of the Wet Season, Specialized German failed to provide the required explanation as to why it failed. If a Facility fails to sample the first qualifying storm of the Wet Season, the Facility “shall explain in the Annual Report why the first storm event was not sampled.” General Permit, Section B.5.a. Not only did Specialized German failed to provide the requisite explanation, it also failed to explain why it waited until the last two weeks of the eight-month Wet Season to take the first sample at all. In the section of the annual permit where the Facility is required to explain why it did not sample the first qualifying storm, Specialized German discussed other Facility failures. Failing to sample any storm during the first seven months of the eight month wet season and failing to provide any explanation for this failure 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. Specialized German Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 16, 2006.**

CSPA is informed and believes that available documents demonstrate Specialized German’s consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Permit. For example, while in its 2009-2010 Annual Report Specialized German reported having collected samples of storm water discharged during one qualifying storm event, the storm date recorded was not a qualifying storm event; and, Specialized German failed to sample a second storm as required by the General Permit. With respect to the storm that occurred at the Facility on April 4, 2010, based on CSPA’s review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on April 4, 2010 was not a qualifying storm event because enough rain fell on the Facility three working days prior to likely result in a discharge of storm water from the Facility, thereby invalidating the April 4, 2010 storm as a qualifying storm event.

Additionally, Specialized German 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 Specialized German’s annual reports filed for the past two wet seasons, the method detection limit employed by the laboratory utilized by Specialized German 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, Specialized German 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, Specialized German is subject to penalties for these violations of the General Permit and the Act since September 16, 2006.

**C. Specialized German 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 Specialized German has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), 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, Specialized German 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 Specialized German 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. Specialized German has failed to adequately implement such measures.

Specialized German was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Specialized German 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. Specialized German is subject to penalties for violations of the General Permit and the Act occurring since September 16, 2006.

**D. Specialized German 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 Specialized German has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Specialized German has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Specialized German 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. Specialized German is subject to penalties for violations of the Order and the Act occurring since September 16, 2006.

**E. Specialized German 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, Specialized German is discharging elevated levels of Total Suspended Solids (TSS), 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, Specialized German 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, Specialized German was aware of high levels of these pollutants prior to September 16, 2006. Likewise, Specialized German 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). Specialized German 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 September 16, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Specialized German is subject to penalties for violations of the General Permit and the Act occurring since September 16, 2006.

**F. Specialized German 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 its 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 Specialized German has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, in its 2007-2008 Annual Report, Specialized German asserted statements that cannot possibly be true. Specialized German reported observing storm water discharge on October 9, 2007, but publicly available rainfall data demonstrates that 0.00" of rain fell on the Facility that day. Based on this information, CSPA is informed and believes that Specialized German falsely asserted that a storm event resulting in "clear" discharge took place on a day that did not rain.

Specialized German also asserted statements in the 2009-2010 Annual Report that cannot possibly be true. In its 2009-2010 Annual Report, Specialized German reported having collected samples of storm water discharged from the Facility during one storm event that occurred at the Facility on April 4, 2010. Not only did Specialized German fail to collect samples of storm water for a second storm event as required by the General Permit, CSPA's review of publicly available rain data reveals that the storm event on April 4, 2010 is not a qualifying storm event within the meaning of the General Permit. The storm that occurred at the Facility on April 4, 2010 was not a qualifying storm event because publicly available rainfall data demonstrates that storm water discharged from the Facility three working days before on March 31, 2010 when 0.15" of rain fell on the Facility. Thus, given that the April 4<sup>th</sup> storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the April 4<sup>th</sup> storm was not a qualifying storm event.

Finally, perhaps the most egregious example of Specialized German's demonstrated tendency to file false reports is found in its 2010-2011 Annual Report. Specialized German falsely asserted in its 2010-2011 Annual Report that its samples were from qualifying storm events. Specialized German took two samples at the Facility in the *last two weeks* of the entire Wet Season, on May 16, 2011 and May 28, 2011. Publicly available rainfall data for the area indicates that neither sample dates were qualifying storm events because enough rain fell on the Facility to cause storm water to discharge therefrom within three days prior to each of the sample dates. Publicly available rainfall data indicates it rained 0.19" on May 15, 2011, one day before Specialized German took its first sample for the 2010-2011 Wet Season. Publicly available rainfall data indicates it rained 0.25" on May 25, 2011, three days before Specialized German took its second sample for the Wet Season. Therefore, despite Specialized German's assertions that both of its samples were from qualifying storm events, neither sample qualifies.

Specialized German also made statements in its 2010-2011 Annual Report

“explanations” section that cannot possibly be true. Specialized German asserted that “Al & Fe are over benchmarks on the first sampling the area was cleaned and inspections were increased. We hope that this second sample will be under benchmarks. The second sample was take to the lab late and the results are not back as of July 1, 2011.”

In its 2010-2011 Annual Report, Specialized German reported: (1) having collected the first sample on May 16, 2011; (2) that the lab received this sample on May 24, 2011; and, (3) that the lab issued the results of the sample on June 6, 2011. Based on this information, it cannot possibly be true that Specialized German was aware that the first sample failed to meet EPA benchmark values by exceeding benchmarks for Aluminum and Iron and that based on this information, Specialized German cleaned and increased inspections before the second sample was taken on May 28, 2011. This is because the lab did not receive the first sample until *four days before* the second sample was taken and the lab did not report the results of the first sample to Specialized German until *nine days after* the second sample was taken. There is no way for Specialized German to have known that the first sample did not meet benchmarks before it took a second sample twelve days later. Therefore, it is not possible that Specialized German used such knowledge as a basis for cleaning and increasing inspections in hopes of meeting benchmarks for the second sample.

Specialized German makes a further seriously dubious statement in its claim that it was not able to get the lab results from the second sample back in time to submit it as part of the 2010-2011 Annual Report. Given the amount of time it took the lab to provide Specialized German the analytical results from the first sample (i.e., 2 weeks), it strains credulity to suggest that Specialized German could not have had the lab results from the second sampling event in time to attach them to its 2010-2011 Annual Report when it filed it at the Regional Board on or about July 1, 2011.

Based on the amount of time it took Specialized German to get the lab results back from the first sample, it is supremely unconvincing that Specialized German could not have gotten the lab report for the second sample back in time to file the Annual Report. It took a total of fourteen working days for Specialized German to get the analytical results of the first sample, six working days for Specialized German to get the sample to the lab that is 13.5 miles from the Facility and eight working days for the lab to process and report the results. After taking the second sample, Specialized German had twenty-three working days before the Annual Report deadline to process the second sample. Considering the first sample only took fourteen working days to process, including the six working days it took Specialized German to deliver the sample to the lab, it simply smacks of bad faith for Specialized German to assert that it could not get the lab results for the second sample in time to file the Annual Report. Surely, Specialized German could have gotten the lab results back, with a nine day buffer. It is reasonable to assume that the General Permit gives facilities a month after the Wet Season to prepare the Annual Report because that is a reasonable and feasible amount of time to process samples and report the results. In sum, for the 2010-2011 Annual Report, Specialized German (1) asserted that it sampled two qualifying storm events that were

not, in fact, qualifying storm events, (2) stated that it made clean up and increased inspection efforts based on information it could not have possibly known at the time, and (3) claimed inability to provide lab results from the second sample to prove such efforts, despite having twenty-three working days, nearly double the amount of time it took to get sample results from the first storm sample.

These are only a few examples of how Specialized German has failed to file completely true and accurate reports. As indicated above, Specialized German has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Specialized German has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Specialized German submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Specialized German's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Specialized German is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since September 16, 2006.

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

CSPA puts M & M Recycling, Inc. and Robert Schaffner 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 M & M Recycling, Inc. and Robert Schaffner 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  
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100 Petaluma Boulevard, Suite 301  
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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 M & M Recycling, Inc. and Robert Schaffner 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 M & M Recycling, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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

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

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

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

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

**ATTACHMENT A**  
**Notice of Intent to File Suit, Specialized German Recycling (Rancho Cordova, CA)**  
**Significant Rain Events,\* September 16, 2006 – September 16, 2011**

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

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

**ATTACHMENT A**  
**Notice of Intent to File Suit, Specialized German Recycling (Rancho Cordova, CA)**  
**Significant Rain Events,\* September 16, 2006 – September 16, 2011**

Dec.	18	2010
Dec.	19	2010
Dec.	22	2010
Dec.	25	2010
Dec.	28	2010
Dec.	29	2010
Jan.	01	2011
Jan.	02	2011
Jan.	13	2011
Jan.	29	2011
Jan.	30	2011
Feb.	14	2011
Feb.	15	2011
Feb.	16	2011
Feb.	17	2011
Feb.	18	2011
Feb.	19	2011
Feb.	24	2011
Feb.	25	2011
Mar.	02	2011
Mar.	05	2011
Mar.	06	2011
Mar.	10	2011
Mar.	13	2011
Mar.	14	2011
Mar.	15	2011
Mar.	16	2011
Mar.	18	2011
Mar.	19	2011
Mar.	20	2011
Mar.	22	2011
Mar.	23	2011
Mar.	24	2011
Mar.	25	2011
Mar.	26	2011
April	21	2011
April	25	2011
May	15	2011
May	16	2011
May	17	2011
May	18	2011
May	19	2011
May	25	2011
May	28	2011

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