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11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

12 **UNITED STATES DISTRICT COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA**

14 CALIFORNIA SPORTFISHING  
15 PROTECTION ALLIANCE, a non-profit  
16 corporation,

17 Plaintiff,

18 vs.

19 PARKER-HANNIFIN CORPORATION,  
20 dba RACOR DIVISION, an Ohio  
21 corporation,

22 Defendant.

Case No.

FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

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

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

25 **I. JURISDICTION AND VENUE**

26 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
27 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
28 or “the Act”) against Parker-Hannifin Corporation, dba, Racor Division (hereafter  
“Defendant”). This Court has subject matter jurisdiction over the parties and the subject  
matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A),  
and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief

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

5 2. On or about February 4, 2013, Plaintiff provided notices of Defendant's  
6 violations of the Act ("CWA Notice Letter"), and of its intention to file suit against  
7 Defendant, to the Administrator of the United States Environmental Protection Agency  
8 ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water  
9 Resources Control Board ("State Board"); the Executive Officer of the Regional Water  
10 Quality Control Board, Central Valley Region ("Regional Board"); and to Defendant, as  
11 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's CWA  
12 Notice Letter is attached hereto as Exhibit A, and is incorporated by reference.

13 3. More than sixty days have passed since this CWA Notice Letter was served on  
14 Defendant and the State and federal agencies. Plaintiff is informed and believes, and  
15 thereupon alleges, that neither the EPA nor the State of California has commenced nor is  
16 diligently prosecuting a court action to redress the violations alleged in this Complaint. This  
17 action's claim for civil penalties is not barred by any prior administrative penalty under  
18 Section 309(g) of the Act, 33 U.S.C. § 1319(g).

19 4. Venue is proper in the Eastern District of California pursuant to Section  
20 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
21 located within this judicial district. Pursuant to Local Rule 3-2(e), intra-district venue is  
22 proper in Fresno, California because the sources of the violations are located within  
23 Stanislaus County.

## 24 **II. INTRODUCTION**

25 5. This Complaint seeks relief for Defendant's discharges of pollutants from a  
26 fuel filter manufacturing facility owned and/or operated by Defendant.

27 6. The facility is an approximately 8-acre fuel filter manufacturing facility  
28 owned and/or operated by Defendant (the "Facility"). The Facility is located at 3400 Finch

1 Road in Modesto, California. Defendant discharges pollutant-contaminated storm water  
2 from the Facility into the Tuolumne River, the San Joaquin River and ultimately into the  
3 Sacramento-San Joaquin Delta.

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

13 8. The failure on the part of industrial facility operators such as Defendant to  
14 comply with the General Permit is recognized as a significant cause of the continuing decline  
15 in water quality of these receiving waters. The general consensus among regulatory agencies  
16 and water quality specialists is that storm water pollution amounts to more than half the total  
17 pollution entering the marine environment each year. With every rainfall event, hundreds of  
18 thousands of gallons of polluted storm water originating from industrial facilities discharge  
19 to the Tuolumne River, the San Joaquin River and Sacramento-San Joaquin Delta.

20 **III. PARTIES**

21 9. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
22 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
23 California with its main office in Stockton, California. CSPA has approximately 2,000  
24 members who live, recreate and work in and around waters of the State of California,  
25 including the Tuolumne River, the San Joaquin River, the Sacramento River, and the  
26 Sacramento-San Joaquin Delta ("the Delta"). CSPA is dedicated to the preservation,  
27 protection, and defense of the environment, and the wildlife and the natural resources of all  
28 waters of California. To further these goals, CSPA actively seeks federal and state agency

1 implementation of the Act and other laws and, where necessary, directly initiates  
2 enforcement actions on behalf of itself and its members.

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

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

17 12. Plaintiff is informed and believes, and thereupon alleges that Defendant  
18 Parker-Hannifin Corporation, dba Racor Division, is a corporation organized under the laws  
19 of the State of Ohio, and that Defendant Parker-Hannifin Corporation, dba, Racor Division,  
20 owns and operates the Facility.

21 13. Accordingly, Defendant owns and/or operates the Facility.

22 **IV. STATUTORY BACKGROUND**

23 14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
24 pollutant into waters of the United States, unless such discharge is in compliance with  
25 various enumerated sections of the Act. Among other things, Section 301(a) prohibits  
26 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
27 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

28 15. Section 402(p) of the Act establishes a framework for regulating municipal

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

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

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

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

25 19. In addition to absolute prohibitions, the General Permit contains a variety of  
26 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
27 or having the potential to discharge, storm water associated with industrial activity that have  
28 not obtained an individual NPDES permit must apply for coverage under the State's General

1 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing  
2 dischargers to file their NOIs before March 30, 1992.

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

9 21. EPA has established Benchmark Levels as guidelines for determining  
10 whether a facility discharging industrial storm water has implemented the requisite BAT and  
11 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
12 established for pollutants discharged by Defendant: total suspended solids – 100 mg/L;  
13 chemical oxygen demand 120 mg/L; biological oxygen demand 30 mg/L; and, oil & grease  
14 15 mg/L. The State Water Quality Control Board has proposed adding a benchmark level  
15 for specific conductance of 200  $\mu$ mhos/cm.

16 22. Dischargers must develop and implement a Storm Water Pollution  
17 Prevention Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the  
18 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
19 (1) a narrative description and summary of all industrial activity, potential sources of  
20 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
21 water conveyance system, associated points of discharge, direction of flow, areas of  
22 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
23 storm water management practices, best management practices ("BMPs") and preventive  
24 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
25 the location where Significant Materials are being shipped, stored, received and handled, as  
26 well as the typical quantities of such materials and the frequency with which they are  
27 handled; (5) a description of potential pollutant sources including industrial processes,  
28 material handling and storage areas, dust and particulate generating activities; (6) a summary

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

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

25 24. The General Permit requires dischargers to eliminate all non-storm water  
26 discharges to storm water conveyance systems other than those specifically set forth in  
27 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth  
28 in Special Condition D(1)(b).

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

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

23           27.       In order to discharge storm water lawfully in California, industrial  
24 dischargers must comply with the terms of the General Permit or have obtained and  
25 complied with an individual NPDES permit.

26           28.       The term “discharge of pollutants” means “any addition of any pollutant to  
27 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
28 include, among other examples, industrial waste, chemical wastes, biological materials, heat,



1 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

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

5 30. “Navigable waters” means “the waters of the United States.” 33 U.S.C.  
6 § 1362(7). Waters of the United States include tributaries to waters that are navigable in  
7 fact. Waters of the United States include man-made water bodies that are tributary to waters  
8 that are navigable in fact. Waters of the United States include ephemeral waters that are  
9 tributary to waters that are navigable in fact.

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

19 32. The Regional Board has established water quality standards for the  
20 Tuolumne River, the San Joaquin River and the Sacramento-San Joaquin River Delta (“the  
21 Delta”) in the Water Quality Control Plan for the Sacramento River and San Joaquin River  
22 Basins, generally referred to as the Basin Plan.

23 33. The Basin Plan includes a toxicity standard which states that “[a]ll waters  
24 shall be maintained free of toxic substances in concentrations that produce detrimental  
25 physiological responses in, human, plant, animal, or aquatic life.”

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

1           35.       The Basin Plan provides that “[w]aters shall not contain chemical constituents  
2 in concentrations that adversely affect beneficial uses.”

3           36.       The Basin Plan provides that “[a]t a minimum, water designated for use as  
4 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
5 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the San  
6 Joaquin River and the Sacramento-San Joaquin River Delta have been designated by the  
7 State Board for use as municipal and domestic supply.

8                   **STATEMENT OF FACTS**

9           37.       The Facility is classified as conforming to SIC Code 3714 (“Motor Vehicle  
10 Parts & Accessories”). Industrial activities occur throughout the Facility. The Facility’s  
11 primary industrial activities are to handle, store, manufacture and transport fuel filters and  
12 fuel filter production-related materials. Other current industrial activities occurring at the  
13 Facility involve the use, storage, and maintenance of heavy machinery and motorized  
14 vehicles, including trucks used to haul materials to, from and within the Facility. Most of  
15 these activities occur outside in areas that are exposed to storm water and storm flows due to  
16 the lack of overhead coverage, functional berms and other storm water controls. Plaintiff is  
17 informed and believes that Defendant’s storm water controls, to the extent any exist, fail to  
18 achieve BAT and BCT standards.

19           38.       The management practices at the Facility are wholly inadequate to prevent  
20 the sources of contamination described above from causing the discharge of pollutants to  
21 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential  
22 structural controls such as grading, berming and roofing to prevent rainfall and storm water  
23 flows from coming into contact with these and other sources of contaminants, thereby  
24 allowing storm water to flow over and across these materials and become contaminated prior  
25 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the  
26 discharge of water once contaminated. The Facility also lacks an adequate filtration system  
27 to treat water once it is contaminated.

28           39.       Vehicle traffic at the Facility tracks dust and particulate matter, increasing

1 the discharges of polluted water and mud into waters of the United States.

2 40. During rain events storm water laden with pollutants discharges from the  
3 Facility to a conveyance which carries storm water from the Facility into the Tuolumne  
4 River, the San Joaquin River and the Delta.

5 41. Information available to Plaintiff indicates that as a result of these practices,  
6 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
7 being discharged from the Facility directly to these waters during significant rain events.

8 42. Information available to Plaintiff indicates that Defendant has not fulfilled  
9 the requirements set forth in the General Permit for discharges from the Facility due to the  
10 continued discharge of contaminated storm water.

11 43. Plaintiff is informed and believes, and thereupon alleges, that Defendant has  
12 failed to develop and implement an adequate Storm Water Pollution Prevention Plan at the  
13 Facility.

14 44. Information available to Plaintiff indicates the continued existence of  
15 unlawful storm water discharges at the Facility.

16 45. Plaintiff is informed and believes, and thereupon alleges, that Defendant has  
17 failed to develop and implement adequate storm water monitoring, reporting and sampling  
18 programs at the Facility. Plaintiff is informed and believes, and thereupon alleges, that  
19 Defendant has not sampled with adequate frequency, have not conducted visual monitoring,  
20 and have not analyzed the storm water samples collected at the Facility for the required  
21 pollutant parameters.

22 46. Plaintiff is informed and believes, and thereupon alleges, that all of the  
23 violations alleged in this Complaint are ongoing and continuing.

24 **V. CLAIMS FOR RELIEF**

25 **FIRST CAUSE OF ACTION**

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

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

1 though fully set forth herein.

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

9 49. Plaintiff is informed and believes, and thereupon alleges, that since at least  
10 October 1, 1992, Defendant has been discharging polluted storm water from the Facility to the  
11 Tuolumne River, the San Joaquin River and the Delta in violation of the General Permit.

12 50. During every significant rain event, storm water flowing over and through  
13 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
14 Facility to the Tuolumne River, which carries storm water from the Facility into the  
15 Tuolumne River, the San Joaquin River and the Delta.

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

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

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

26 54. Plaintiff is informed and believes, and thereupon alleges, that every day since  
27 March 30, 1992, Defendant has discharged and continue to discharge polluted storm water  
28 from the Facility in violation of the General Permit. Every day Defendant has discharged and

1 continue to discharge polluted storm water from the Facility in violation of the General Permit  
2 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These  
3 violations are ongoing and continuous.

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

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

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

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

14 57. Defendant has failed to develop and implement an adequate SWPPP for the  
15 Facility. Defendant’s ongoing failure to develop and implement an adequate SWPPP for the  
16 Facility is evidenced by, *inter alia*, Defendant’s outdoor storage of industrial materials,  
17 including fuel filter manufacturing-related materials, without appropriate best management  
18 practices; the continued exposure of significant quantities of industrial material to storm water  
19 flows; the failure to either treat storm water prior to discharge or to implement effective  
20 containment practices; and the continued discharge of storm water pollutants from the Facility  
21 at levels in excess of EPA benchmark values and other applicable water quality standards.

22 58. Defendant has further failed to update Facility’s SWPPP in response to the  
23 analytical results of the Facility’s storm water monitoring as required by the General Permit.

24 59. Each day since October 1, 1992 that Defendant has failed to develop and  
25 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate  
26 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

27 60. Defendant has been in violation of the SWPPP requirement every day since  
28 October 1, 1992. Defendant continues to be in violation of the Act each day that they fail to  
develop and fully implement an adequate SWPPP for the Facility.

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

2 **THIRD CAUSE OF ACTION**

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

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

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

12 63. Defendant has failed to implement BAT and BCT at the Facility for their  
13 discharges of biological oxygen demand, chemical oxygen demand, total suspended solids,  
14 specific conductance, oil & grease, and other unmonitored pollutants in violation of Effluent  
15 Limitation B(3) of the General Permit.

16 64. Each day that Defendant has failed to develop and implement BAT and BCT at  
17 the Facility in violation of the General Permit is a separate and distinct violation of Section  
18 301(a) of the Act, 33 U.S.C. § 1311(a).

19 65. Defendant has been in violation of the BAT and BCT requirements at the  
20 Facility every day since at least February 4, 2008. Defendant continues to be in violation of  
21 the BAT and BCT requirements each day that they fail to develop and fully implement an  
22 adequate BAT and BCT for the Facility.

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

24 **FOURTH CAUSE OF ACTION**

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

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

67. Section B of the General Permit requires dischargers of storm water associated  
with industrial activity to develop and implement a monitoring and reporting program

1 (including, among other things, sampling and analysis of discharges) no later than October 1,  
2 1992.

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

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

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

17 **VI. RELIEF REQUESTED**

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

- 19 a. Declare Defendant to have violated and to be in violation of the Act, as  
20 alleged herein;
- 21 b. Enjoin Defendant from discharging pollutants from the Facility and to the  
22 surface waters surrounding and downstream from the Facility;
- 23 c. Enjoin Defendant from further violating the substantive and procedural  
24 requirements of the General Permit;
- 25 d. Order Defendant to pay civil penalties of \$32,500 per day per violation for  
26 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all  
27 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections  
28 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4

1 (pp. 200-202) (Dec. 31, 1996);

2 e. Order Defendant to take appropriate actions to restore the quality of  
3 navigable waters and sources of drinking water impaired by their activities;

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

6 g. Award any such other and further relief as this Court may deem appropriate.  
7

8 Dated: April 29, 2013

Respectfully Submitted,

9 LAW OFFICES OF ANDREW L. PACKARD

10  
11 By: /s/ Andrew L. Packard  
12 Andrew L. Packard  
13 Attorneys for Plaintiff  
14 CALIFORNIA SPORTFISHING  
15 PROTECTION ALLIANCE  
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**EXHIBIT A**



February 4, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Brian Hook, Filtration Group VP and Racor Division General Manager  
Sean Howard, Division Environmental Manager  
Parker-Hannifin Corporation, dba, Racor Division  
P.O. Box 3208  
Modesto, CA 95353

C T Corporation System, Agent for Service of Process  
Parker-Hannifin Corporation  
818 W. Seventh Street  
Los Angeles, CA 90017

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

Dear Messrs. Hook and Howard:

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 Parker-Hannifin Corporation facility doing business as Racor (“PHC”), located at 3400 Finch Road in Modesto, California (“the Facility”). The WDID identification number for the Facility is 5S50I006981. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of the Tuolumne River, the San Joaquin 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, Parker-Hannifin Corporation, Brian Hook and Sean Howard shall hereinafter be collectively referred to as PHC.

This letter addresses PHC’s unlawful discharges of pollutants from the Facility to the Tuolumne River, the San Joaquin 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”)

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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, Parker-Hannifin Corporation, Brian Hook and Sean Howard 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 Parker-Hannifin Corporation, Brian Hook and Sean Howard 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.**

PHC owns and operates a fuel filter manufacturing facility located in Modesto, California. The Facility falls under Standard Industrial Classification (“SIC”) Code 3714 (“Motor Vehicle Parts & Accessories”). CSPA notes that PHC has reported in publicly available documents that industrial activities at the Facility include the handling and/or storage of hazardous waste, scrap metal and petroleum products.

PHC discharges storm water from its approximately 8-acre Facility through at least two (2) discharge points into an unnamed drainage ditch, which discharges storm water from the Facility into the Tuolumne River, which ultimately flows into the San Joaquin 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

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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

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have been established for pollutants discharged by PHC: oil and grease – 15 mg/L; total suspended solids – 100.0 mg/L; biological oxygen demand - 30 mg/L; and, chemical oxygen demand - 120 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

## **II. PHC 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. § 122.30(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 San Joaquin River and the Delta and its tributaries are waters of the United States. Accordingly, PHC’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 PHC 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, PHC is subject to penalties for violations of the Act since February 4, 2008.

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

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

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

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

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

##### **A. PHC Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

PHC has discharged and continues to discharge storm water with unacceptable levels of Oil and Grease (O&G), Total Suspended Solids (TSS), Biological Oxygen Demand (BOD), Chemical Oxygen Demand (COD) and Specific Conductance (SC) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data

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attached hereto as Attachment A. PHC’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 Chemical Oxygen Demand (COD) 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>Benchmark Value</b>
01/20/2012	South Maint. Yard	COD	932 mg/L	120 mg/L
01/20/2012	East Parking Lot	COD	336 mg/L	120 mg/L
10/6/2011	South Maint. Yard	COD	358 mg/L	120 mg/L
10/6/2011	East Parking Lot	COD	145 mg/L	120 mg/L
05/18/2011	South Maint. Yard	COD	932 mg/L	120 mg/L
05/18/2011	East Parking Lot	COD	314 mg/L	120 mg/L
01/18/2010	South Maint. Yard	COD	148 mg/L	120 mg/L
01/23/2009	East Parking Lot	COD	172 mg/L	120 mg/L
01/23/2009	South Maint. Yard	COD	738 mg/L	120 mg/L
11/03/2008	East Parking Lot	COD	224 mg/L	120 mg/L
11/03/2008	South Maint. Yard	COD	738 mg/L	120 mg/L

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**2. Discharge of Storm Water Containing Biological Oxygen Demand (BOD) 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>Benchmark Value</b>
01/20/2012	South Maint. Yard	BOD	292 mg/L	30 mg/L
01/20/2012	East Parking Lot	BOD	40 mg/L	30 mg/L
10/06/2011	South Maint. Yard	BOD	200 mg/L	30 mg/L
05/18/2011	South Maint. Yard	BOD	292 mg/L	30 mg/L
01/23/2009	South Maint. Yard	BOD	32 mg/L	30 mg/L
11/03/2008	East Parking Lot	BOD	38 mg/L	30 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>Benchmark Value</b>
01/20/2012	South Maint. Yard	TSS	693 mg/L	100 mg/L
01/20/2012	East Parking Lot	TSS	173 mg/L	100 mg/L
10/06/2011	South Maint. Yard	TSS	144 mg/L	100 mg/L
05/18/2011	South Maint. Yard	TSS	102 mg/L	100 mg/L
01/23/2009	South Maint. Yard	TSS	342 mg/L	100 mg/L



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**4. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed EPA Benchmark Value.**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
01/20/2012	South Maint. Yard	SC	222 µmhos/cm	200 µmhos/cm
01/20/2012	East Parking Lot	SC	824 µmhos/cm	200 µmhos/cm
05/18/2011	South Maint. Yard	SC	222 µmhos/cm	200 µmhos/cm
05/18/2011	East Parking Lot	SC	210 µmhos/cm	200 µmhos/cm
11/03/2008	East Parking Lot	SC	226 µmhos/cm	200 µmhos/cm

**5. Discharge of Storm Water Containing Oil and Grease (O&G) 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>Benchmark Value</b>
01/20/2012	South Maint. Yard	O&G	95.9 mg/L	15 mg/L
01/20/2012	East Parking Lot	O&G	18.9 mg/L	15 mg/L
10/06/2011	South Maint. Yard	O&G	39.7 mg/L	15 mg/L
05/18/2011	South Maint. Yard	O&G	95.9 mg/L	15 mg/L

CSPA's investigation, including its review of PHC'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 PHC has not implemented BAT and BCT at the Facility for its discharges of Chemical Oxygen Demand (COD), Biological Oxygen Demand (BOD), Oil and Grease (O&G), Total Suspended Solids (TSS) and Specific Conductance (SC) and other unmonitored pollutants, in violation of Effluent Limitation B(3) of the General Permit. PHC was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, PHC is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

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CSPA is informed and believes that PHC has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 4, 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 February 4, 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 PHC has discharged storm water containing impermissible levels of Chemical Oxygen Demand (COD), Biological Oxygen Demand (BOD), Oil and Grease (O&G), Total Suspended Solids (TSS) and Specific Conductance (SC) and other unmonitored pollutants 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, PHC is subject to penalties for violations of the General Permit and the Act since February 4, 2008.

**B. PHC 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.”

Based on its investigation, CSPA is informed and believes that PHC 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 PHC has failed to collect storm water samples during at least two qualifying storms event (as

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defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that PHC has failed to conduct the monthly visual monitoring of storm water discharges required under the General Permit during each of the past five years. Third, CSPA is informed and believes that PHC has failed to collect samples of the storm water discharged from each of the Facility's storm water discharge points during each of the past five years. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PHC is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 4, 2008. These violations are set forth in greater detail below:

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

Section B(5) of the General Industrial Storm Water Permit requires facility operators to collect storm water samples from “[a]ll storm water discharge locations” during at least two qualifying storm events each wet season. General Permit § B(5)(a). Based on its review of publicly available documents, CSPA is informed and believes that PHC has failed to collect storm water samples during at least two qualifying rain events at the Facility during each of the past five years, as required by the General Permit. For example, CSPA notes that PHC reported in its 2007-2008 Annual Report that it only collected storm water discharge samples during one storm event for that entire wet season. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

PHC's failure to conduct this required sampling extends back to at least February 4, 2008. PHC's failure to conduct this required sampling has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

**2. PHC 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 General Permit requires that the annual reports filed by PHC at the Regional Board document these required visual observations on Form 4 Monthly Visual Inspections. Based upon its review of publicly available historical precipitation records for the Modesto area, CSPA is informed and believes that PHC failed to conduct the required monthly visual monitoring of storm water discharges because on many of the dates that PHC reported having observed storm water discharges, local precipitation records indicate it did not even rain. Alternatively, while a storm event likely occurred on many of the other dates that PHC reported having observed monthly storm water discharges many of those visual observations are invalid because

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they did not occur during a qualifying storm event. General Permit Section B(4)(b) provides that monthly visual observations of qualifying storm events are “required of storm water discharges that occur during daylight hours that are preceded by at least three (3) working days without storm water discharges and that occur during scheduled operating hours.” Many of the dates that PHC reported having conducted monthly visual observations of storm water discharges are invalid because such observations occurred during storm events that were *not* preceded by at least three days without storm water discharging from the Facility.

PHC’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least February 4, 2008. PHC’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. PHC Has Failed to Collect Storm Water Samples From Each Discharge Point During at Least Two Rain Events In Each of the Last Five Years.**

Section B(5) of the General Industrial Storm Water Permit requires facility operators to collect storm water samples from “[a]ll storm water discharge locations” during at least two qualifying storm events each wet season. General Permit § B(5)(a). CSPA is informed and believes that PHC has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during the past five years, as required by the General Permit.

PHC’s failure to conduct this required sampling extends back to at least February 4, 2008. PHC’s failure to conduct this required sampling has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

**4. PHC Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 4, 2008.**

CSPA is informed and believes that publicly available documents demonstrate PHC’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. PHC’s above-described failures to sample at least two qualifying storm events in the last five years or report monthly visual observations of storm water discharge are not the Facility’s only violations of the General Permit’s monitoring and reporting requirements, they are merely examples of some of PHC’s violations of the General Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PHC is subject to penalties for these violations of the General Permit and the Act since February 4, 2008.

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**C. PHC 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 PHC has not implemented BAT and BCT at the Facility for its discharges of Chemical Oxygen Demand (COD), Biological Oxygen Demand (BOD), Oil and Grease (O&G), Total Suspended Solids (TSS) and Specific Conductance (SC) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

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

PHC was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, PHC 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. PHC is subject to penalties for violations of the General Permit and the Act occurring since February 4, 2008.

**D. PHC 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

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(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 PHC has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. PHC has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, PHC 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. PHC is subject to penalties for violations of the Order and the Act occurring since February 4, 2008.

**E. PHC 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).

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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, PHC is discharging elevated levels of Chemical Oxygen Demand (COD), Biological Oxygen Demand (BOD), Oil and Grease (O&G), Total Suspended Solids (TSS) and Specific Conductance (SC) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, PHC 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, PHC was aware of high levels of these pollutants prior to February 4, 2008. Likewise, PHC 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). PHC 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 February 4, 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. PHC is subject to penalties for violations of the General Permit and the Act occurring since February 4, 2008.

#### **F. PHC 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).

Based upon its review of publicly available documents, CSPA is informed and believes that PHC has submitted late, incomplete and/or false Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, PHC reported in its 2011-2012 Annual Report that it collected storm water discharge samples during three qualifying storm events. However, based on CSPA's review of publically available rainfall data, CSPA believes that is not true.

In its 2011-2012 Annual Report, PHC reported having collected storm water

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discharge samples during a qualifying storm event at the Facility on October 6, 2011. However, publicly available precipitation data for Modesto demonstrates that it rained 0.41” inches of rain in Modesto the day prior to October 6, 2011, and that it rained 0.3” in Modesto two days prior to that date. CSPA believes that 0.3” of rain falling on the Facility on any given day would cause storm water to discharge from the Facility. Accordingly, because storm water discharged from the Facility both of the two days prior, the storm that occurred at the Facility on October 6, 2011 was rendered a non-qualifying storm event.

Additionally, PHC reported in its 2011-2012 Annual Report that it collected storm water discharge samples and conducted its required monthly visual observation of storm water discharges on February 29, 2012. However, publicly available rainfall data for Modesto demonstrates that it did not even rain in Modesto on February 29, 2012.

These are only a few examples of how PHC has failed to file completely true and accurate reports. As indicated above, PHC has failed to comply with the General Permit and the Act consistently for at least the past five years; therefore, PHC has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time PHC submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. PHC’s failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. PHC is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since February 4, 2008.

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

CSPA puts Parker-Hannifin Corporation, Brian Hook and Sean Howard 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 Parker-Hannifin Corporation, Brian Hook and Sean Howard 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.



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**VI. Counsel.**

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


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Emily J. Brand  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
E-mail: Andrew@PackardLawOffices.com  
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 Parker-Hannifin Corporation, Brian Hook and Sean Howard 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 Parker-Hannifin Corporation, Brian Hook and Sean Howard and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

## ATTACHMENT A

**Notice of Intent to File Suit re Parker-Hannifin Corp., dba, Racor (Modesto, CA)  
Significant Rain Events,\* February 4, 2008 – February 4, 2013**

Feb. 19 2008	Jan. 25 2010	Feb. 17 2011
Feb. 20 2008	Feb. 04 2010	Feb. 18 2011
Feb. 21 2008	Feb. 06 2010	Feb. 19 2011
Feb. 22 2008	Feb. 09 2010	Feb. 24 2011
Feb. 23 2008	Feb. 21 2010	Feb. 25 2011
Feb. 24 2008	Feb. 23 2010	Mar. 06 2011
Oct. 04 2008	Feb. 24 2010	Mar. 15 2011
Oct. 30 2008	Feb. 26 2010	Mar. 18 2011
Nov. 03 2008	Feb. 27 2010	Mar. 19 2011
Nov. 26 2008	Mar. 02 2010	Mar. 24 2011
Dec. 14 2008	Mar. 03 2010	Mar. 26 2011
Dec. 21 2008	Mar. 10 2010	May 15 2011
Dec. 22 2008	Mar. 12 2010	May 18 2011
Dec. 24 2008	April 04 2010	Jun. 04 2011
Dec. 25 2008	April 05 2010	Jun. 05 2011
Jan. 22 2009	April 11 2010	Jun. 28 2011
Jan. 23 2009	April 12 2010	Oct. 03 2011
Jan. 25 2009	April 20 2010	Oct. 04 2011
Feb. 05 2009	April 21 2010	Oct. 05 2011
Feb. 06 2009	May 10 2010	Oct. 06 2011
Feb. 11 2009	May 25 2010	Nov. 05 2011
Feb. 13 2009	May 26 2010	Dec. 15 2011
Feb. 15 2009	May 27 2010	April 11 2012
Feb. 16 2009	Jun. 05 2010	April 12 2012
Feb. 17 2009	Jun. 07 2010	April 13 2012
Feb. 23 2009	Oct. 23 2010	April 25 2012
Mar. 01 2009	Oct. 24 2010	Nov. 28 2012
Mar. 02 2009	Nov. 07 2010	Nov. 30 2012
Mar. 03 2009	Nov. 19 2010	Dec. 01 2012
Mar. 04 2009	Nov. 20 2010	Dec. 02 2012
Mar. 21 2009	Nov. 23 2010	Dec. 05 2012
April 07 2009	Nov. 27 2010	Dec. 15 2012
April 09 2009	Dec. 04 2010	Dec. 22 2012
May 01 2009	Dec. 05 2010	Dec. 23 2012
Sept. 14 2009	Dec. 08 2010	Dec. 25 2012
Oct. 13 2009	Dec. 14 2010	Jan. 05 2013
Nov. 27 2009	Dec. 17 2010	Jan. 06 2013
Dec. 07 2009	Dec. 19 2010	Jan. 24 2013
Dec. 11 2009	Dec. 20 2010	
Dec. 12 2009	Dec. 22 2010	
Dec. 21 2009	Dec. 25 2010	
Dec. 27 2009	Dec. 28 2010	
Jan. 13 2010	Dec. 29 2010	
Jan. 17 2010	Jan. 01 2011	
Jan. 18 2010	Jan. 02 2011	
Jan. 19 2010	Jan. 11 2011	
Jan. 20 2010	Jan. 30 2011	
Jan. 21 2010	Feb. 16 2011	

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