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7 CALIFORNIA SPORTFISHING  
8 PROTECTION ALLIANCE

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 CALIFORNIA SPORTFISHING  
11 PROTECTION ALLIANCE, a non-profit  
12 corporation,  
13 Plaintiff,  
14 vs.  
15 RECOLOGY, INC., a California  
16 corporation,  
17 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

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

18  
19 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
20 through its counsel, hereby alleges:

21 **I. JURISDICTION AND VENUE**

22 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
23 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
24 or “the Act”) against RECOLOGY, INC. (hereafter “Defendant”). This Court has subject  
25 matter jurisdiction over the parties and the subject matter of this action pursuant to Section  
26 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising  
27 under the laws of the United States). The relief requested is authorized pursuant to 28  
28 U.S.C. § 2201-02 (power to issue declaratory relief in case of actual controversy and further

1 necessary relief based on such a declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive  
2 relief), and 33 U.S.C. § 1319(d), 1365(a) (civil penalties).

3 2. On or about October 24, 2013, Plaintiff provided notice of Defendant's  
4 violations of the Act ("CWA Notice Letter"), and of its intention to file suit against  
5 Defendant, to the Administrator of the United States Environmental Protection Agency  
6 ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water  
7 Resources Control Board ("State Board"); the Executive Officer of the Regional Water  
8 Quality Control Board, Central Valley Region ("Regional Board"); and to Defendant, as  
9 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's CWA  
10 Notice Letter is attached hereto as Exhibit A, and is incorporated by reference.

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

17 4. Venue is proper in the Northern District of California pursuant to Section  
18 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
19 located within this judicial district. Pursuant to Local Rule 3-2(e), intra-district venue is  
20 proper in San Jose, California because the sources of the violations are located within Santa  
21 Clara County.

## 22 **II. INTRODUCTION**

23 5. This Complaint seeks relief for Defendant's discharges of pollutants from an  
24 approximately 7-acre waste transfer station and recycling facility owned and operated by  
25 Defendant (the "Facility"). The Facility is located at 14070 Llagas Avenue in San Martin,  
26 California. Defendant discharges pollutant-contaminated storm water from the Facility into  
27 the Llagas Creek, the Pajaro River and ultimately into Monterey Bay.

28 6. Defendant's discharge of pollutant-contaminated storm water from the

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

9         7.         The failure on the part of industrial facility operators such as Defendant to  
10 comply with the General Permit is recognized as a significant cause of the continuing decline  
11 in water quality of these receiving waters. The general consensus among regulatory agencies  
12 and water quality specialists is that storm water pollution amounts to more than half the total  
13 pollution entering the marine environment each year. With every rainfall event, hundreds of  
14 thousands of gallons of polluted storm water originating from industrial facilities discharge  
15 to Llagas Creek, the Pajaro River and Monterey Bay.

### 16 **III. PARTIES**

17         8.         Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
18 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
19 California with its main office in Stockton, California. CSPA has approximately 2,000  
20 members who live, recreate and work in and around waters of the State of California,  
21 including Llagas Creek, the Pajaro River and Monterey Bay. CSPA is dedicated to the  
22 preservation, protection, and defense of the environment, and the wildlife and the natural  
23 resources of all waters of California. To further these goals, CSPA actively seeks federal  
24 and state agency implementation of the Act and other laws and, where necessary, directly  
25 initiates enforcement actions on behalf of itself and its members.

26         9.         Members of CSPA reside in California and use and enjoy California's  
27 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the  
28 waters of Llagas Creek, the Pajaro River and/or Monterey Bay, into which Defendant has

1 caused, is causing, and will continue to cause, pollutants to be discharged. Members of  
2 CSPA use these areas to fish, sail, boat, kayak, swim, birdwatch, view wildlife and engage in  
3 scientific study, including monitoring activities, among other things. Defendant's discharges  
4 of pollutants threaten or impair each of those uses or contribute to such threats and  
5 impairments. Thus, the interests of CSPA's members have been, are being, and will  
6 continue to be adversely affected by Defendant's ongoing failure to comply with the Clean  
7 Water Act. The relief sought herein will redress the harms to Plaintiff caused by Defendant's  
8 activities.

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

12 11. Plaintiff is informed and believes, and thereupon alleges that Defendant is a  
13 corporation organized under the laws of the State of California, and that Defendant owns and  
14 operates the Facility.

15 **IV. STATUTORY BACKGROUND**

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

21 13. Section 402(p) of the Act establishes a framework for regulating municipal  
22 and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p).  
23 States with approved NPDES permit programs are authorized by Section 402(p) to regulate  
24 industrial storm water discharges through individual permits issued to dischargers and/or  
25 through the issuance of a single, statewide general permit applicable to all industrial storm  
26 water dischargers. 33 U.S.C. § 1342.

27 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of  
28 the U.S. EPA has authorized California's State Board to issue NPDES permits including

1 general NPDES permits in California.

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

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

18 17. In addition to absolute prohibitions, the General Permit contains a variety of  
19 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
20 or having the potential to discharge, storm water associated with industrial activity that have  
21 not obtained an individual NPDES permit must apply for coverage under the State's General  
22 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing  
23 dischargers to file their NOIs before March 30, 1992.

24 18. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
25 or prevent pollutants in its storm water discharges through implementation of the Best  
26 Available Technology Economically Achievable ("BAT") for toxic and nonconventional  
27 pollutants and the Best Conventional Pollutant Control Technology ("BCT") for  
28 conventional pollutants. BAT and BCT include both nonstructural and structural measures.

1 General Permit, Section A(8).

2 19. EPA has established Benchmark Levels as guidelines for determining  
3 whether a facility discharging industrial storm water has implemented the requisite BAT and  
4 BCT standards. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks  
5 have been established for pollutants discharged by Defendant: total suspended solids (100  
6 mg/L); chemical oxygen demand (120 mg/L); biological oxygen demand (30 mg/L); oil &  
7 grease (15 mg/L) and the metals aluminum, copper, iron, lead and zinc. The State Water  
8 Quality Control Board has proposed adding a benchmark level for specific conductance of  
9 200  $\mu$ mhos/cm.

10 20. Dischargers must develop and implement a Storm Water Pollution  
11 Prevention Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the  
12 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
13 (1) a narrative description and summary of all industrial activity, potential sources of  
14 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
15 water conveyance system, associated points of discharge, direction of flow, areas of  
16 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
17 storm water management practices, best management practices ("BMPs") and preventive  
18 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
19 the location where Significant Materials are being shipped, stored, received and handled, as  
20 well as the typical quantities of such materials and the frequency with which they are  
21 handled; (5) a description of potential pollutant sources including industrial processes,  
22 material handling and storage areas, dust and particulate generating activities; (6) a summary  
23 of storm water sampling points; (7) a description of individuals and their responsibilities for  
24 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of  
25 potential pollutant sources including industrial processes, material handling and storage  
26 areas, and dust and particulate generating activities; (9) a description of significant spills and  
27 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description  
28 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an

1 assessment of potential pollutant sources at the Facility and a description of the BMPs to be  
2 implemented at the Facility that will reduce or prevent pollutants in storm water discharges  
3 and authorized non-storm water discharges, including structural BMPs where non-structural  
4 BMPs are not effective (Section A(7), (8)).

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

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

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

28 24. The General Permit also requires dischargers to submit yearly "Annual

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

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

20 26. The term “discharge of pollutants” means “any addition of any pollutant to  
21 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
22 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
23 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

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

27 28. “Navigable waters” means “the waters of the United States.” 33 U.S.C.  
28 § 1362(7). Waters of the United States include tributaries to waters that are navigable in

1 fact. Waters of the United States include man-made water bodies that are tributary to waters  
2 that are navigable in fact. Waters of the United States include ephemeral waters that are  
3 tributary to waters that are navigable in fact.

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

13 30. The Regional Board has established water quality standards for Llagas  
14 Creek, the Pajaro River and Monterey Bay in the Water Quality Control Plan for the Central  
15 Coast Basin, generally referred to as the “Basin Plan.”

16 31. The Basin Plan includes a toxicity standard which states that “[a]ll waters  
17 shall be maintained free of toxic substances in concentrations which are toxic to or which  
18 produce detrimental physiological responses in, human, plant, animal, or aquatic life.”

19 32. The Basin Plan provides that “[w]aters shall not contain concentrations of  
20 chemical constituents known to be deleterious to fish or wildlife.”

21 33. The Basin Plan provides that “[a]t a minimum, water designated for use as  
22 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
23 constituents in excess of the maximum contaminant levels (MCLs).”

## 24 **V. STATEMENT OF FACTS**

25 34. The Facility is classified as conforming to Standard Industrial Classification  
26 (“SIC”) Codes 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and  
27 Waste Materials”) and 4212 (“Local Trucking Without Storage”). Industrial activities occur  
28 throughout the Facility. The Facility’s primary industrial activities include receiving,

1 storing, handling, and transporting commercial, residential, and non-hazardous industrial  
2 waste and recyclable waste, including appliances, furniture, brush and yard waste, household  
3 garbage, wood, aluminum and tin cans, cardboard, glass bottles and jars, mixed paper, white  
4 goods and some plastic containers. Other current industrial activities occurring at the  
5 Facility involve the use, storage, and maintenance of heavy machinery and motorized  
6 vehicles, including trucks used to haul materials to, from and within the Facility. Most of  
7 these activities occur outside in areas that are exposed to storm water and storm flows due to  
8 the lack of overhead coverage, functional berms and other storm water controls. Plaintiff is  
9 informed and believes that Defendant's storm water controls, to the extent any exist, fail to  
10 achieve BAT and BCT standards.

11 35. The management practices at the Facility are wholly inadequate to prevent  
12 the sources of contamination described above from causing the discharge of pollutants to  
13 waters of the United States and fail to meet BAT and BCT standards. The Facility lacks  
14 essential structural controls such as grading, berming and roofing to prevent rainfall and  
15 storm water flows from coming into contact with these and other sources of contaminants,  
16 thereby allowing storm water to flow over and across these materials and become  
17 contaminated prior to leaving the Facility. In addition, the Facility lacks structural controls  
18 to prevent the discharge of water once contaminated. The Facility also lacks an adequate  
19 filtration system to treat water once it is contaminated.

20 36. Vehicle traffic at the Facility tracks dust and particulate matter, increasing  
21 the discharges of polluted water and mud into waters of the United States.

22 37. During rain events storm water laden with pollutants discharges from the  
23 Facility to Llagas Creek, the Pajaro River and ultimately into Monterey Bay.

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

27 39. Information available to Plaintiff indicates that Defendant has not fulfilled  
28 the requirements set forth in the General Permit for discharges from the Facility due to the

1 continued discharge of contaminated storm water.

2 40. Plaintiff is informed and believes, and thereupon alleges, that Defendant has  
3 failed to develop and implement an adequate Storm Water Pollution Prevention Plan at the  
4 Facility.

5 41. Information available to Plaintiff indicates the continued existence of  
6 unlawful storm water discharges at the Facility.

7 42. Plaintiff is informed and believes, and thereupon alleges, that Defendant has  
8 failed to develop and implement adequate storm water monitoring, reporting and sampling  
9 programs at the Facility. Plaintiff is informed and believes, and thereupon alleges, that  
10 Defendant has not sampled with adequate frequency, has not conducted visual monitoring,  
11 and has not analyzed the storm water samples collected at the Facility for the required  
12 pollutant parameters.

13 43. Plaintiff is informed and believes, and thereupon alleges, that all of the  
14 violations alleged in this Complaint are ongoing and continuing.

15 **V. CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**  
17 **Discharges of Contaminated Storm Water From The Facility**  
18 **in Violation of Permit Conditions and the Act**  
19 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

20 44. Plaintiff incorporates the allegations contained in the above paragraphs as  
21 though fully set forth herein.

22 45. Discharge Prohibition A(2) of the General Permit requires that storm water  
23 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
24 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
25 General Permit require that storm water discharges and authorized non-storm water discharges  
26 shall not adversely impact human health or the environment, and shall not cause or contribute  
27 to a violation of any water quality standards contained in a Statewide Water Quality Control  
28 Plan or the applicable Regional Board's Basin Plan.

46. Plaintiff is informed and believes, and thereupon alleges, that since at least

1 October 1, 1992, Defendant has been discharging polluted storm water from the Facility into  
2 Llagas Creek, the Pajaro River and Monterey Bay in violation of the General Permit.

3 47. During every significant rain event, storm water flowing over and through  
4 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
5 Facility to Llagas Creek, the Pajaro River and Monterey Bay.

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

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

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

16 51. Plaintiff is informed and believes, and thereupon alleges, that every day since  
17 March 30, 1992, Defendant has discharged and continues to discharge polluted storm water  
18 from the Facility in violation of the General Permit. Every day Defendant has discharged and  
19 continues to discharge polluted storm water from the Facility in violation of the General  
20 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).  
21 These violations are ongoing and continuous.

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

23  
24 **SECOND CAUSE OF ACTION**

25 **Failure to Develop and Implement an Adequate**  
26 **Storm Water Pollution Prevention Plan For the Facility**  
**(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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



1 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
2 pollutants.

3 60. Defendant has failed to implement BAT and BCT at the Facility for their  
4 discharges of chemical oxygen demand, total suspended solids, specific conductance, oil &  
5 grease, aluminum, copper, iron, lead, zinc and other unmonitored pollutants in violation of  
6 Effluent Limitation B(3) of the General Permit.

7 61. Each day that Defendant has failed to develop and implement BAT and BCT at  
8 the Facility in violation of the General Permit is a separate and distinct violation of Section  
9 301(a) of the Act, 33 U.S.C. § 1311(a).

10 62. Defendant has been in violation of the BAT and BCT requirements at the  
11 Facility every day since at least January 9, 2009. Defendant continues to be in violation of the  
12 BAT and BCT requirements each day that it fails to develop and fully implement BMPs  
13 meeting the BAT and BCT standards.

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

15

**FOURTH CAUSE OF ACTION**

**Failure to Develop and Implement an Adequate  
Monitoring and Reporting Program For The Facility**

**(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

64. Section B of the General Permit requires dischargers of storm water associated  
with industrial activity to develop and implement a monitoring and reporting program  
(including, among other things, sampling and analysis of discharges) no later than October 1,  
1992.

65. Defendant has failed to develop and implement an adequate monitoring and  
reporting program for the Facility. Defendant’s ongoing failures to develop and implement  
adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing  
failure to collect and analyze storm water samples from all discharge locations, their

1 continuing failure to analyze storm water samples for all required pollutant parameters and  
2 other pollutants likely to be present in the Facility's storm water discharges in significant  
3 quantities, and their failure to file required Annual Reports with the Regional Board which  
4 provide required documentation and information relating to visual observations and storm  
5 water sampling and analysis conducted at the Facility.

6 66. Each day since October 1, 1992 that Defendant has failed to develop and  
7 implement an adequate monitoring and reporting program for the Facility in violation of the  
8 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.  
9 § 1311(a). These violations are ongoing and continuous.

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

11  
12 **VI. RELIEF REQUESTED**

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

- 14 a. Declare Defendant to have violated and to be in violation of the Act, as  
15 alleged herein;
- 16 b. Enjoin Defendant from discharging pollutants from the Facility and to the  
17 surface waters surrounding and downstream from the Facility;
- 18 c. Enjoin Defendant from further violating the substantive and procedural  
19 requirements of the General Permit;
- 20 d. Order Defendant to pay civil penalties of \$32,500 per day per violation for  
21 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all  
22 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections  
23 309(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  
24 (pp. 200-202) (Dec. 31, 1996);
- 25 e. Order Defendant to take appropriate actions to restore the quality of  
26 navigable waters impaired by their activities;
- 27 f. Award Plaintiff's costs (including reasonable attorney, witness, and  
28 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

Dated: January 9, 2014

Respectfully Submitted,

LAW OFFICES OF ANDREW L. PACKARD

By:           /s/ Andrew L. Packard            
Andrew L. Packard  
Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

**EXHIBIT A**



October 24, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Recology South Valley  
c/o Roxanne Frye, Agent for Service of Process  
50 California St. 24<sup>th</sup> Floor  
San Francisco, CA 94111

Recology Inc.  
c/o Roxanne Frye, Agent for Service of Process  
50 California St. 24<sup>th</sup> Floor  
San Francisco, CA 94111

Phil Couchee, General Manager  
Chris Gibson, Environmental Compliance Manager  
San Martin Transfer Station  
14070 Llagas Ave.  
San Martin, CA 95046

Steve Lucchetti, Operations Manager  
Ray Escuerdo, Lead Operator  
1351 Pacheco Pass Hwy  
Gilroy, CA 95020

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

Dear Mssrs. Couchee, Gibson, Escuerdo, and Lucchetti and Ms. Frye:

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 San Martin Transfer Station in San Martin, California (“the Facility”). The WDID

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identification number for the Facility is 343I000135. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of all California waters, including Llagas Creek, the Pajaro River, and the Monterey Bay. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Recology Inc., Recology South Valley, Chris Gibson, Steve Lucchetti, Phil Couchee, and Ray Escuerdo will be referred to collectively as “San Martin Transfer Station” or “SMTS.”

This letter addresses SMTS’s unlawful discharges of pollutant-contaminated storm water from the Facility to Llagas Creek, which then conveys that storm water into the Pajaro River, which ultimately flows into Monterey Bay. 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, Recology Inc., Recology South Valley, Chris Gibson, Steve Lucchetti, Phil Couchee, and Ray Escuerdo 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 Recology Inc., Recology South Valley, Chris Gibson, Steve Lucchetti, Phil Couchee, and Ray Escuerdo 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.**

STMS owns and operates a transfer station facility located in San Martin, California. The Facility falls under Standard Industrial Classification (“SIC”) Code 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”) and 4212 (“Motor Freight Transportation and Warehousing”). The Facility is used to receive, store, handle, recycle and transport commercial, residential, and non-hazardous industrial waste and recyclables waste, including appliances, furniture, brush and yard waste, household garbage, wood, aluminum and tin cans, cardboard, glass bottles and jars, mixed paper, white goods and some plastic containers. Other activities at the Facility include the use and storage of heavy machinery and motorized vehicles,

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including trucks used to haul materials to, from and within the Facility, as well as the dispensing of diesel fuel.

SMTS collects and discharges storm water from its approximately seven-acre Facility through at least one, and as many as three, discharge points to Llagas Creek, which feeds into the Pajaro River and leads to Monterey Bay. Llagas Creek, the Pajaro River, and the Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for Llagas Creek, the Pajaro River and the Monterey Bay in the “Water Quality Control Plan for the Central Coast Basin,” 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.” Basin Plan at III-4.

The Regional Board has designated the following uses for Llagas Creek below the Chesbro Reservoir: Municipal; Agricultural; Warm Fresh Water Habitat; Cold Fresh Water Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species; and Spawning, Reproduction, and/or Early Development. *Id.* at II-5. The Basin Plan establishes maximum contaminant levels (MCLs) for municipal water supplies for aluminum (1.0 mg/L) and lead (0.05 mg/L). *Id.* at III-7, Table 3-2. The Basin Plan also sets the following MCLs for livestock watering: aluminum (5.0 mg/L), lead (0.1 mg/L), and zinc (25.0 mg/L). *Id.* at III-9, Table 3-4. The Basin Plan also sets the following MCLs for Aquatic Life Habitats based on hard or soft water, respectively: lead (0.03 mg/L, 0.03 mg/L), and zinc (0.2 mg/L, 0.004 mg/L). *Id.* at III-11, Table 3-5. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.3.” *Id.* at III-4. 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-3.

The Basin Plan also provides that water designated for use as domestic or municipal supply “shall not contain concentrations of chemical constituents in excess of the [maximum contaminant levels (MCLs)] specified in California Code of Regulations, Title 22 . . . Section 64435.” *Id.* at III-5. 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 5.0 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 – 1.0 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0

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(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); and lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified the portion of Llagas Creek below Chesbro Reservoir as failing to meet water quality standards for electrical conductivity, sodium, total dissolved solids, and turbidity. *See* [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml). Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of the 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 SMTS: total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; and, lead – 0.0816 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, including but not limited to, 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. SMTS 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

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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).

Llagas Creek, the Pajaro River and the Monterey Bay are waters of the United States. Accordingly, SMTS’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 SMTS 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, SMTS is subject to penalties for violations of the Act since October 24, 2008.

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

SMTS 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 non-conventional. *Id.*; 40 C.F.R. § 401.15.

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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.

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

SMTS has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Chemical Oxygen Demand (COD), Aluminum, Copper, Iron, Lead, and Zinc 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. SMTS’s Annual Reports and Sampling and Analysis Results confirm discharges of 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 Total Suspended Solids (“TSS”) at Concentrations in Excess of Applicable EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/28/2012	TSS	210 mg/L	100 mg/L
4/10/2012	TSS	160 mg/L	100 mg/L
11/11/2011	TSS	300 mg/L	100 mg/L
12/28/2010	TSS	220 mg/L	100 mg/L

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11/23/2010	TSS	760 mg/L	100 mg/L
1/18/2010	TSS	260 mg/L	100 mg/L
10/13/2009	TSS	240 mg/L	100 mg/L
11/26/2008	TSS	540 mg/L	100 mg/L
10/31/2008	TSS	540 mg/L	100 mg/L

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

Date	Parameter	Concentration in Discharge	Proposed Benchmark Value
12/17/2012	SC	380 µmhos/cm	200 µmhos/cm
11/28/2012	SC	630 µmhos/cm	200 µmhos/cm
11/11/2011	SC	440 µmhos/cm	200 µmhos/cm
12/28/2010	SC	430 µmhos/cm	200 µmhos/cm
11/23/2010	SC	360 µmhos/cm	200 µmhos/cm
1/18/2010	SC	610 µmhos/cm	200 µmhos/cm
10/13/2009	SC	420 µmhos/cm	200 µmhos/cm
11/26/2008	SC	520 µmhos/cm	200 µmhos/cm
10/31/2008	SC	780 µmhos/cm	200 µmhos/cm

**3. Discharges of Storm Water Containing Oil and Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
11/28/2012	O&G	28 mg/L	15 mg/L
11/11/2011	O&G	21 mg/L	15 mg/L
11/23/2010	O&G	130 mg/L	15 mg/L

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

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
12/17/2012	Fe	4.3 mg/L	1.0 mg/L
11/28/2012	Fe	3.7 mg/L	1.0 mg/L
4/10/2012	Fe	5.6 mg/L	1.0 mg/L
11/11/2011	Fe	8.8 mg/L	1.0 mg/L
12/28/2010	Fe	8.6 mg/L	1.0 mg/L

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11/23/2010	Fe	19.0 mg/L	1.0 mg/L
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5. **Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Parameter	Concentration in Discharge	Proposed Benchmark Value
12/17/2012	Al	1.2 mg/L	0.75 mg/L
11/28/2012	Al	1.3 mg/L	0.75 mg/L
4/10/2012	Al	3.6 mg/L	0.75 mg/L
11/11/2011	Al	6.0 mg/L	0.75 mg/L
12/28/2010	Al	6.1 mg/L	0.75 mg/L
11/23/2010	Al	16.0 mg/L	0.75 mg/L

6. **Discharges of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
11/28/2012	Pb	0.083 mg/L	0.0816 mg/L

7. **Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Parameter	Concentration in Discharge	Benchmark Value
12/17/2012	Zn	5.1 mg/L	0.117 mg/L
11/28/2012	Zn	4.0 mg/L	0.117 mg/L
4/10/2012	Zn	1.2 mg/L	0.117 mg/L
11/11/2011	Zn	0.37 mg/L	0.117 mg/L
12/28/2010	Zn	0.4 mg/L	0.117 mg/L
11/23/2010	Zn	1.0 mg/L	0.117 mg/L

8. **Discharges of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Parameter	Concentration in Discharge	Benchmark Value
11/28/2012	Cu	0.18 mg/L	0.0636 mg/L

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CSPA's investigation, including its review of SMTS'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 SMTS has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Lead (Pb), Copper (Cu), Zinc (Zn) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SMTS was required to have implemented BAT and BCT by no later than October 1, 1992, or the start of its operations. Thus, SMTS is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SMTS has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 24, 2008. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since October 24, 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 SMTS has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Lead (Pb), Copper (Cu), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SMTS is subject to penalties for violations of the General Permit and the Act since October 24, 2008.

**B. SMTS 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.

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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.”

Based on its investigation, CSPA is informed and believes that SMTS 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 SMTS 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 five years. Second, based on its review of publicly available documents, CSPA is informed and believes that SMTS has failed to conduct the monthly visual monitoring of storm water discharges during qualified storm events as required under the General Permit during each of the past five years. Third, based on its review of publicly available documents, CSPA is informed and believes that SMTS has failed to analyze samples of storm water discharged from the Facility for all pollutant parameters required under Table D of the General Permit.

Finally, based on its review of publicly available documents, CSPA is informed and believes that SMTS has failed to collect storm water samples from the first storm of the Wet Season that produced a discharge during scheduled Facility operating hours. 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, SMTS is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 24, 2008. These violations are set forth in greater detail below:

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

Based on its review of publicly available documents, CSPA is informed and believes that SMTS 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 Reports filed by SMTS for the 2009-2010, 2010-2011 and 2012-2013 Wet Seasons reported that ASM analyzed samples of storm water discharged during two qualifying storm events that season, upon closer scrutiny publicly available rain data indicates that either one or both of the storms tested each year were not qualifying storm events within the meaning of the General Permit (discussed further below). Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one sampling location currently designated by SMTS. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

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**2. SMTS 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. SMTS is required to document these required visual observations on Form 4 of the mandatory Annual Reports filed with the Regional Water Board. As evidenced by the entries on Form 4 contained in the annual reports SMTS has filed for the Facility over the last five (5) Wet Seasons, CSPA is informed and believes that SMTS has failed to properly conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit. SMTS’s failure to conduct this required monthly Wet Season visual monitoring in compliance with the General Permit extends back to at least March 2, 2009. SMTS’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. SMTS Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since October 24, 2008.**

CSPA is informed and believes that available documents demonstrate SMTS’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 SMTS reported having collected samples of storm water discharged during two qualifying storm events, only one of the two dates that SMTS reported having collected samples of storm water was a qualifying storm event. First, with respect to the reported storm that occurred on January 18, 2010, that was not a qualifying storm event within the meaning of the General Permit given that it had rained enough the day before that date to render the storm that occurred on January 18, 2010, a non-qualifying storm event. Under the General Permit, a qualifying storm event is one that produces a storm water discharge from the Facility during scheduled operating hours and that was preceded by at least three working days without a storm water discharge. General Permit, Section B.5.b. In this instance, it rained enough on January 17, 2010 (approximately 0.2”) to cause storm water to discharge from the Facility less than three working days prior to January 18, 2010.

Similarly, SMTS failed to collect samples from at least two qualifying storm events during the 2010-2011 Wet Season. During that Wet Season, SMTS reported having collected samples of storm water discharged from the Facility during storm events that occurred on November 23<sup>rd</sup> and December 28<sup>th</sup> of 2010. However, neither of those storms were qualifying storm events within the meaning of the General Permit (on both dates because it had rained enough to discharge from the Facility during the three days preceding the sampling date. SMTS again failed to collect samples from at least two

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qualifying storm events during the 2012-2013 Wet Season. The December 17, 2012 storm was not a qualifying storm event because it rained 0.13" on December 15, 2012).

However, failure to collect storm water discharge samples from two qualifying storm events per Wet Season is not SMTS's only violation of the General Permit's monitoring and reporting requirements. Based on its review of publicly available documents, CSPA is informed and believes that SMTS has failed to analyze samples of storm water discharged from the Facility for all pollutant parameters required under Table D of the General Permit. SMTS erroneously identifies the only applicable Standard Industrial Classification (SIC) code on the Annual Reports as 4212; in fact, SIC code 5093 ("Scrap Recycling Facilities") is more applicable. Under Table D of the General Permit, facilities falling within SIC Code 5093 are required to analyze collected samples of storm water discharged from their facility for total suspended solids (TSS), iron (Fe), lead (Pb), aluminum (Al), copper (Cu), zinc (Zn) and chemical oxygen demand (COD). Based on its review of publicly available documents, CSPA is informed and believes that SMTS failed to analyze samples of storm water discharged from the Facility for iron, copper, aluminum, zinc and chemical oxygen demand as required under Table D of the General Permit for at least two of the last five years.

Finally, as mentioned above, based on its review of publicly available documents, CSPA is informed and believes that SMTS has failed to collect storm water samples from the first storm of the Wet Season that produced a discharge during scheduled Facility operating hours each of the past five years. For example, in its Annual Report filed for the 2012-13 Wet Season, SMTS reported that it had collected a sample from the first qualifying storm event of the season and that that storm had occurred on November 28, 2012. However, the first qualifying storm of the 2012-2013 wet season occurred on October 22, 2012, when approximately 0.15" of rain fell on the Facility.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SMTS is subject to penalties for these violations of the General Permit and the Act since October 24, 2008.

### **C. SMTS 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 SMTS has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Specific Conductivity, Oil and Grease, Aluminum, Iron, Lead, Zinc, Copper, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

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

SMTS was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SMTS 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. SMTS is subject to penalties for violations of the General Permit and the Act occurring since October 24, 2008.

**D. SMTS 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 1, 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

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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 SMTS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Although SMTS has revised some portion of its SWPPP in the past five years, SMTS has failed to adequately evaluate the effectiveness of its BMPs and to revise its SWPPP as required by federal law. Accordingly, SMTS 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. SMTS is subject to penalties for violations of the Order and the Act occurring since October 24, 2008.

**E. SMTS 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, SMTS is discharging elevated levels of Total Suspended Solids, Specific Conductivity, Oil and Grease, Aluminum, Iron, Lead, Copper, and other

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unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SMTS 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, SMTS was aware of high levels of these pollutants prior to October 24, 2008 (SC, O&G, and TSS) and November 23, 2010 (Zinc, iron, aluminum, COD). Likewise, SMTS 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 sufficiently altered as a result of the annual evaluation required by Section A(9). SMTS has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since October 24, 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. SMTS is subject to penalties for violations of the General Permit and the Act occurring since October 24, 2008.

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

CSPA puts Recology South Valley, Recology, Inc., Phil Couchee, Chris Gibson, Steve Lucchetti, and Ray Escuerdo 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 Recology South Valley, Recology, Inc., Phil Couchee, Chris Gibson, Steve Lucchetti, and Ray Escuerdo 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  
Laurie A. Mikkelsen  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227

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Fax. (707) 763-9227

E-mail: Andrew@PackardLawOffices.com

Laurie@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 Recology South Valley, Recology, Inc., Phil Couchee, Chris Gibson, Steve Lucchetti, and Ray Escuerdo 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 Recology South Valley and Recology, Inc., 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,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with a large initial "B" and "J".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Gina McCarthy, 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

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

Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906

## ATTACHMENT A

**Notice of Intent to File Suit, San Martin Transfer Station (San Martin, CA)  
Significant Rain Events,\* October 24, 2008 – October 24, 2013**

Oct.	04	2008	Jan.	12	2010	Dec.	04	2010	Feb.	06	2012
Nov.	02	2008	Jan.	13	2010	Dec.	05	2010	Feb.	07	2012
Nov.	03	2008	Jan.	17	2010	Dec.	08	2010	Feb.	12	2012
Nov.	27	2008	Jan.	18	2010	Dec.	14	2010	Feb.	13	2012
Dec.	15	2008	Jan.	19	2010	Dec.	17	2010	Feb.	29	2012
Dec.	16	2008	Jan.	20	2010	Dec.	18	2010	Mar.	16	2012
Dec.	19	2008	Jan.	21	2010	Dec.	19	2010	Mar.	17	2012
Dec.	22	2008	Jan.	22	2010	Dec.	21	2010	Mar.	25	2012
Dec.	23	2008	Jan.	23	2010	Dec.	22	2010	Mar.	27	2012
Dec.	25	2008	Jan.	26	2010	Dec.	25	2010	Mar.	28	2012
Jan.	02	2009	Jan.	29	2010	Dec.	28	2010	Mar.	31	2012
Jan.	05	2009	Feb.	04	2010	Dec.	29	2010	April	10	2012
Jan.	21	2009	Feb.	05	2010	Jan.	01	2011	April	11	2012
Jan.	25	2009	Feb.	06	2010	Jan.	02	2011	April	12	2012
Feb.	05	2009	Feb.	09	2010	Jan.	30	2011	April	13	2012
Feb.	06	2009	Feb.	21	2010	Feb.	14	2011	April	25	2012
Feb.	08	2009	Feb.	23	2010	Feb.	16	2011	Oct.	22	2012
Feb.	11	2009	Feb.	26	2010	Feb.	17	2011	Oct.	23	2012
Feb.	13	2009	Feb.	27	2010	Feb.	18	2011	Nov.	08	2012
Feb.	16	2009	Mar.	02	2010	Feb.	19	2011	Nov.	16	2012
Feb.	17	2009	Mar.	03	2010	Feb.	24	2011	Nov.	30	2012
Mar.	01	2009	Mar.	10	2010	Feb.	25	2011	Dec.	04	2012
Mar.	02	2009	Mar.	12	2010	Mar.	13	2011	Dec.	05	2012
Mar.	03	2009	Mar.	25	2010	Mar.	16	2011	Dec.	15	2012
Mar.	04	2009	Mar.	30	2010	Mar.	18	2011	Dec.	17	2012
Mar.	21	2009	April	02	2010	Mar.	19	2011	Dec.	22	2012
Mar.	22	2009	April	04	2010	Mar.	20	2011	Dec.	23	2012
April	07	2009	April	05	2010	Mar.	21	2011	Dec.	25	2012
May	01	2009	April	11	2010	Mar.	23	2011	Dec.	26	2012
May	05	2009	April	12	2010	Mar.	24	2011	Dec.	29	2012
Oct.	13	2009	April	20	2010	Mar.	26	2011	Jan.	05	2013
Oct.	14	2009	April	21	2010	April	07	2011	Jan.	06	2013
Oct.	23	2009	April	26	2010	April	08	2011	Jan.	24	2013
Oct.	24	2009	April	27	2010	May	09	2011	Feb.	19	2013
Oct.	26	2009	May	10	2010	May	14	2011	Mar.	06	2013
Oct.	28	2009	May	25	2010	May	15	2011	Mar.	07	2013
Oct.	30	2009	May	27	2010	May	16	2011	Mar.	19	2013
Nov.	7	2009	Oct.	17	2010	May	17	2011	April	01	2013
Nov.	27	2009	Oct.	22	2010	Oct.	05	2011	April	04	2013
Dec.	07	2009	Oct.	23	2010	Nov.	04	2011			
Dec.	10	2009	Oct.	24	2010	Nov.	05	2011			
Dec.	11	2009	Nov.	07	2010	Nov.	11	2011			
Dec.	12	2009	Nov.	19	2010	Nov.	19	2011			
Dec.	13	2009	Nov.	20	2010	Nov.	20	2011			
Dec.	21	2009	Nov.	21	2010	Jan.	20	2012			
Dec.	26	2009	Nov.	22	2010	Jan.	21	2012			
Dec.	27	2009	Nov.	23	2010	Jan.	22	2012			
Dec.	28	2009	Nov.	27	2010	Jan.	23	2012			

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