

1 Michael R. Lozeau (State Bar No. 142893)
Richard Drury (State Bar No. 163559)
2 Douglas J. Chermak (State Bar No. 233382)
LOZEAU DRURY LLP
3 410 12th Street, Suite 250
Oakland, CA 94607
4 Tel: (510) 836-4200
Fax: (510) 836-4205 (fax)
5 E-mail: michael@lozeaudrury.com
doug@lozeaudrury.com

6 Attorneys for Plaintiff
7 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

8
9 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

10 CALIFORNIA SPORTFISHING
11 PROTECTION ALLIANCE, a non-profit
corporation,

12 Plaintiff,

13 vs.

14 SYAR CONCRETE LLC, a corporation,
15 Defendant.

Case No. _____

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

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

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18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its
19 counsel, hereby alleges:

20 **I. JURISDICTION AND VENUE**

21 1. This is a civil suit brought under the citizen suit enforcement provisions of the
22 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or
23 “the Act”). This Court has subject matter jurisdiction over the parties and the subject matter
24 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
25 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
26 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
27 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
28 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

1 2. On or about May 21, 2010, Plaintiff provided notice of Defendant’s violations
2 of the Act, and of its intention to file suit against Defendant, to the Administrator of the
3 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region
4 IX; the Executive Director of the State Water Resources Control Board (“State Board”); the
5 Executive Officer of the California Regional Water Quality Control Board, Central Valley
6 Bay Region (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. §
7 1365(b)(1)(A). A true and correct copy of Plaintiff’s notice letter is attached as Exhibit A,
8 and is incorporated by reference.

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

15 4. Venue is proper in the Eastern District of California pursuant to Section
16 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
17 within this judicial district. Pursuant to Local Rule 3-120, intradistrict venue is proper in
18 Sacramento, California, because the source of the violations is located within Yolo County.

19 **II. INTRODUCTION**

20 5. This complaint seeks relief for Defendant’s discharges of polluted storm water
21 and non-storm water pollutants from Defendant SYAR CONCRETE LLC’s ready-mix
22 concrete facility located at 39820 Kentucky Ave in Woodland, California (“the Facility”) in
23 violation of the Act and National Pollutant Discharge Elimination System (“NPDES”)
24 Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-
25 13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order
26 No. 97-03-DWQ (hereinafter “the Order” or “Permit” or “General Permit”). Defendant’s
27 violations of the discharge, treatment technology, monitoring requirements, and other
28 procedural and substantive requirements of the Permit and the Act are ongoing and

1 continuous.

2 6. The failure on the part of persons and facilities such as Defendant and its
3 industrial facility to comply with storm water requirements is recognized as a significant
4 cause of the continuing decline in water quality of the Sacramento River, the Sacramento-
5 San Joaquin River Delta (“Delta”) and other area receiving waters. The general consensus
6 among regulatory agencies and water quality specialists is that storm pollution amounts to
7 more than half of the total pollution entering the aquatic environment each year. In many
8 areas of Yolo County, storm water from commercial and industrial activities flows
9 completely untreated through storm drain systems or other channels directly to the waters of
10 the United States.

11 **III. PARTIES**

12 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
13 (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of
14 California with its main office in Stockton, California. CSPA has approximately 2,000
15 members who live, recreate and work in and around waters of the State of California,
16 including the Sacramento River and the Delta. CSPA is dedicated to the preservation,
17 protection, and defense of the environment, the wildlife and the natural resources of all
18 waters of California. To further these goals, CSPA actively seeks federal and state agency
19 implementation of the Act and other laws and, where necessary, directly initiates
20 enforcement actions on behalf of itself and its members.

21 8. Members of CSPA reside in and around the Sacramento River and the Delta
22 and enjoy using the Sacramento River and the Delta for recreation and other activities.
23 Members of CSPA use and enjoy the waters into which Defendant has caused, is causing,
24 and will continue to cause, pollutants to be discharged. Members of CSPA use those areas
25 to fish, sail, boat, kayak, swim, bird watch, view wildlife and engage in scientific study
26 including monitoring activities, among other things. Defendant’s discharges of pollutants
27 threaten or impair each of those uses or contribute to such threats and impairments. Thus,
28 the interests of CSPA’s members have been, are being, and will continue to be adversely

1 affected by Defendant's failure to comply with the Clean Water Act and the Permit. The
2 relief sought herein will redress the harms to CSPA caused by Defendant's activities.

3 9. Continuing commission of the acts and omissions alleged above will irreparably
4 harm Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy
5 at law.

6 10. Defendant SYAR CONCRETE LLC ("Syar") is a corporation organized under
7 the laws of California. Defendant Syar operates a ready-mix concrete facility in Woodland,
8 California.

9 **IV. STATUTORY BACKGROUND**

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

15 12. Section 402(p) of the Act establishes a framework for regulating municipal and
16 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States
17 with approved NPDES permit programs are authorized by Section 402(p) to regulate
18 industrial storm water discharges through individual permits issued to dischargers or through
19 the issuance of a single, statewide general permit applicable to all industrial storm water
20 dischargers. 33 U.S.C. § 1342(p).

21 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
22 U.S. EPA has authorized California's State Board to issue NPDES permits including general
23 NPDES permits in California.

24 14. The State Board elected to issue a statewide general permit for industrial storm
25 water discharges. The State Board issued the General Permit on or about November 19,
26 1991, modified the General Permit on or about September 17, 1992, and reissued the
27 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
28 Act, 33 U.S.C. § 1342(p).

1 15. In order to discharge storm water lawfully in California, industrial dischargers
2 must comply with the terms of the General Permit or have obtained and complied with an
3 individual NPDES permit. 33 U.S.C. § 1311(a).

4 16. The General Permit contains several prohibitions. Effluent Limitation B(3) of
5 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
6 discharges through implementation of the Best Available Technology Economically
7 Achievable (“BAT”) for toxic and nonconventional pollutants and the Best Conventional
8 Pollutant Control Technology (“BCT”) for conventional pollutants. BAT and BCT include
9 both nonstructural and structural measures. General Permit, Section A(8). Discharge
10 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-
11 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
12 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to
13 any surface or ground water that adversely impact human health or the environment.
14 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that
15 cause or contribute to an exceedance of any applicable water quality standards contained in
16 Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

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

23 18. Dischargers must develop and implement a Storm Water Pollution Prevention
24 Plan (“SWPPP”). The SWPPP must describe storm water control facilities and measures
25 that comply with the BAT and BCT standards. The General Permit requires that an initial
26 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
27 among other requirements, identify and evaluate sources of pollutants associated with
28 industrial activities that may affect the quality of storm and non-storm water discharges from

1 the facility and identify and implement site-specific best management practices (“BMPs”) to
2 reduce or prevent pollutants associated with industrial activities in storm water and
3 authorized non-storm water discharges (Section A(2)). The SWPPP’s BMPs must
4 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
5 individuals and their responsibilities for developing and implementing the SWPPP (Section
6 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
7 pattern and nearby water bodies, the location of the storm water collection, conveyance and
8 discharge system, structural control measures, impervious areas, areas of actual and potential
9 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
10 handled and stored at the site (Section A(5)); a description of potential pollutant sources
11 including industrial processes, material handling and storage areas, dust and particulate
12 generating activities, and a description of significant spills and leaks, a list of all non-storm
13 water discharges and their sources, and a description of locations where soil erosion may
14 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
15 at the Facility and a description of the BMPs to be implemented at the Facility that will
16 reduce or prevent pollutants in storm water discharges and authorized non-storm water
17 discharges, including structural BMPs where non-structural BMPs are not effective (Section
18 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
19 where necessary (Section A(9),(10)).

20 19. Section C(3) of the General Permit requires a discharger to prepare and submit
21 a report to the Regional Board describing changes it will make to its current BMPs in order
22 to prevent or reduce any pollutant in its storm water discharges that is causing or
23 contributing to an exceedance of water quality standards. Once approved by the Regional
24 Board, the additional BMPs must be incorporated into the Facility’s SWPPP. The report
25 must be submitted to the Regional Board no later than 60 days from the date the discharger
26 first learns that its discharge is causing or contributing to an exceedance of an applicable
27 water quality standard. Section C(4)(a).

28 20. Section C(11)(d) of the General Permit’s Standard Provisions requires

1 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
2 Section A(9) of the General Permit requires an annual evaluation of storm water controls
3 including the preparation of an evaluation report and implementation of any additional
4 measures in the SWPPP to respond to the monitoring results and other inspection activities.

5 21. The General Permit requires dischargers commencing industrial activities
6 before October 1, 1992 to develop and implement an adequate written monitoring and
7 reporting program no later than October 1, 1992. Existing facilities covered under the
8 General Permit must implement all necessary revisions to their monitoring programs no later
9 than August 1, 1997.

10 22. As part of their monitoring program, dischargers must identify all storm water
11 discharge locations that produce a significant storm water discharge, evaluate the
12 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
13 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
14 conduct visual observations of these discharge locations for at least one storm per month
15 during the wet season (October through May) and record their findings in their Annual
16 Report. Dischargers must also collect and analyze storm water samples from at least two
17 storms per year. Section B(5)(a) of the General Permit requires that dischargers “shall
18 collect storm water samples during the first hour of discharge from (1) the first storm event
19 of the wet season, and (2) at least one other storm event in the wet season. All storm water
20 discharge locations shall be sampled.” Section B(5)(c)(i) requires dischargers to sample and
21 analyze during the wet season for basic parameters, such as pH, total suspended solids,
22 electrical conductance, and total organic content or oil & grease, certain industry-specific
23 parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other
24 pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii)
25 requires discharges to sample for parameters dependent on a facility’s standard industrial
26 classification (“SIC”) code. Facilities that fall under SIC Code 3273 are required to analyze
27 their storm water discharge samples for iron. Dischargers must also conduct dry season
28 visual observations to identify sources of non-storm water pollution. Section B(7)(a)

1 indicates that the visual observations and samples must represent the “quality and quantity of
2 the facility’s storm water discharges from the storm event.” Section B(7)(c) requires that “if
3 visual observation and sample collection locations are difficult to observe or
4 sample...facility operators shall identify and collect samples from other locations that
5 represent the quality and quantity of the facility’s storm water discharges from the storm
6 event.”

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

13 24. The General Permit does not provide for any mixing zones by dischargers.
14 The General Permit does not provide for any dilution credits to be applied by dischargers.

15 25. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
16 enforcement actions against any “person,” including individuals, corporations, or
17 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
18 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
19 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to
20 \$32,500 per day per violation for all violations occurring through January 12, 2009, and up to
21 \$37,500 per day per violation for all violations occurring after January 12, 2009, for each
22 violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d),
23 1365(a) and 40 C.F.R. §§ 19.1 - 19.4.

24 26. The Regional Board has established water quality standards for the
25 Sacramento River and the Delta and their tributaries, including the Tule Canal, in the Water
26 Quality Control Plan for the San Francisco Bay Basin, generally referred to as the Basin
27 Plan.

28 27. The Basin Plan includes a narrative toxicity standard which states that “[a]ll

1 waters shall be maintained free of toxic substances in concentrations that produce
2 detrimental physiological responses in human, plant, animal, or aquatic life.”

3 28. The Basin Plan provides that “[w]ater shall be free of discoloration that causes
4 nuisance or adversely affects beneficial uses.”

5 29. The Basin Plan provides that “[w]aters shall be free of changes in turbidity that
6 cause nuisance or adversely affect beneficial uses.”

7 30. The Basin Plan includes a narrative oil and grease standard which states that
8 “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that
9 cause nuisance, result in a visible film or coating on the surface of the water or on objects in
10 the water, or otherwise adversely affect beneficial uses.”

11 31. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor
12 raised above 8.5.”

13 32. The Basin Plan establishes a dissolved oxygen standard of 7.0 mg/L for the
14 Sacramento River and Delta waters.

15 33. The Basin Plan establishes trace element water quality objectives for several
16 metals, including 0.3 mg/L for iron, 0.1 mg/L for zinc, and 0.01 mg/L for copper.

17 34. The Basin Plan provides that electrical conductivity in the Sacramento River
18 shall not exceed 240 micromhos/cm (50 percentile) or 340 micromhos/cm (90 percentile) at
19 the I Street Bridge.

20 35. EPA has established Parameter Benchmark Values as guidelines for
21 determining whether a facility discharging industrial storm water has implemented the
22 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
23 Parameter Benchmark Values for the following parameters, among others: total suspended
24 solids – 100 mg/L; oil & grease – 15 mg/L; total organic carbon – 110 mg/L; pH – 6.0 – 9.0
25 s.u.; iron – 1.0 mg/L; zinc – 0.117 mg/L; nitrate plus nitrite nitrogen (“N+N”) – 0.68 mg/L;
26 aluminum – 0.75 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; and chemical oxygen
27 demand – 120 mg/L. The State Board has proposed a Benchmark Value for electrical
28 conductance of 200 µmhos/cm.

1 **V. STATEMENT OF FACTS**

2 36. Defendant Syar operates a ready-mix concrete facility located at 39820
3 Kentucky Ave in Woodland, California. The Facility is engaged in the production of ready-
4 mix concrete. Activities at the Facility fall within SIC Code 3273. The Facility covers
5 approximately 5.75 acres, the majority of which is used for processing, transporting, and
6 storing materials such as concrete, stone, and aggregate throughout the Facility. On
7 information and belief, Plaintiff alleges that there is at there are at least two large buildings
8 located on the property. On information and belief, Plaintiff alleges that materials
9 processing and the movement of materials occurs both inside and outside of this building.

10 37. Defendant channels and collects storm water falling on the Facility through a
11 series of storm water drains that lead to at least two storm water outfalls. Each outfall
12 collects storm water runoff from a particular area of the Facility. On information and belief,
13 Plaintiff alleges that the Facility's outfalls discharge to the City of Woodland storm drain
14 system. The water then flows untreated into the Tule Canal, which empties into the
15 Sacramento River, and then flows to the Delta.

16 38. On information and belief, Plaintiff alleges that the industrial activities at the
17 site include the processing, storage, and disposal of a variety of materials including sand,
18 aggregate, stone, and concrete. Industrial activities also include the outdoor handling,
19 processing, and storage of these materials as well as other materials used in the ready-mix
20 concrete production process.

21 39. Significant activities at the site take place outside and are exposed to rainfall.
22 These activities include the storage and movement of raw materials and finished products,
23 equipment used in the production processes; the storage and use of vehicles and equipment
24 for materials handling; and the storage, handling, and disposal of waste materials. Loading
25 and delivery of raw materials and finished products occurs outside. Trucks enter and exit the
26 Facility directly from and to a public road. Trucks and fork lifts are the primary means of
27 moving raw materials and finished products around the storage areas of the Facility. These
28 areas are exposed to storm water and storm flows due to the lack of overhead coverage,

1 berms, and other storm water controls.

2 40. Industrial machinery, heavy equipment and vehicles, including trucks and fork
3 lifts, are operated and stored at the Facility in areas exposed to storm water flows. Plaintiff
4 is informed and believes, and thereupon alleges, that such machinery and equipment leak
5 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
6 to storm water flows, and that such machinery and equipment track sediment and other
7 contaminants throughout the Facility.

8 41. Plaintiff is informed and believes, and thereupon alleges that the storm water
9 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
10 and other pollutants as it flows toward the storm water drains. Storm water and any
11 pollutants contained in that storm water entering the drains flows directly to the Facility's
12 outfalls.

13 42. The management practices at the Facility are wholly inadequate to prevent the
14 sources of contamination described above from causing the discharge of pollutants to waters
15 of the United States. The Facility lacks sufficient structural controls such as grading,
16 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
17 flows from coming into contact with these and other exposed sources of contaminants. The
18 Facility lacks sufficient structural controls to prevent the discharge of water once
19 contaminated. The Facility lacks adequate storm water pollution treatment technologies to
20 treat storm water once contaminated.

21 43. Since at least January 4, 2008, Defendant has taken samples or arranged for
22 samples to be taken of storm water discharges at the Facility. The sample results were
23 reported in the Facility's annual reports submitted to the Regional Board. Defendant Syar
24 certified each of those annual reports pursuant to Sections A and C of the General Permit.

25 44. Since at least January 4, 2008, the Facility has detected elevated pH in storm
26 water discharged from the Facility. Since at least January 22, 2008, the Facility has detected
27 iron, copper, and aluminum in storm water discharged from the Facility. Since at least
28 January 25, 2008, the Facility has detected total suspended solids in storm water discharged

1 from the Facility. Since at least January 22, 2009, the Facility has detected zinc and N+N in
 2 storm water discharged from the Facility. Levels of these pollutants detected in the
 3 Facility's storm water have been in excess of EPA's numeric parameter benchmark values
 4 and the State Board's proposed value for electrical conductance. Levels of these pollutants
 5 detected in the Facility's storm water have been in excess of water quality standards
 6 established in the Basin Plan.

7 45. The following discharges on the following dates contained concentrations of
 8 pollutants in excess of numeric and narrative water quality standards established in the Basin
 9 Plan:

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
2/13/2009	pH	9.1	6.5 – 8.5	Outfall A
2/13/2009	Iron	18 mg/L	0.3 mg/L	Outfall A
2/13/2009	Copper	0.02 mg/L	0.01 mg/L	Outfall A
2/13/2009	Light brown color and turbid water observed		Narrative	Outfall A
1/22/2009	Light brown color and turbid water observed		Narrative	Outfall A
1/22/2009	Iron	32 mg/L	0.3 mg/L	Outfall A
1/22/2009	Copper	0.033 mg/L	0.01 mg/L	Outfall A
1/22/2009	Zinc	0.12 mg/L	0.1 mg/L	Outfall A
1/25/2008	Iron	17 mg/L	0.3 mg/L	Outfall B
1/25/2008	Copper	0.027 mg/L	0.01 mg/L	Outfall B

1	1/25/2008	pH	9.09	6.5 – 8.5	Outfall B
2	1/22/2008	pH	8.88	6.5 – 8.5	Outfall A
3	1/22/2008	Iron	10 mg/L	0.3 mg/L	Outfall A
4	1/22/2008	Copper	0.015 mg/L	0.01 mg/L	Outfall B
5	1/4/2008	pH	8.93	6.5 – 8.5	Outfall A

6
7 46. The levels of total suspended solids in storm water detected by the Facility
8 have exceeded the benchmark value for total suspended solids of 100 mg/L established by
9 EPA. For example, on January 22, 2009, the level of total suspended solids measured by
10 Defendant in the Facility’s discharged storm water was 346 mg/L. That level of total
11 suspended solids is almost three and a half times the benchmark value for total suspended
12 solids established by EPA. The Facility also has measured levels of total suspended solids in
13 storm water discharged from the Facility in excess of EPA’s benchmark value of 100 mg/L
14 on January 25, 2008 and February 13, 2009.

15 47. The levels of pH in storm water detected by the Facility have exceeded the
16 benchmark value for pH of 6.0 – 9.0 established by EPA. On February 13, 2003, the level of
17 pH measured by Defendant in the Facility’s discharged storm water was 9.1. The Facility
18 also has measured levels of pH in storm water discharged from the Facility outside the
19 benchmark values established by EPA on January 25, 2009.

20 48. The levels of iron in storm water detected by the Facility have exceeded the
21 benchmark value for iron of 1.0 mg/L established by EPA. For example, on January 22,
22 2009, the level of iron measured by Defendant in the Facility’s discharged storm water was
23 32 mg/L. That level of iron is 32 times the benchmark value for iron established by EPA.
24 The Facility also has measured levels of iron in storm water discharged from the Facility in
25 excess of EPA’s benchmark value of 1.0 mg/L on February 13, 2009; January 25, 2008; and
26 January 22, 2008.

27 49. The levels of aluminum in storm water detected by the Facility have exceeded
28 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on

1 January 22, 2009, the level of aluminum measured by Defendant in the Facility's discharged
2 storm water was 19 mg/L. That level of aluminum is over 25 times the benchmark value for
3 aluminum established by EPA. The Facility also has measured levels of aluminum in storm
4 water discharged from the Facility in excess of EPA's benchmark value of 0.75 mg/L on
5 February 13, 2009; January 25, 2008; and January 22, 2008.

6 50. The levels of zinc in storm water detected by the Facility have exceeded the
7 benchmark value for zinc of 0.117 mg/L established by EPA. On January 22, 2009, the level
8 of zinc measured by Defendant in the Facility's discharged storm water was 0.12 mg/L.

9 51. The levels of N+N in storm water detected by the Facility have exceeded the
10 benchmark value for N+N of 0.68 mg/L established by EPA. On January 22, 2009, the level
11 of zinc measured by Defendant in the Facility's discharged storm water was 0.7 mg/L.

12 52. On information and belief, Plaintiff alleges that since at least October 3, 2007,
13 Defendant has failed to implement BAT and BCT at the Facility for its discharges of total
14 suspended solids, high pH, zinc, N+N, iron, aluminum, copper, zinc, and other pollutants.
15 Section B(3) of the General Permit requires that Defendant implement BAT for toxic and
16 nonconventional pollutants and BCT for conventional pollutants by no later than October 1,
17 1992. As of the date of this Complaint, Defendant has failed to implement BAT and BCT.

18 53. On information and belief, Plaintiff alleges that since at least October 3, 2007,
19 Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for
20 the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP
21 prepared for the Facility does not set forth site-specific best management practices for the
22 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and
23 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an
24 adequate assessment of potential pollutant sources, structural pollutant control measures
25 employed by the Defendant, a list of actual and potential areas of pollutant contact, or an
26 adequate description of best management practices to be implemented at the Facility to
27 reduce pollutant discharges. According to information available to CSPA, Defendant's
28 SWPPP has not been evaluated to ensure its effectiveness and revised where necessary to

1 further reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges,
2 that the SWPPP does not include each of the mandatory elements required by Section A of
3 the General Permit.

4 54. Information available to CSPA indicates that as a result of these practices,
5 storm water containing excessive pollutants is being discharged during rain events from the
6 Facility directly to the City of Woodland storm drain system. This water then flows
7 untreated into the Tule Canal, which empties into the Sacramento River, and then flows to
8 the Delta.

9 55. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
10 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent
11 with Section A(9) of the General Permit.

12 56. Plaintiff is informed and believes that Defendant failed to submit to the
13 Regional Board a true and complete annual report certifying compliance with the General
14 Permit since at least July 1, 2008. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the
15 General Permit, Defendant must submit an annual report, that is signed and certified by the
16 appropriate corporate officer, outlining the Facility's storm water controls and certifying
17 compliance with the General Permit. Plaintiff is informed and believes, and thereupon
18 alleges, that Defendant has signed incomplete annual reports that purported to comply with
19 the General Permit when there was significant noncompliance at the Facility.

20 57. Information available to Plaintiff indicates that Defendant has not fulfilled the
21 requirements set forth in the General Permit for discharges from the Facility due to the
22 continued discharge of contaminated storm water. Plaintiff is informed and believes, and
23 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and
24 continuing.

25 58. Plaintiff is informed and believes that Defendant failed to comply with the
26 NOI requirements by failing to provide the name of the Facility's receiving water and by
27 failing to provide a site map. Defendant's failure to comply with the NOI requirements is
28 ongoing and continuous.

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

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

6 59. Plaintiff re-alleges and incorporates Paragraphs 1-58, as if fully set forth
7 herein.

8 60. 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. Defendant has failed to implement BAT and BCT at the Facility for its
12 discharges of suspended solids, high pH, zinc, N+N, iron, aluminum, copper, zinc, and other
13 un-monitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

14 61. Each day since October 3, 2007, that Defendant has failed to develop and
15 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
16 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

17 62. Defendant has been in violation of the BAT/BCT requirements every day since
18 October 3, 2007. Defendant continues to be in violation of the BAT/BCT requirements each
19 day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

20 **SECOND CAUSE OF ACTION**

21 **Discharges of Contaminated Storm Water**
22 **in Violation of Permit Conditions and the Act**
23 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

24 63. Plaintiff re-alleges and incorporates Paragraphs 1-62, inclusive, as if fully set
25 forth herein.

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

1 Plan or the applicable Regional Board's Basin Plan.

2 65. Plaintiff is informed and believes, and thereupon alleges, that since at least
3 October 3, 2007, Defendant has been discharging polluted storm water from the Facility in
4 excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of
5 the General Permit.

6 66. During every rain event, storm water flows freely over exposed materials, waste
7 products, and other accumulated pollutants at the Facility, becoming contaminated with total
8 suspended solids, high pH, zinc, N+N, iron, aluminum, copper, zinc, and other un-monitored
9 pollutants at levels above applicable water quality standards. The storm water then flows
10 untreated from the Facility directly to the City of Woodland storm drain system. This water
11 then flows untreated into the Tule Canal, which empties into the Sacramento River, and then
12 flows to the Delta.

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

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

20 69. Every day since at least October 3, 2007, that Defendant has discharged and
21 continues to discharge polluted storm water from the Facility in violation of the General Permit
22 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
23 violations are ongoing and continuous.

24 **THIRD CAUSE OF ACTION**
25 **Failure to Prepare, Implement, Review, and Update**
26 **an Adequate Storm Water Pollution Prevention Plan**
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

27 70. Plaintiff re-alleges and incorporates Paragraphs 1-69, as if fully set forth
28 herein.

1 unless authorized by the Permit;

2 c. Enjoin Defendant from further violating the substantive and procedural
3 requirements of the Permit;

4 d. Order Defendant to immediately implement storm water pollution control
5 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
6 pollutants in the Facility's storm water from contributing to violations of any water quality
7 standards;

8 e. Order Defendant to comply with the Permit's monitoring and reporting
9 requirements, including ordering supplemental monitoring to compensate for past monitoring
10 violations;

11 f. Order Defendant to prepare a SWPPP consistent with the Permit's
12 requirements and implement procedures to regularly review and update the SWPPP;

13 g. Order Defendant to provide Plaintiff with reports documenting the quality
14 and quantity of their discharges to waters of the United States and their efforts to comply with
15 the Act and the Court's orders;

16 h. Order Defendant to pay civil penalties of \$32,500 per day per violation for
17 all violations occurring through January 12, 2009, and \$37,500 per day per violation for all
18 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
19 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

20 i. Order Defendant to take appropriate actions to restore the quality of waters
21 impaired or adversely affected by their activities;

22 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,
23 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

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Dated: August 13, 2010

Respectfully submitted,
LOZEAU DRURY LLP

By: /s/ Douglas J. Chermak
Douglas J. Chermak
Attorneys for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

EXHIBIT A

California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 21, 2010

Steve Batson, Plant Manager
Toby Goyette, Environmental Manager
Syar Concrete LLC
39820 Kentucky Ave
Woodland, CA 95695

Toby Goyette
Syar Concrete LLC
P.O. Box 2700
Napa, CA 94558

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

Dear Mr. Batson and Mr. Goyette:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at Syar Concrete LLC's Woodland Plant located at 39820 Kentucky Ave. in Woodland, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Sacramento River, the Sacramento-San Joaquin River Delta (the "Delta"), and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of Syar Concrete LLC's Woodland Plant (all recipients are hereinafter collectively referred to as "Syar Concrete").

This letter addresses Syar Concrete's unlawful discharge of pollutants from the Facility into the City of Woodland storm drain system, the Tule Canal, the Sacramento River, and, ultimately, the Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the State Water Resources Control Board ("State Board") and California Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S57I021209. The

Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the state in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Syar Concrete is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Syar Concrete under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On October 3, 2007, Syar Concrete filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Syar Concrete certifies that the Facility is classified under SIC code 3273 (“concrete products”). The Facility collects and discharges storm water from its 5.75 acre industrial site into at least two storm drain outfalls located at the Facility. Based on the Facility’s NOI, the storm water discharged by Syar Concrete to those drains is then discharged indirectly to waters of the United States. On information and belief, CSPA alleges that the storm water is discharged to the City of Woodland storm drain system which flows untreated into the Tule Canal, which empties into the Sacramento River, and then flows to the Delta. The Regional Board has identified waters of the Sacramento River (from Knights Landing to the Delta) as failing to meet applicable water quality standards for mercury, chlordane, DDT, dieldrin, PCBs, and “unknown toxicity.” *See* http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/impaired_waters_list/final_2008_303d/category5_report.shtml.

The Regional Board has identified beneficial uses of the Central Valley Region’s waters and established water quality standards for the Sacramento River, the Delta and their tributaries, including the Tule Canal, in “The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin,” generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of the Sacramento River, the Delta and their tributaries, including the Tule Canal, include among others water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking,

sunbathing, hiking, . . . , camping, boating, . . . , hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at II-1.00 – II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Tule Canal, the Sacramento River and Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the Sacramento River, the Delta and their tributaries, including the Tule Canal. It provides that “[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses.” *Id.* at III-5.00. It 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.” *Id.* at III-8.01. For the Delta, the Basin Plan establishes trace element water quality objectives for several metals, including 0.3 mg/L for iron, 0.1 mg/L for zinc, and 0.01 mg/L for copper. *Id.* at Table III-1. 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-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at III-9.00. The Basin Plan establishes a dissolved oxygen standard of 7.0 mg/L for the Sacramento River and Delta waters. *Id.* at III-5.00. The Basin Plan provides that electrical conductivity in the Sacramento River shall not exceed 240 micromhos/cm (50 percentile) or 340 micromhos/cm (90 percentile) at the I Street Bridge. *Id.*

The U.S. Environmental Protection Agency (“EPA”) has published benchmark levels 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 Syar Concrete: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil & grease (“O&G”) – 15 mg/L, total organic carbon – 120 mg/L, nitrate plus nitrite as nitrogen (“N+N”) – 0.68 mg/L, aluminum – 0.75 mg/L, lead – 0.0816 mg/L, copper – 0.0636 mg/L, zinc – 0.117 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, and iron – 1.0 mg/L. The State Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

Syar Concrete has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
2/13/2009	pH	9.1	6.5 – 8.5	Outfall A
2/13/2009	Iron	18 mg/L	0.3 mg/L	Outfall A
2/13/2009	Copper	0.02 mg/L	0.01 mg/L	Outfall A
2/13/2009	Light brown color and turbid water observed		Narrative	Outfall A
1/22/2009	Light brown color and turbid water observed		Narrative	Outfall A
1/22/2009	Iron	32 mg/L	0.3 mg/L	Outfall A
1/22/2009	Copper	0.033 mg/L	0.01 mg/L	Outfall A
1/22/2009	Zinc	0.12 mg/L	0.1 mg/L	Outfall A
1/25/2008	Iron	17 mg/L	0.3 mg/L	Outfall B
1/25/2008	Copper	0.027 mg/L	0.01 mg/L	Outfall B
1/25/2008	pH	9.09	6.5 – 8.5	Outfall B
1/22/2008	pH	8.88	6.5 – 8.5	Outfall A
1/22/2008	Iron	10 mg/L	0.3 mg/L	Outfall A
1/22/2008	Copper	0.015 mg/L	0.01 mg/L	Outfall B
1/4/2008	pH	8.93	6.5 – 8.5	Outfall A

The following discharges of pollutants by Syar Concrete from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value	Location (as identified by the Facility)
2/13/2009	pH	9.1	6.0 - 9.0	Outfall A
2/13/2009	Total Suspended Solids	188 mg/L	100 mg/L	Outfall A
2/13/2009	Iron	18 mg/L	1.0 mg/L	Outfall A
2/13/2009	Aluminum	10 mg/L	0.75 mg/L	Outfall A
1/22/2009	Total Suspended Solids	346 mg/L	100 mg/L	Outfall A
1/22/2009	Nitrate + Nitrate as N	0.7 mg/L	0.68 mg/L	Outfall A
1/22/2009	Iron	32 mg/L	1.0 mg/L	Outfall A
1/22/2009	Aluminum	19 mg/L	0.75 mg/L	Outfall A
1/22/2009	Zinc	0.12 mg/L	0.117 mg/L	Outfall A

1/25/2008	pH	9.09	6.0 - 9.0	Outfall B
1/25/2008	Total Suspended Solids	155 mg/L	100 mg/L	Outfall B
1/25/2008	Iron	17 mg/L	1.0 mg/L	Outfall B
1/25/2008	Aluminum	11 mg/L	0.75 mg/L	Outfall B
1/22/2008	Iron	10 mg/L	1.0 mg/L	Outfall A
1/22/2008	Aluminum	6.7 mg/L	0.75 mg/L	Outfall A

CSPA’s investigation, including its review of Syar Concrete’s analytical results documenting pollutants of applicable water quality standards, EPA’s benchmark values and the State Board’s proposed benchmark for electrical conductivity, indicates that Syar Concrete has not implemented BAT and BCT for its discharges of TSS, specific conductivity, iron, copper, zinc, aluminum, N+N, pH, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Syar Concrete was required to have implemented BAT and BCT by no later than October 1, 1992 or the date on which Syar Concrete purchased or otherwise began operations at the Facility. Thus, Syar Concrete is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since May 21, 2005 or the date on which Syar Concrete purchased or otherwise began operations at the Facility, 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 Syar Concrete has discharged storm water containing impermissible levels of TSS, specific conductivity, iron, copper, zinc, aluminum, N+N, pH in violation of Effluent Limitation B(3), 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 each of these pollutants in storm water constitutes a separate violation of the General Industrial Storm Water 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, Syar Concrete is subject to penalties for violations of the General Permit and the Act since May 21, 2005 or the date on which Syar Concrete purchased or otherwise began operations at the Facility.

B. Failure to Submit a Legally Adequate Notice of Intent to Comply With the Terms of the General Permit

The General Permit requires that facility operators submit an NOI to obtain coverage for storm water discharges and authorized non-storm water discharges. The NOI must be submitted at least fourteen days prior to beginning operations at the facility. The requirements for the NOI are described in Attachment 3 to the General Permit. Section VI of Attachment 3 requires

facility operators to provide the name of the receiving water where storm water discharge flows from the facility. If the water discharges indirectly to waters of the United States, facility operators must indicate the name of the closest receiving water. Section VIII of Attachment 3 requires facility operators to provide a “to scale” drawing of the facility and its immediate surroundings. This map must be as detailed as possible. Section VIII indicates that a location map may also be included but is “not to be submitted as a substitute for the site map.” (emphasis original). Section IX of Attachment 3 provides the certification requirements for the NOI. For a corporation, the NOI must be signed by a responsible corporate officer or authorized individual. This certification, among other things, “provides assurances that the NOI and site map were completed by the facility operator in an accurate and complete fashion and with the knowledge that penalties exist for providing false information.

CSPA’s review of Syar Concrete’s NOI indicates that Syar Concrete has failed to comply with the NOI requirements set forth in the General Permit. Specifically, Syar Concrete failed to provide the name of the Facility’s receiving water and failed to include a site map (Syar Concrete only submitted a location map). Syar Concrete also falsely certified the NOI by failing to comply with the receiving water and site map requirements articulated in Attachment 3 to the General Permit. Syar Concrete has been in continuous violation of Sections VI, VIII, and IX of Attachment 3 of the General Permit every day since October 3, 2007 at the very latest or the date on which Syar Concrete purchased or otherwise began operations at the Facility, and will continue to be in violation every day that Syar Concrete fails to submit a legally adequate NOI. Syar Concrete is subject to penalties for violations of the Order and the Act occurring since October 3, 2007 or the date on which Syar Concrete purchased or otherwise began operations at the Facility.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water 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 the General Permit 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 include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water

collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility and review of Syar Concrete's Annual Reports indicates that Syar Concrete has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Syar Concrete has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Syar Concrete has been in continuous violation of Section A and Provision E(2) of the General Permit every day since May 21, 2005 at the very latest or the date on which Syar Concrete purchased or otherwise began operations at the Facility, and will continue to be in violation every day that Syar Concrete fails to prepare, implement, review, and update an effective SWPPP. Syar Concrete is subject to penalties for violations of the Order and the Act occurring since May 21, 2005 or the date on which Syar Concrete purchased or otherwise began operations at the Facility.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Syar Concrete is not representative of the quality of the Facility's various storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4),

(5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Syar Concrete is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 21, 2005 or the date on which Syar Concrete purchased or otherwise began operations at the Facility.

E. Failure to File True and Correct Annual Reports.

Section B(14) of the General Industrial Storm Water 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 Industrial Storm Water 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).

For at least the last two years, Syar Concrete and its agent, Toby Goyette, inaccurately certified in the Facility's Annual Reports that the facility was in compliance with the General Permit. Consequently, Syar Concrete has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Syar Concrete or its agent failed to submit a complete or correct report and every time Syar Concrete or its agent falsely purported to comply with the Act. Syar Concrete is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since at least June 26, 2008.

IV. Persons Responsible for the Violations.

CSPA puts Syar Concrete LLC, Toby Goyette and Steve Batson 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 Syar Concrete LLC, Toby Goyette and Steve Batson on notice that it intends to include those subsequently identified persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067

VI. Counsel.

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

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
michael@lozeaudrury.com
doug@lozeaudrury.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 Syar Concrete to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit through January 12, 2009, and a maximum of \$37,500 per day per violation for all violations occurring after January 12, 2009. 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 Syar Concrete and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days

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Batson and Goyette
Syar Concrete LLC – Woodland Plant
May 21, 2010
Page 11 of 15

so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

cc via First Class: Ralston Roberts, Registered Agent (Syar Concrete, Inc., 2301 Napa Vallejo Highway, Napa, California 94558)

SERVICE LIST

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

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

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

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

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

ATTACHMENT A
Rain Dates, Syar Concrete, Woodland, CA

June 8, 2005	February 2, 2006	April 23, 2006
June 9, 2005	February 3, 2006	May 20, 2006
June 17, 2005	February 4, 2006	May 22, 2006
September 27, 2005	February 18, 2006	May 23, 2006
October 15, 2005	February 19, 2006	October 5, 2006
October 26, 2005	February 27, 2006	November 3, 2006
October 28, 2005	March 1, 2006	November 13, 2006
October 29, 2005	March 2, 2006	November 14, 2006
November 4, 2005	March 3, 2006	November 16, 2006
November 8, 2005	March 5, 2006	November 22, 2006
November 25, 2005	March 6, 2006	November 27, 2006
November 26, 2005	March 7, 2006	December 11, 2006
November 28, 2005	March 8, 2006	December 12, 2006
November 29, 2005	March 9, 2006	December 14, 2006
December 1, 2005	March 13, 2006	December 15, 2006
December 2, 2005	March 14, 2006	December 27, 2006
December 8, 2005	March 15, 2006	February 7, 2007
December 18, 2005	March 17, 2006	February 8, 2007
December 19, 2005	March 21, 2006	February 9, 2007
December 21, 2005	March 22, 2006	February 10, 2007
December 22, 2005	March 24, 2006	February 11, 2007
December 23, 2005	March 25, 2006	February 13, 2007
December 25, 2005	March 26, 2006	February 22, 2007
December 26, 2005	March 28, 2006	February 23, 2007
December 27, 2005	March 29, 2006	February 24, 2007
December 28, 2005	March 30, 2006	February 26, 2007
December 29, 2005	March 31, 2006	February 27, 2007
December 30, 2005	April 1, 2006	February 28, 2007
December 31, 2005	April 2, 2006	March 1, 2007
January 1, 2006	April 3, 2006	March 21, 2007
January 2, 2006	April 4, 2006	March 27, 2007
January 3, 2006	April 5, 2006	April 11, 2007
January 4, 2006	April 6, 2006	April 14, 2007
January 11, 2006	April 7, 2006	April 15, 2007
January 14, 2006	April 8, 2006	April 22, 2007
January 15, 2006	April 9, 2006	April 23, 2007
January 18, 2006	April 10, 2006	May 2, 2007
January 19, 2006	April 11, 2006	May 4, 2007
January 21, 2006	April 12, 2006	July 18, 2007
January 27, 2006	April 13, 2006	September 20, 2007
January 28, 2006	April 14, 2006	October 1, 2007
January 29, 2006	April 15, 2006	October 10, 2007
January 31, 2006	April 16, 2006	October 12, 2007
February 1, 2006	April 17, 2006	October 13, 2007

ATTACHMENT A
Rain Dates, Syar Concrete, Woodland, CA

October 17, 2007	November 3, 2008	February 18, 2009
October 18, 2007	November 4, 2008	February 22, 2009
November 11, 2007	November 9, 2008	February 23, 2009
December 4, 2007	November 27, 2008	February 24, 2009
December 5, 2007	November 28, 2008	February 25, 2009
December 6, 2007	November 29, 2008	February 26, 2009
December 7, 2007	November 30, 2008	February 27, 2009
December 17, 2007	December 1, 2008	March 1, 2009
December 18, 2007	December 2, 2008	March 2, 2009
December 19, 2007	December 3, 2008	March 3, 2009
December 20, 2007	December 5, 2008	March 4, 2009
December 29, 2007	December 6, 2008	March 5, 2009
January 4, 2008	December 8, 2008	March 6, 2009
January 5, 2008	December 9, 2008	March 22, 2009
January 6, 2008	December 10, 2008	April 8, 2009
January 9, 2008	December 12, 2008	April 10, 2009
January 10, 2008	December 15, 2008	April 13, 2009
January 11, 2008	December 16, 2008	April 24, 2009
January 12, 2008	December 17, 2008	May 1, 2009
January 13, 2008	December 19, 2008	May 2, 2009
January 22, 2008	December 21, 2008	May 3, 2009
January 23, 2008	December 22, 2008	May 5, 2009
January 24, 2008	December 24, 2008	June 4, 2009
January 25, 2008	December 25, 2008	June 19, 2009
January 26, 2008	December 31, 2008	October 13, 2009
January 27, 2008	January 1, 2009	October 14, 2009
January 28, 2008	January 2, 2009	October 15, 2009
January 29, 2008	January 5, 2009	October 19, 2009
January 30, 2008	January 6, 2009	November 17, 2009
January 31, 2008	January 7, 2009	November 20, 2009
February 1, 2008	January 9, 2009	November 27, 2009
February 2, 2008	January 22, 2009	December 6, 2009
February 3, 2008	January 23, 2009	December 7, 2009
February 20, 2008	January 24, 2009	December 10, 2009
February 21, 2008	February 5, 2009	December 11, 2009
February 22, 2008	February 6, 2009	December 12, 2009
February 23, 2008	February 7, 2009	December 13, 2009
February 24, 2008	February 9, 2009	December 16, 2009
February 25, 2008	February 11, 2009	December 18, 2009
April 23, 2008	February 12, 2009	December 20, 2009
May 24, 2008	February 13, 2009	December 21, 2009
October 4, 2008	February 14, 2009	December 27, 2009
October 31, 2008	February 15, 2009	December 29, 2009
November 1, 2008	February 16, 2009	December 30, 2009
November 2, 2008	February 17, 2009	January 1, 2010

ATTACHMENT A
Rain Dates, Syar Concrete, Woodland, CA

January 3, 2010	February 27, 2010
January 8, 2010	March 2, 2010
January 9, 2010	March 3, 2010
January 12, 2010	March 10, 2010
January 13, 2010	March 12, 2010
January 16, 2010	March 24, 2010
January 17, 2010	March 25, 2010
January 18, 2010	March 29, 2010
January 19, 2010	March 30, 2010
January 20, 2010	March 31, 2010
January 21, 2010	April 2, 2010
January 22, 2010	April 4, 2010
January 23, 2010	April 11, 2010
January 24, 2010	April 12, 2010
January 25, 2010	April 19, 2010
January 26, 2010	April 20, 2010
January 29, 2010	April 21, 2010
February 1, 2010	April 28, 2010
February 4, 2010	May 10, 2010
February 5, 2010	May 17, 2010
February 6, 2010	May 19, 2010
February 8, 2010	
February 9, 2010	
February 12, 2010	
February 17, 2010	
February 18, 2010	
February 23, 2010	
February 24, 2010	
February 26, 2010	