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18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

19 IN THE UNITED STATES DISTRICT COURT
20 FOR THE EASTERN DISTRICT OF CALIFORNIA

21	_____)	Case No. _____
22	CALIFORNIA SPORTFISHING)	
23	PROTECTION ALLIANCE, a nonprofit)	COMPLAINT FOR DECLARATORY AND
24	corporation,)	INJUNCTIVE RELIEF AND CIVIL
25)	PENALTIES
26	Plaintiff,)	
27)	(Federal Water Pollution Control Act, 33
28	v.)	U.S.C. §§ 1251 to 1387)
29)	
30	NORTHSTATE RECYCLING, a)	
31	California corporation, and WILLIAM)	
32	SHORT, an individual,)	
33)	
34	Defendants,)	
35)	

36 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and
37 through its counsel, hereby alleges:
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1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit enforcement provisions of the
3 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act” or
4 “the Act”) against Northstate Recycling and William Short (hereafter “Defendants”). This
5 Court has subject matter jurisdiction over the parties pursuant to Section 505(a)(1)(A) of the
6 Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the
7 United States). The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to
8 issue declaratory relief in case of actual controversy and further necessary relief based on such
9 a declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d),
10 1365(a) (civil penalties).

11 2. On or about April 29, 2010, Plaintiff provided notice of Defendants’ violations
12 of the Act, and of its intention to file suit against Defendants, to the Administrator of the United
13 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
14 Executive Director of the State Water Resources Control Board (“State Board”); the Executive
15 Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional
16 Board”); the U.S. Attorney General; and to Defendants, as required by the Act, 33 U.S.C. §
17 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and is
18 incorporated herein by reference.

19 3. More than sixty days have passed since notice was served on Defendants and the
20 State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
21 neither the EPA nor the State of California has commenced or is diligently prosecuting a court
22 action to redress the violations alleged in this complaint. This action’s claim for civil penalties
23 is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. §
24 1319(g).

25 4. Venue is proper in the Eastern District of California pursuant to Section
26 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
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1 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in
2 Sacramento, California because the source of the violations is located within Shasta County.

3 **II. INTRODUCTION**

4 5. This complaint seeks relief for Defendants' discharges of pollutants from an
5 approximately thirteen-acre recycling facility ("the Facility") owned and/or operated by
6 Defendants Northstate Recycling ("Northstate") and William Short. The Facility discharges
7 surface water to storm water drains that empty into Clear Creek. Clear Creek is a tributary to
8 the Sacramento River, and the Sacramento-San Joaquin Delta. Defendants' discharges of
9 pollutants from the Facility are in violation of the Act and the State of California's General
10 Industrial Permit for storm water discharges, State Water Resources Control Board ("State
11 Board") Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-
12 12-DWQ, and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination
13 System ("NPDES") General Permit No. CAS000001 (hereinafter "General Permit" or
14 "Permit"). Defendants' violations of the filing, monitoring, reporting, discharge and
15 management practice requirements, and other procedural and substantive requirements of the
16 General Permit and the Act are ongoing and continuous.

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

24 **III. PARTIES**

25 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
26 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
27 California with its main office in Stockton, California. CSPA has approximately 2,000
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1 members who live, recreate and work in and around waters of the State of California, including
2 Clear Creek, the Sacramento River, and the Sacramento-San Joaquin Delta. CSPA is dedicated
3 to the preservation, protection, and defense of the environment, and the wildlife and the natural
4 resources of all waters of California. To further these goals, CSPA actively seeks federal and
5 state agency implementation of the Act and other laws and, where necessary, directly initiates
6 enforcement actions on behalf of itself and its members.

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

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

20 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant
21 Northstate is a corporation organized under the laws of the State of California, and that
22 Defendant William Short manages the Facility. Accordingly, Defendants own and/or operate
23 the Facility.

24 **IV. STATUTORY BACKGROUND**

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

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

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

12 14. The State Board elected to issue a statewide general permit for industrial
13 discharges. The State Board issued the General Permit on or about November 19, 1991,
14 modified the General Permit on or about September 17, 1992, and reissued the General Permit
15 on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. §
16 1342(p).

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

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

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

12 18. The EPA has established Benchmark Levels as guidelines for determining
13 whether a facility discharging industrial storm water has implemented the requisite BAT and
14 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
15 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids
16 ("TSS") – 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand ("COD") – 120
17 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L; aluminum – 0.75 mg/L;
18 and iron – 1.0 mg/L. The State Water Quality Control Board has proposed adding a benchmark
19 level for specific conductance of 200 μ mhos/cm.

20 19. Dischargers must develop and implement a Storm Water Pollution Prevention
21 Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the BAT and BCT
22 standards. (Section B(3)). The SWPPP must include, among other elements: (1) a narrative
23 description and summary of all industrial activity, potential sources of pollutants and potential
24 pollutants; (2) a site map showing facility boundaries, the storm water conveyance system,
25 associated points of discharge, direction of flow, areas of industrial activities, and areas of
26 actual and potential pollutant contact; (3) a description of storm water management practices,
27 best management practices ("BMPs") and preventive maintenance undertaken to avoid storm
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1 water contamination that achieve BAT and BCT; (4) the location where Significant Materials
2 are being shipped, stored, received and handled, as well as the typical quantities of such
3 materials and the frequency with which they are handled; (5) a description of potential pollutant
4 sources including industrial processes, material handling and storage areas, dust and particulate
5 generating activities; (6) a summary of storm water sampling points; (7) a description of
6 individuals and their responsibilities for developing and implementing the SWPPP (Permit,
7 Section A(3)); (8) a description of potential pollutant sources including industrial processes,
8 material handling and storage areas, and dust and particulate generating activities; (9) a
9 description of significant spills and leaks; (10) a list of all non-storm water discharges and their
10 sources, and (11) a description of locations where soil erosion may occur (Section A(6)). The
11 SWPPP must also include an assessment of potential pollutant sources at the Facility and a
12 description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants
13 in storm water discharges and authorized non-storm water discharges, including structural
14 BMPs where non-structural BMPs are not effective (Section A(7), (8)).

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

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

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

10 23. The General Permit also requires dischargers to submit yearly “Annual Reports”
11 to the Regional Board. As part of their monitoring program, dischargers must identify all storm
12 water discharge locations that produce a significant storm water discharge, evaluate the
13 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
14 measures set out in the SWPPP are adequate and properly implemented. Dischargers must then
15 conduct visual observations of these discharge locations for at least one storm per month during
16 the wet season (October through May) and record their findings in their Annual Report.
17 Dischargers must also collect and analyze storm water samples from at least two storms per
18 year. Section B requires dischargers to sample and analyze during the wet season for basic
19 parameters such as pH, total suspended solids (“TSS”), specific conductance, and total organic
20 content (“TOC”) or oil and grease, certain industry-specific parameters, and toxic chemicals
21 and other pollutants likely to be in the storm water discharged from the facility. Section B(5)
22 and Table D of the General Permit requires dischargers whose industrial activities fall within
23 SIC Code 5093 and 5015 to analyze their storm water discharge samples for copper, lead, zinc,
24 aluminum, iron, and chemical oxygen demand. Dischargers must also conduct dry season
25 visual observations to identify sources of non-storm water pollution. The monitoring and
26 reporting program requires dischargers to certify, based upon the annual site inspections, that
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1 the facility is in compliance with the General Permit and report any non-compliance, and
2 contains additional requirements as well.

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

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

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

13 27. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
14 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.
15 Waters of the United States also include man-made water bodies that are tributary to waters
16 that are navigable in fact, as well as ephemeral waters that are tributary to waters that are
17 navigable in fact.

18 28. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement
19 actions against any “person,” including individuals, corporations, or partnerships, for violations
20 of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C.
21 §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by
22 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of
23 up to \$32,500 per day for violations that occurred between March 15, 2004 and January 12,
24 2009, and an assessment of civil penalties of up to \$37,500 per day for violations occurring
25 after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d),
26 1365 and 40 C.F.R. §§ 19.1 - 19.4.

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1 29. The Regional Board has established water quality standards for the Sacramento
2 River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan for the
3 Sacramento River and San Joaquin River Basins, generally referred to as the Basin Plan.

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

7 31. The Basin Plan establishes a standard for electrical conductivity in the Delta of
8 0.7 μ mhos/cm from April 1 through August 31 and 1.0 μ mhos/cm from September 1 through
9 March 31.

10 32. The Basin Plan provides that “[w]aters shall not contain chemical constituents in
11 concentrations that adversely affect beneficial uses.”

12 33. The Basin Plan provides that “[a]t a minimum, water designated for use as
13 domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents
14 in excess of the maximum contaminant levels (MCLs).” The waters of the Feather River, the
15 Sacramento River and the Delta have been designated by the State Board for use as municipal
16 and domestic supply.

17 **V. STATEMENT OF FACTS**

18 34. Defendants operate an approximately thirteen-acre recycling facility located at
19 2041 Girvan Road in Redding, California (the "Facility"). The Facility discharges surface water
20 to Clear Creek, which is a tributary to the Sacramento River, and the Sacramento-San Joaquin
21 Delta.

22 35. The Facility is classified under Standard Industrial Classification (“SIC”) Code
23 5093 (“Scrap Recycling Facilities”) and 5015 (“Automotive Salvage Yard”). The main
24 industrial activities occurring at the Facility involve the recycling and disposal of recycle scrap
25 metals, redemption glass, aluminum cans, non-ferrous metals, plastics, and cardboard. Other
26 activities at the Facility include the use, storage, and maintenance of motorized vehicles,
27 including trucks used to haul materials to and from the Facility. Many of these activities occur
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1 outside in areas that are exposed to storm water and storm flows due to the lack of overhead
2 coverage, functional berms and other storm water controls. Plaintiff is informed and believes
3 that Defendants' storm water controls, to the extent any exist, fail to achieve BAT and BCT
4 standards.

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

14 37. Vehicle traffic at the Facility tracks dust and particulate matter, increasing the
15 discharges of polluted water and mud into waters of the United States.

16 38. During rain events storm water laden with pollutants flows from the Facility into
17 Clear Creek, which ultimately flows to the Sacramento River, and the Sacramento-San Joaquin
18 Delta.

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

22 40. Clear Creek, the Sacramento River, and the Sacramento-San Joaquin Delta are
23 waters of the United States.

24 41. Information available to Plaintiff indicates that Defendants have not fulfilled the
25 requirements set forth in the General Permit for discharges from the Facility due to the
26 continued discharge of contaminated storm water.

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1 42. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
2 failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

3 43. Information available to Plaintiff indicates the continued existence of unlawful
4 storm water discharges at the Facility.

5 44. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
6 failed to develop and implement adequate monitoring, reporting and sampling programs for the
7 Facility. Plaintiffs are informed and believe, and thereupon allege, that Defendants have not
8 sampled with adequate frequency, have not conducted visual monitoring, and have not
9 analyzed the samples collected for the required pollutant parameters.

10 45. Plaintiff is informed and believes, and thereupon alleges, that all of the
11 violations alleged in this Complaint are ongoing and continuing.

12 **VI. CLAIMS FOR RELIEF**

13 **FIRST CAUSE OF ACTION**

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

16 46. Plaintiff incorporates the allegations contained in the above paragraphs as
17 though fully set forth herein.

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

25 48. Plaintiff is informed and believes, and thereupon alleges, that since at least
26 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to
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1 Clear Creek, the Sacramento River, and the Sacramento-San Joaquin Delta in violation of the
2 General Permit.

3 49. 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 the Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta.

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

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

12 52. 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 53. Plaintiff is informed and believes, and thereupon alleges, that every day since
17 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water
18 from the Facility in violation of the General Permit. Every day Defendants have discharged and
19 continue to discharge polluted storm water from the Facility in violation of the General Permit
20 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
21 violations are ongoing and continuous.

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

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

27 54. 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 62. Defendants have failed to implement BAT and BCT at the Facility for its
4 discharges of total suspended solids (TSS), specific conductivity (SC), chemical oxygen
5 demand (COD), copper (Cu), lead (Pb), zinc (Zn), aluminum (Al), iron (Fe), and unmonitored
6 pollutants in violation of Effluent Limitation B(3) of the General Permit.

7 63. Each day since April 29, 2005 that Defendants have failed to develop and
8 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
9 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

10 64. Defendants have been in violation of the BAT and BCT requirements every day
11 since at least April 29, 2005. Defendants continue to be in violation of the BAT and BCT
12 requirements each day that they fail to develop and fully implement an adequate BAT and BCT
13 for the Facility.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15 **FOURTH CAUSE OF ACTION**
16 **Failure to Develop and Implement an**
17 **Adequate Monitoring and Reporting Program**
18 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

21 66. Section B of the General Permit requires dischargers of storm water associated
22 with industrial activity to develop and implement a monitoring and reporting program
23 (including, among other things, sampling and analysis of discharges) no later than October 1,
24 1992.

25 67. Defendants have failed to develop and implement an adequate monitoring and
26 reporting program for the Facility. Defendants' ongoing failures to develop and implement
27 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing
28 failure to collect and analyze storm water samples from all discharge locations, their continuing

1 failure to analyze storm water samples for all toxic chemicals and other pollutants likely to be
2 present in the Facility's storm water discharges in significant quantities, and/or their failure to
3 file required Annual Reports with the Regional Board which provide required information
4 concerning the Facility's visual observations and storm water sampling and analysis.

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

9 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

10 **FIFTH CAUSE OF ACTION**

11 **False Certification of Compliance in Annual Report**
12 **(Violations of Permit conditions and the Act 33 U.S.C. §§ 1311, 1342)**

13 69. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set
14 forth herein.

15 70. As required by section B(14) of the General Permit, Defendants have submitted
16 signed annual reports certifying that the Facility is in compliance with the General Permit each
17 of the last five years.

18 71. Defendants have falsely certified compliance with the General Permit in each of
19 the Annual Reports submitted to the Regional Board since at least April 29, 2005.

20 72. Each day since at least April 29, 2005, that Defendants have falsely certified
21 compliance with the General Permit is a separate and distinct violation of the General Permit
22 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of
23 the General Permit's verification requirement each day that they maintain their false
24 certification of its compliance with the General Permit.

25 **VII. RELIEF REQUESTED**

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

27 a. Declare Defendants to have violated and to be in violation of the Act as alleged
28 herein;

1 b. Enjoin Defendants from discharging pollutants from the Facility and to the
2 surface waters surrounding and downstream from the Facility;

3 c. Enjoin Defendants from further violating the substantive and procedural
4 requirements of the General Permit;

5 d. Order Defendant to immediately implement storm water pollution control and
6 treatment technologies and measures that are equivalent to BAT or BCT and prevent pollutants
7 in the Facility's storm water from contributing to violations of any water quality 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 Defendants to prepare a SWPPP consistent with the Permit's requirements
12 and implement procedures to regularly review and update the SWPPP;

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

16 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for all
17 violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations
18 occurring after January 12, 2009, for each violation of the Act pursuant to Sections 309(d) and
19 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4 (pp. 200-
20 202) (Dec. 31, 1996);

21 i. Order Defendants to take appropriate actions to restore the quality of navigable
22 waters impaired by their activities;

23 j. Award Plaintiffs' costs (including reasonable attorney, witness, and consultant
24 fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

Dated: June 30, 2010

Respectfully submitted,

JACKSON & TUERCK

By: s/ Robert J. Tuerck

Robert J. Tuerck
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CALIFORNIA SPORTFISHING
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