California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 26, 2009

Mitchell A. Hoppe
Owner, President, and Agent for Service of Process
Melrose Metal Products, Inc.
44533 S. Grimmer Blvd.
Fremont, CA 94538

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

Dear Mr. Hoppe:

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 Melrose Metal Products, Inc., located at 44533 S. Grimmer Blvd. in Fremont, 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 San Francisco Bay ("Bay") and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility (all recipients are hereinafter collectively referred to as "Melrose Metal").

This letter addresses Melrose Metal's unlawful discharge of pollutants from the Facility into channels that flow into the Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region ("Regional 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 Regional Board is 201I013003. 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 ("EPA"), 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, Melrose Metal is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Melrose Metal and Mitchell A. Hoppe under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On February 20, 1998, Melrose Metal filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). Melrose Metal certifies that the Facility is classified under SIC code 3444 ("sheet metal work"). The Facility collects and discharges storm water from its approximately 40-acre industrial site into at least four storm water discharge locations at the Facility. The storm water discharged by Melrose Metal is discharged to either a channel adjacent to the Facility or to the City of Fremont storm drain system, which flows into either Mowry Slough or Coyote Creek. The channel adjacent to the Facility, Mowry Slough, and Coyote Creek all flow into San Francisco Bay.

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for San Francisco Bay as well its tributaries, including Mowry Slough and Coyote Creek, in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of San Francisco Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id*. at 3.3.21. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id*. at 3.3.14. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a

manner as to cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.12. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at 3.3.9.

The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); for copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and for lead of 0.0081 mg/L (4-day average) and 0.21 mg/L (1-hour average). *Id.* at Table 3-3. The Basin Plan establishes Freshwater Water Quality Objectives for zinc of 0.120 mg/L (4-day average and 1-hour average); for copper of 0.009 mg/L (4-day average) and 0.013 mg/L (1-hour average); and for lead of 0.0025 mg/L (4-day average) and 0.065 mg/L (1-hour average). *Id.* at Table 3-4. The EPA has adopted saltwater numeric water quality standards for zinc of 0.090 mg/L (Criteria Maximum Concentration – "CMC") and 0.081 mg/L (Criteria Continuous Concentration – "CCC"); for copper of 0.0031 mg/L (CMC) and 0.0048 mg/L (CCC); and for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000).

The 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"). 65 Fed.Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Melrose Metal: pH – 6.0-9.0 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, aluminum – 0.75 mg/L, nitrate + nitrite nitrogen ("N+N") – 0.68 mg/L; zinc – 0.117 mg/L, and iron – 1 mg/L. The State Water Quality Control 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.

Melrose Metal 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 requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

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

Melrose Metal has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, specific conductivity, iron, N+N, zinc and other pollutants in violation of the General Permit. Melrose Metal's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan and thus 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	Basin Plan Water Quality Objective	Location (as identified by the Facility)
1/25/2008	pH	5.93	6.5 – 8.5	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
1/25/2008	pH	5.87	6.5 – 8.5	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
1/25/2008	pH	5.88	6.5 – 8.5	Drain #3
1/25/2008	Zinc	0.31 mg/L	0.081 mg/L (4-day	Drain #3

			average) – Marine	
1/25/2008	Zinc	0.31 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
1/25/2008	pH	6.11	6.5 – 8.5	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
10/12/2007	Zinc	0.51 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
10/12/2007	Zinc	0.51 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
10/12/2007	Zinc	1.4 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
10/12/2007	Zinc	1.4 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
10/12/2007	Zinc	2 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
10/12/2007	Zinc	2 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
10/12/2007	Zinc	0.62 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
10/12/2007	Zinc	0.62 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
1/5/2007	Zinc	0.32 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
1/5/2007	Zinc	0.32 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
1/5/2007	Zinc	0.43 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
1/5/2007	Zinc	0.43 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
1/5/2007	Zinc	0.85 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/5/2007	Zinc	0.85 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
12/12/2006	Zinc	0.11 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
12/12/2006	Zinc	0.11 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
12/12/2006	Zinc	0.13 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
12/12/2006	Zinc	0.13 mg/L	0.09 mg/L (1-hour	Drain #3

			average) – Marine	
12/12/2006	Zinc	0.72 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
12/12/2006	Zinc	0.72 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
1/3/2006	Zinc	0.38 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
1/3/2006	Zinc	0.38 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
1/3/2006	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/3/2006	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
10/19/2004	pH	6.2	6.5 – 8.5	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
10/19/2004	pH	5.8	6.5 – 8.5	Drain #2
10/19/2004	Zinc	0.26 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
10/19/2004	Zinc	0.26 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
10/19/2004	pH	5.7	6.5 – 8.5	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
10/19/2004	pH	5.5	6.5 – 8.5	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
5/28/2004	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
5/28/2004	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
5/28/2004	Zinc	0.3 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
5/28/2004	Zinc	0.3 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
5/28/2004	Zinc	2.6 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3

5/28/2004	Zinc	2.6 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
5/28/2004	Zinc	2.9 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
5/28/2004	Zinc	2.9 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4

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

Date	**Parameter**	**Observed Concentration**	**Benchmark Value**	**Location (as identified by the Facility)**
1/25/2008	pH	5.93	6 – 9	Drain #1
1/25/2008	Iron	3.8 mg/L	1.0 mg/L	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.117 mg/L	Drain #1
1/25/2008	pH	5.87	6 – 9	Drain #2
1/25/2008	Iron	3.5 mg/L	1.0 mg/L	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.117 mg/L	Drain #2
1/25/2008	pH	5.88	6 – 9	Drain #3
1/25/2008	Iron	1.7 mg/L	1.0 mg/L	Drain #3
1/25/2008	Zinc	0.31 mg/L	0.117 mg/L	Drain #3
1/25/2008	Iron	4.1 mg/L	1.0 mg/L	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.117 mg/L	Drain #4
10/12/2007	Total Suspended Solids	170 mg/L	100 mg/L	Drain #1
10/12/2007	Specific Conductivity	220 µmho/cm	200 µmho/cm (proposed)	Drain #1
10/12/2007	Iron	7.6 mg/L	1.0 mg/L	Drain #1
10/12/2007	Zinc	0.51 mg/L	0.117 mg/L	Drain #1
10/12/2007	N +N	1.3 mg/L	0.68 mg/L	Drain #1
10/12/2007	Total Suspended Solids	150 mg/L	100 mg/L	Drain #2
10/12/2007	Specific Conductivity	330 µmho/cm	200 µmho/cm (proposed)	Drain #2
10/12/2007	Iron	12 mg/L	1.0 mg/L	Drain #2
10/12/2007	Zinc	1.4 mg/L	0.117 mg/L	Drain #2
10/12/2007	N + N	2.5 mg/L	0.68 mg/L	Drain #2
10/12/2007	Total Suspended Solids	590 mg/L	100 mg/L	Drain #3
10/12/2007	Specific Conductivity	380 µmho/cm	200 µmho/cm (proposed)	Drain #3
10/12/2007	Iron	21 mg/L	1.0 mg/L	Drain #3
10/12/2007	Zinc	2 mg/L	0.117 mg/L	Drain #3

10/12/2007	N + N	2.2 mg/L	0.68 mg/L	Drain #3
10/12/2007	Total Suspended Solids	200 mg/L	100 mg/L	Drain #4
10/12/2007	Specific Conductivity	320 µmho/cm	200 µmho/cm (proposed)	Drain #4
10/12/2007	Iron	9.5 mg/L	1.0 mg/L	Drain #4
10/12/2007	Zinc	0.62 mg/L	0.117 mg/L	Drain #4
10/12/2007	N + N	1.93 mg/L	0.68 mg/L	Drain #4
1/5/2007	Specific Conductivity	580 µmho/cm	200 µmho/cm (proposed)	Drain #1
1/5/2007	Iron	3.5 mg/L	1.0 mg/L	Drain #1
1/5/2007	Zinc	0.32 mg/L	0.117 mg/L	Drain #1
1/5/2007	N + N	3.41 mg/L	0.68 mg/L	Drain #1
1/5/2007	Specific Conductivity	560 µmho/cm	200 µmho/cm (proposed)	Drain #2
1/5/2007	Iron	7.3 mg/L	1.0 mg/L	Drain #2
1/5/2007	Zinc	0.43 mg/L	0.117 mg/L	Drain #2
1/5/2007	N + N	3.64 mg/L	0.68 mg/L	Drain #2
1/5/2007	Specific Conductivity	560 µmho/cm	200 µmho/cm (proposed)	Drain #3
1/5/2007	N + N	3.18 mg/L	0.68 mg/L	Drain #3
1/5/2007	Total Suspended Solids	140 mg/L	100 mg/L	Drain #4
1/5/2007	Specific Conductivity	560 µmho/cm	200 µmho/cm (proposed)	Drain #4
1/5/2007	Iron	6.1 mg/L	1.0 mg/L	Drain #4
1/5/2007	Zinc	0.85 mg/L	0.117 mg/L	Drain #4
1/5/2007	N + N	2.95 mg/L	0.68 mg/L	Drain #4
12/12/2006	Specific Conductivity	440 µmho/cm	200 µmho/cm (proposed)	Drain #1
12/12/2006	Iron	1.1 mg/L	1.0 mg/L	Drain #1
12/12/2006	N + N	2.27 mg/L	0.68 mg/L	Drain #1
12/12/2006	Specific Conductivity	390 µmho/cm	200 µmho/cm (proposed)	Drain #2
12/12/2006	Iron	1.8 mg/L	1.0 mg/L	Drain #2
12/12/2006	N + N	3.64 mg/L	0.68 mg/L	Drain #2
12/12/2006	Specific Conductivity	400 µmho/cm	200 µmho/cm (proposed)	Drain #3
12/12/2006	Iron	1.1 mg/L	1.0 mg/L	Drain #3
12/12/2006	Zinc	0.13 mg/L	0.117 mg/L	Drain #3
12/12/2006	N + N	3.18 mg/L	0.68 mg/L	Drain #3
12/12/2006	Specific Conductivity	370 µmho/cm	200 µmho/cm (proposed)	Drain #4
12/12/2006	Iron	3.6 mg/L	1.0 mg/L	Drain #4

12/12/2006	Zinc	0.72 mg/L	0.117 mg/L	Drain #4
12/12/2006	N + N	2.5 mg/L	0.68 mg/L	Drain #4
1/3/2006	Specific Conductivity	470 µmho/cm	200 µmho/cm (proposed)	Drain #1
1/3/2006	N + N	2.73 mg/L	0.68 mg/L	Drain #1
1/3/2006	Specific Conductivity	540 µmho/cm	200 µmho/cm (proposed)	Drain #2
1/3/2006	Iron	2.5 mg/L	1.0 mg/L	Drain #2
1/3/2006	N + N	2.73 mg/L	0.68 mg/L	Drain #2
1/3/2006	Specific Conductivity	520 µmho/cm	200 µmho/cm (proposed)	Drain #3
1/3/2006	Iron	3.4 mg/L	1.0 mg/L	Drain #3
1/3/2006	Zinc	0.38 mg/L	0.117 mg/L	Drain #3
1/3/2006	N + N	56.82 mg/L	0.68 mg/L	Drain #3
1/3/2006	Specific Conductivity	530 µmho/cm	200 µmho/cm (proposed)	Drain #4
1/3/2006	Zinc	0.12 mg/L	0.117 mg/L	Drain #4
1/3/2006	N + N	2.73 mg/L	0.68 mg/L	Drain #4
10/19/2004	Total Suspended Solids	250 mg/L	100 mg/L	Drain #1
10/19/2004	Iron	1.2 mg/L	1.0 mg/L	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.117 mg/L	Drain #1
10/19/2004	pH	5.8	6 – 9	Drain #2
10/19/2004	Total Suspended Solids	130 mg/L	100 mg/L	Drain #2
10/19/2004	Zinc	0.26 mg/L	0.117 mg/L	Drain #2
10/19/2004	pH	5.7	6 – 9	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.117 mg/L	Drain #3
10/19/2004	pH	5.5	6 – 9	Drain #4
10/19/2004	Total Suspended Solids	110 mg/L	100 mg/L	Drain #4
10/19/2004	Iron	1.5 mg/L	1.0 mg/L	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.117 mg/L	Drain #4
10/19/2004	N + N	2.02 mg/L	0.68 mg/L	Drain #4
5/28/2004	Total Suspended Solids	250 mg/L	100 mg/L	Drain #1
5/28/2004	Specific Conductivity	890 µmho/cm	200 µmho/cm (proposed)	Drain #1
5/28/2004	Iron	1.4 mg/L	1.0 mg/L	Drain #1
5/28/2004	Specific Conductivity	760 µmho/cm	200 µmho/cm (proposed)	Drain #2
5/28/2004	Zinc	0.3 mg/L	0.117 mg/L	Drain #2
5/28/2004	N + N	0.82 mg/L	0.68 mg/L	Drain #2
5/28/2004	Total Suspended Solids	120 mg/L	100 mg/L	Drain #3
5/28/2004	Specific Conductivity	590 µmho/cm	200 µmho/cm (proposed)	Drain #3

5/28/2004	Iron	5.7 mg/L	1.0 mg/L	Drain #3
5/28/2004	Zinc	2.6 mg/L	0.117 mg/L	Drain #3
5/28/2004	N + N	1.41 mg/L	0.68 mg/L	Drain #3
5/28/2004	Total Suspended Solids	230 mg/L	100 mg/L	Drain #4
5/28/2004	Specific Conductivity	550 µmho/cm	200 µmho/cm (proposed)	Drain #4
5/28/2004	Iron	31 mg/L	1.0 mg/L	Drain #4
5/28/2004	Zinc	2.9 mg/L	0.117 mg/L	Drain #4
5/28/2004	N + N	2.2 mg/L	0.68 mg/L	Drain #4

CSPA's investigation, including its review of Melrose Metal's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that Melrose Metal has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, specific conductivity, iron, N+N, zinc and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Melrose Metal was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Melrose Metal 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 at least May 26, 2004, 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 Melrose Metal has discharged storm water containing impermissible levels of TSS, pH, specific conductivity, iron, N+N, and zinc 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 storm water containing any of these pollutants 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, Melrose Metal is subject to penalties for violations of the General Permit and the Act since May 26, 2004.

B. Failure to Sample and Analyze Storm Events and Mandatory Parameters

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *Id*. "All storm water discharge locations shall be sampled." *Id*. "Facility operators that do not collect samples from the first storm event of the wet season are still

required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled." *Id*. Melrose Metal failed to sample a second storm event during the 2004-2005 rainy season.

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id*. at Section B(5)(c)(i). Facilities also must analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id*. at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id*. at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 3444, including Melrose Metal, must analyze each of its storm water samples for zinc, N + N, iron, and aluminum. *Id.*, Table D (Sector N). CSPA's review of Melrose Metal's monitoring data indicates that you have failed to analyze for aluminum in the following samples taken on the following dates at the identified storm water discharge locations at the Facility:

Date	**Location (as identified by the Facility)**
1/25/2008	Drain #1
1/25/2008	Drain #2
1/25/2008	Drain #3
1/25/2008	Drain #4
10/12/2007	Drain #1
10/12/2007	Drain #2
10/12/2007	Drain #3
10/12/2007	Drain #4
1/5/2007	Drain #1
1/5/2007	Drain #2
1/5/2007	Drain #3
1/5/2007	Drain #4
12/12/2006	Drain #1
12/12/2006	Drain #2
12/12/2006	Drain #3
12/12/2006	Drain #4
1/3/2006	Drain #1
1/3/2006	Drain #2
1/3/2006	Drain #3
1/3/2006	Drain #4
10/19/2004	Drain #1
10/19/2004	Drain #2
10/19/2004	Drain #3
10/19/2004	Drain #4
5/28/2004	Drain #1

5/28/2004	Drain #2
5/28/2004	Drain #3
5/28/2004	Drain #4

Each of the above listed failures to analyze for aluminum is a violation of General Permit, Section B(5)(c)(iii). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Melrose Metal is subject to penalties for violations of the General Permit and the Act since May 26, 2004.

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 as well as Melrose Metal's Annual Reports indicate that Melrose Metal has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Melrose Metal has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Melrose Metal has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least May 26, 2004, and will continue to be in violation every day that Melrose Metal fails to prepare, implement, review, and update an effective SWPPP. Melrose Metal is subject to penalties for violations of the Order and the Act occurring since May 26, 2004.

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 Melrose Metal 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, Melrose Metal is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 26, 2004.

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).

In addition, since 2004, Melrose Metal and its agent, Mitchell A. Hoppe, inaccurately certified in their Annual Reports that the Facility was in compliance with the General Permit. Consequently, Melrose Metal has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Melrose Metal failed to submit a complete or correct report and every time Melrose Metal or its agent falsely purported to comply with the Act. Melrose Metal is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since May 26, 2004.

IV. Persons Responsible for the Violations.

CSPA puts Melrose Metal and Mitchell A. Hoppe 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 Melrose Metal and Mitchell A. Hoppe on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

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

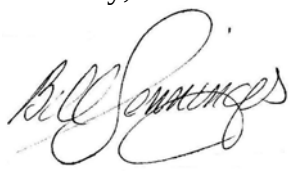
Andrew L. Packard
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, California 94952
Tel. (707) 763-7227
andrew@packardlawoffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Melrose Metal 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. 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 Melrose Metal 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 so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

Dorothy R. 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

Laura Yoshii, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A

Rain Dates, Melrose Metal Products, Inc., Fremont, California

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