



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

September 3, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kenneth W. Hoffman, President
Viking Truck & Auto, Inc.
19980 Viking Way
Redding, CA 96003

Mr. Kenneth W. Hoffman, Agent For Service Of Process
Viking Truck & Auto, Inc.
2336 Airstrip Rd.
Redding, CA 96003

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

Dear Sir:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Viking Truck & Auto Dismantlers, Inc. ("VTA") vehicle dismantling and automotive parts recycling facility located at 19980 Viking Way in Redding, California ("the Facility"). The WDID identification number for the Facility is 5R45I017416. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Churn Creek, the Sacramento River, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of VTA. For purposes of this Notice of Violations and Intent to File Suit, "VTA" shall also refer to Mr. Kenneth Hoffman.

This letter addresses VTA's unlawful discharges of pollutants from the Facility to Churn Creek, which in turn ultimately flows into the Sacramento River and the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

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

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, VTA, and Mr. Kenneth Hoffman are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against VTA and Mr. Kenneth Hoffman 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 Industrial Storm Water Permit. These violations are described more fully below.

I. Background.

VTA operates a vehicle dismantling and automotive parts recycling facility located in Redding, California. The Facility receives, dismantles, stores, reclaims, processes and recycles truck and automotive vehicles and automotive parts. The Facility also accepts vehicles for crushing and subsequent recycling, with weekly crushing and bi-weekly scrap metal removal.

On or about August 8, 2002, VTA submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as an auto dismantling facility under Standard Industrial Classification (“SIC”) Code 5015 (“Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale”). The Facility collects and discharges storm water from its approximately 19-acre industrial site through at least four discharge points to Churn Creek, which in turn ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and Churn Creek are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01mg/L; iron – 0.3 mg/L; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that

“[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by VTA: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L;

lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; and, chemical oxygen demand – 120 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

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

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 Industrial Storm Water 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.

On August 6, 2002, a representative of the United States Environmental Protection Agency and the Regional Water Quality Control Board, Region 5, conducted an inspection of the Facility. The inspector met with Mr. Kenneth Hoffman to tour the facility and review relevant paperwork. Four discharge points associated with industrial activity at the Facility were identified during the inspection. Subsequently, on September 19, 2002, Mary Randall of the Regional Board sent a letter to VTA noting the following: (1) Vehicle wash water was being discharged from the Facility and is not authorized under the Storm Water Permit; (2) The SWPPP for the Facility must be revised to include any new or modified Best Management Practices for vehicle washing; (3) The inspector noted VTA did not implement one of the BMPs described in its SWPPP, which states: “Store all vehicles and parts off the ground...”; and, (4) VTA must implement all of the BMPs listed in its SWPPP to be in compliance with the General Permit.

On August 27, 2009, the Regional Water Quality Control Board, Region 5, sent a Notice of Violation (“NOV”) to Mr. Kenneth Hoffman and VTA. The NOV cited an August 13, 2009 inspection by the Board and Shasta County Environmental Health, which revealed several violations of the General Permit. The NOV noted that VTA: (1)

failed to prevent prohibited discharges from the "Crusher Area to off-site areas" from occurring; (2) failed to implement and maintain appropriate BMPs, specifically noting:

The indoor dismantling bays, fluid draining area, waste oil area, new motor bay, engine core room, repair shop, 'U-Pull-It' vehicle storage area, and the crusher area all require additional BMPs to prevent further violations; the drainage ditches/swales leaving the facility require additional BMPs and necessary maintenance to achieve permit compliance; and interior roads lack adequate armoring to prevent sediment from discharging off-site.

Based on this inspection, the Board ordered VTA to immediately complete the following corrective actions:

- (1) Clean up accumulated waste fluids on the ground in the Dismantling Bays;
- (2) Use adequate storage bins for new, used and waste absorbent materials, and label appropriately. Discontinue the mixing of waste absorbent and trash;
- (3) Label all waste drums and containers in the Waste Area, and throughout the facility, with appropriate Hazardous Materials labels, and fill out label completely. Ensure all containers are adequately covered and contained;
- (4) Clean-up the accumulated waste fluid in the Waste Area, and dispose of properly;
- (5) Ensure that all steam cleaning wash water is contained in the treatment facility, and discontinue all discharges outside of the contained area;
- (6) Clean up all accumulated waste fluid and trash in the New Motor Bay. Provide secondary containment for the drain table, and label the drain table appropriately;
- (7) Clean up all accumulated waste fluid and trash in the Engine Core Room and provide adequate containment barrels for all waste fluids, trash, and absorbent materials, and label appropriately;
- (8) Provide additional containment barrels for waste fluids, trash and absorbent material in the Repair Shop, and label appropriately;
- (9) Eliminate additional waste fluid discharges to the ground in the U-Pull-It storage area, by performing thorough fluid draining of all vehicles entering the facility, and by implementing additional BMPs to eliminate and/or reduce future discharges;
- (10) Clean up accumulated trash, debris, and waste fluids on the ground in the Crusher Area, and implement additional BMPs to contain trash, debris and waste materials on-site, eliminating and/or reducing potential discharges off-site;
- (11) Provide better containment on 500-gallon diesel tank, and clean up accumulated diesel on the ground below the tank, in the Crusher Area;
- (12) Update and maintain all housekeeping logs, as specified in the SWPPP;
- (13) Clean all drop inlets, and/or drainage ditches, especially in the Crusher Area, of accumulated petroleum sediment and debris and trash and maintain as specified in the SWPPP; and,

(14) Add road base rock to the interior road network to reduce potential sediment discharges off-site.

The Board also ordered VTA to:

(1) Monitor and maintain all BMPs as specified in the SWPPP, and submit copies of all housekeeping logs and monitoring reports to the Regional Water Board, monthly throughout 2009/2010. The reports must document both the problems and the corrective actions taken to address storm water issues observed at the site, and must include photographs. Reports must be submitted by the 10th day of the following month;

(2) Evaluate the sources of your pollutants, review your current BMPs and identify and implement additional BMPs to reduce the pollutants that discharge from your site. Update the SWPPP to reflect new BMPs, including a site map illustrating the location of all BMPs, and submit a copy of the updated SWPPP to the Central Valley Water Board by 30 September, 2009;

(3) Submit a written report demonstrating the methods you will institute to prevent future violations and potential discharges of pollutants to waters of the state;

(4) Ensure that the person(s) responsible for inspections of the VTA facility have been trained in storm water management, in the effective use of storm water management BMPs, and good housekeeping practices for auto dismantling sites as it is clear from inspection observations that personnel have not been adequately trained, or that training has not been utilized to formulate and implement proper control at your site; and,

(5) Develop and implement an Individual Monitoring Program – Sampling and Analysis Plan. Parameters to be sampled will include Total Suspended Solids (TSS), Iron (Fe), Lead (Pb), and Aluminum (Al) as outlined in Table D – Sector M. Automobile Salvage Yards – SIC Code 5015 – Facilities Engaged in Dismantling or Wrecking Used Motor – Vehicles for Parts Recycling or Resale and for Scrap. All sample results shall be included in the Annual Report for the facility which is due July 1 of each year. Submit a copy of the Individual Monitoring Program – Sampling and Analysis Plan to the Regional Water Board by 30 September, 2009.

VTA responded to these concerns with an email to the Regional Board from Don Reh of NEST Environmental on October 1, 2009, providing a new Monitoring Plan and asserting a new SWPPP and BMPs would follow. However, as of August 12, 2010, nearly one year later, there was no revised SWPPP nor any evidence of new BMPs having been implemented at the Facility in VTA's file at the Regional Board. Furthermore, VTA's file did not contain any of the monthly reports the Regional Board ordered, demonstrating the housekeeping log and monitoring reports. Based on its review of available public documents, CSPA is informed and believes that VTA

continues to discharge these very same pollutants in excess of benchmarks and that VTA has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. VTA's ongoing violations are discussed further below.

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

VTA has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), Copper (Cu), Iron (Fe), and Zinc (Zn) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. VTA's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of Applicable EPA Benchmarks

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	TSS	188 mg/L	100 mg/L
10/13/2009	Point #2	TSS	300 mg/L	100 mg/L

2. Discharges of Storm Water Containing Aluminum (Al) at Levels in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	Proposed Benchmark Value
10/03/2008	Unidentified	Al	Failure to Test	0.75 mg/L
10/13/2009	Point #1	Al	4.4 mg/L	0.75 mg/L
10/13/2009	Point #2	Al	18 mg/L	0.75 mg/L
03/12/2010	Point #1	Al	1.7 mg/L	0.75 mg/L
03/12/2010	Point #2	Al	47 mg/L	0.75mg/L

3. Discharges of Storm Water with Lead (Pb) in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Pb	.168 mg/L	.0816 mg/L
10/13/2009	Point #2	Pb	.21 mg/L	.0816 mg/L

4. Discharges of Storm Water with Iron (Fe) in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Fe	Failure to Test	1 mg/L
10/13/2009	Point #1	Fe	6.4 mg/L	1 mg/L
10/13/2009	Point #2	Fe	2.4 mg/L	1 mg/L
03/26/2007	Point #1	Fe	2.9 mg/L	1 mg/L
10/12/2007	Point #2	Fe	78 mg/L	1 mg/L

5. Discharges of Storm Water with Zinc (Zn) in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Zn	.897 mg/L	0.117 mg/L
10/13/2009	Point #1	Zn	.21 mg/L	0.117 mg/L
10/13/2009	Point #2	Zn	.62 mg/L	0.117 mg/L
03/12/2010	Point #1	Zn	1.7 mg/L	0.117 mg/L
03/12/2010	Point #2	Zn	.59 mg/L	0.117 mg/L

6. Discharges of Storm Water with Copper (Cu) in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Cu	.226 mg/L	0.0636 mg/L
10/13/2009	Point #2	Cu	.13 mg/L	0.0636 mg/L
03/12/2010	Point #2	Cu	.15 mg/L	0.0636 mg/L

CSPA's investigation, including its review of VTA's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values, indicates that VTA has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Aluminum (Al), Lead (Pb), Copper (Cu),

Zinc (Zn), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. VTA was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, VTA is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that VTA has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least September 3, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since September 3, 2005, 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 VTA has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), Copper (Cu), Iron (Fe), Zinc (Zn) and other unmonitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT 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, VTA is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 3, 2005.

B. VTA Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as VTA, designated under SIC Code 5015 are also required to sample for Iron (Fe), Lead (Pb) and Aluminum (Al). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that VTA has failed to implement an adequate Monitoring & Reporting Plan. CSPA's review of publicly available records reveals that: (1) there is no 2005-2006 Annual Report for VTA on file at the Regional Board office; (2) the Annual Reports VTA did file for the 2008-2009 and 2007-2008 periods further establish VTA's failure to sample two storm events as required by the General Permit (the Regional Board notes on the 2007-2008 Annual Report that no waiver from sampling was given, contrary to VTA assertions); (3) the 2008-2009 Annual Report shows VTA failed to test for Aluminum and Iron, as required by the General Permit; and (4) the Annual Reports VTA filed for the 2009-2010, 2008-2009 and 2006-2007 Wet Seasons also demonstrate VTA's chronic failure to collect samples of storm water discharges from each of the Facility's four designated discharge points.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, VTA is subject to penalties for violations of the General Permit and the Act since September 3, 2005. These violations are set forth in greater detail below:

1. VTA Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In the Years It Has Been Designated As A Sampler Within The California Auto Dismantlers Group In Accordance With VTA's Responsibilities as a Group Member

Based on its review of publicly available documents, CSPA is informed and believes that VTA has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during at least two of the past five years as required. CSPA believes that although VTA is a part of a Group Monitoring Plan, VTA did not comply with the applicable requirements for sampling as stated in the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the four discharge points currently designated by VTA. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Clean Water Act.

2. VTA Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires VTA to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbon. The General Permit also requires facilities such as VTA which are designated as SIC Code 5015 to analyze its storm water discharge for Iron (Fe), Lead (Pb), and Aluminum (Al). Further, based on its investigation, CSPA is informed and

believes that VTA has failed to monitor for other pollutants “likely to be present in storm water discharges in significant quantities” (see, General Permit Section B.5.C(ii)), including, as acknowledged in VTA’s SWPPP, Copper (Cu) and Zinc (Zn). VTA failed to analyze storm water samples for Aluminum (Al) and Iron (Fe) in its 2008-2009 Annual Report. Other pollutants likely to be present in the Facility’s storm water discharges include: benzene, toluene, antimony, arsenic, boron, beryllium, cadmium, chromium, cobalt, manganese, mercury, molybdenum, nickel, selenium, silver, thallium and vanadium. VTA’s failure to monitor these pollutants extends back to at least September 3, 2005. VTA’s failure to monitor these other pollutants likely to be present in the Facility’s storm water discharges has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

3. VTA Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 3, 2005.

CSPA is informed and believes that available documents demonstrate VTA’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B 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, VTA is subject to penalties for these violations of the General Permit and the Act since September 3, 2005.

C. VTA Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA’s investigation indicates that VTA has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Benzene (C₆H₆), Toluene (CH₃), Antimony (Sb), Arsenic (As), Boron (B), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Manganese (Mn), Mercury (Hg), Molybdenum (Mo), Nickel (Ni), Selenium (Se), Silver (Ag), Thallium (Tl) and Vanadium (V) in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, VTA must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum VTA must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), follow all orders from the Regional Board in the August 27, 2009

NOV, or eliminate storm water discharge from the Facility altogether. VTA has failed to adequately implement such measures.

VTA was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, VTA has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that VTA fails to implement BAT and BCT. VTA is subject to penalties for violations of the Order and the Act occurring since September 3, 2005.

D. VTA Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

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

Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that VTA has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. VTA has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary and as ordered by the Regional Board in 2009. Although an October 1, 2009 email communication from VTA's environmental consultant stated a SWPPP would be submitted "in a couple days" there is no revised SWPPP on file with the Regional Board. VTA has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that VTA fails to develop and implement an effective SWPPP. VTA is subject to penalties for violations of the Order and the Act occurring since September 3, 2005.

E. VTA Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

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

As indicated above, VTA is discharging elevated levels of TSS, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), and likely discharging elevated levels of Benzene (C₆H₆), Toluene (CH₃), Antimony (Sb), Arsenic (As), Boron (B), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Manganese (Mn), Mercury (Hg), Molybdenum (Mo), Nickel (Ni), Selenium (Se), Silver (Ag), Thallium (Tl) and Vanadium (V) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, VTA was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of

levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). VTA has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since September 3, 2005, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. VTA is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since September 3, 2005.

F. VTA Has Failed to File Timely, True and Correct 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).

CSPA's investigation indicates that VTA has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, VTA failed to collect samples of storm water discharge from two qualifying storm events and from all designated discharge points as required by the General Permit. VTA failed to provide an explanation for the incomplete 2008-2009 Annual Report.

Based on its review of publicly available data on precipitation for the area, CSPA is informed and believes that there were at least two qualifying storm events during the 2008-2009 Wet Season. To wit, CSPA notes the following: (1) based on its own reporting as stated in its 2008-2009 Annual Report, VTA collected a sample of storm water discharged from the Facility's southeast drain on October 3, 2008; (2) publicly available precipitation data for the area reveals that 0.44 inches of precipitation was recorded as falling in the area on January 22, 2009, a weekday that followed three days of dry weather; and, (3) between October 1, 2008 and May 31, 2009 (the 2008-2009 Wet Season for purposes of General Permit compliance), there were no less than 20 days where at least 0.03 inches of rainfall were recorded for the area; further, see Attachment A below, which includes dates on which 0.10 inches or more of precipitation was recorded as having fallen in the area. Thus, VTA has failed to submit true and complete reports to the extent it has misrepresented to the Regional Board the frequency of qualifying storm events during which VTA could have collected a second sample of storm water discharge as required by the General Permit.

As indicated above, VTA has failed to comply with the General Permit and the Act consistently for at least the past five years; therefore, VTA has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. VTA's failure to submit true and complete reports constitutes continuous and ongoing violations of the General Permit and the Act. VTA is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since September 3, 2005.

G. VTA Has Discharged Unauthorized Non-Storm Water in Violation of the General Permit.

Based on its investigation, CSPA is informed and believes that VTA has discharged and continues to discharge unauthorized non-storm water from the Facility. On September 19, 2002, Mary Randall of the Regional Board sent a letter to VTA noting the following: (1) Vehicle wash water was being discharged from the Facility and is not authorized under the Storm Water Permit; (2) The SWPPP for the Facility must be revised to include any new or modified Best Management Practices for vehicle washing. CSPA notes that the Regional Board's August 27, 2009 Notice of Violation ordered VTA to "ensure that all steam cleaning wash water is contained in the treatment facility, and discontinue all discharges outside of the contained area." CSPA is informed and believes that VTA is discharging unauthorized non-storm water to the extent any water used to wash or rinse vehicles, structures, equipment, and the like on site discharges from the Facility. VTA has been in continuous violation of Discharge Prohibition A(1) of the General Permit every day since September 3, 2005, and will continue to be in violation every day VTA fails to eliminate its discharges of unauthorized non-storm water or obtains a separate NPDES permit to authorize such discharges of non-storm water. Accordingly, VTA is subject to penalties for violations of the General Permit and the Act occurring since September 3, 2005.

III. Persons Responsible for the Violations.

CSPA puts VTA and Mr. Kenneth Hoffman 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 VTA on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

V. Counsel.

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

Andrew L. Packard
Erik M. Roper
Hallie B. Albert
Law Offices of Andrew L. Packard
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
E-mail: Andrew@PackardLawOffices.com
Erik@PackardLawOffices.com
Hallie@PackardLawOffices.com

And to:

Robert J. Tuerck
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

VI. 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 VTA and Mr. Kenneth Hoffman to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against VTA and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be

Notice of Violation and Intent To File Suit

September 3, 2010

Page 17 of 17

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

SERVICE LIST

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

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

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

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

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

ATTACHMENT A
Notice of Intent to File Suit, VTA (Redding, CA)
Significant Rain Events,* September 3, 2005 – September 3, 2010

Oct.	14	2005	Mar.	12	2006	Feb.	07	2007	Jan.	29	2008
Oct.	26	2005	Mar.	13	2006	Feb.	08	2007	Jan.	31	2008
Nov.	03	2005	Mar.	14	2006	Feb.	09	2007	Feb.	02	2008
Nov.	07	2005	Mar.	15	2006	Feb.	10	2007	Feb.	21	2008
Nov.	25	2005	Mar.	20	2006	Feb.	22	2007	Feb.	22	2008
Nov.	28	2005	Mar.	23	2006	Feb.	24	2007	Feb.	23	2008
Nov.	29	2005	Mar.	24	2006	Feb.	27	2007	Feb.	24	2008
Nov.	30	2005	Mar.	25	2006	Mar.	26	2007	Mar.	12	2008
Dec.	01	2005	Mar.	27	2006	April	11	2007	Mar.	28	2008
Dec.	17	2005	Mar.	28	2006	April	19	2007	April	22	2008
Dec.	18	2005	Mar.	29	2006	April	21	2007	May	24	2008
Dec.	19	2005	Mar.	31	2006	April	22	2007	Oct.	03	2008
Dec.	20	2005	April	01	2006	May	01	2007	Oct.	04	2008
Dec.	21	2005	April	02	2006	May	02	2007	Oct.	30	2008
Dec.	22	2005	April	03	2006	May	03	2007	Oct.	31	2008
Dec.	25	2005	April	05	2006	Oct.	09	2007	Nov.	01	2008
Dec.	26	2005	April	09	2006	Oct.	10	2007	Nov.	02	2008
Dec.	27	2005	April	10	2006	Oct.	12	2007	Nov.	03	2008
Dec.	28	2005	April	11	2006	Oct.	16	2007	Nov.	08	2008
Dec.	29	2005	April	12	2006	Oct.	19	2007	Dec.	14	2008
Dec.	30	2005	April	15	2006	Nov.	10	2007	Dec.	15	2008
Dec.	31	2005	April	16	2006	Nov.	19	2007	Dec.	18	2008
Jan.	01	2006	May	19	2006	Dec.	03	2007	Dec.	21	2008
Jan.	03	2006	May	21	2006	Dec.	04	2007	Dec.	24	2008
Jan.	04	2006	Oct.	04	2006	Dec.	06	2007	Dec.	28	2008
Jan.	10	2006	Nov.	02	2006	Dec.	18	2007	Jan.	02	2009
Jan.	11	2006	Nov.	03	2006	Dec.	19	2007	Jan.	22	2009
Jan.	13	2006	Nov.	11	2006	Dec.	20	2007	Jan.	24	2009
Jan.	14	2006	Nov.	12	2006	Dec.	27	2007	Feb.	06	2009
Jan.	17	2006	Nov.	13	2006	Dec.	28	2007	Feb.	08	2009
Jan.	18	2006	Nov.	16	2006	Dec.	29	2007	Feb.	10	2009
Jan.	20	2006	Nov.	22	2006	Jan.	03	2008	Feb.	11	2009
Jan.	28	2006	Nov.	26	2006	Jan.	04	2008	Feb.	13	2009
Jan.	30	2006	Dec.	08	2006	Jan.	05	2008	Feb.	14	2009
Feb.	01	2006	Dec.	09	2006	Jan.	06	2008	Feb.	15	2009
Feb.	02	2006	Dec.	10	2006	Jan.	08	2008	Feb.	16	2009
Feb.	04	2006	Dec.	11	2006	Jan.	09	2008	Feb.	17	2009
Feb.	26	2006	Dec.	12	2006	Jan.	10	2008	Feb.	18	2009
Feb.	27	2006	Dec.	13	2006	Jan.	12	2008	Feb.	22	2009
Mar.	02	2006	Dec.	14	2006	Jan.	21	2008	Feb.	25	2009
Mar.	03	2006	Dec.	21	2006	Jan.	24	2008	Mar.	01	2009
Mar.	05	2006	Dec.	26	2006	Jan.	25	2008	Mar.	03	2009
Mar.	06	2006	Dec.	27	2006	Jan.	26	2008	April	09	2009
Mar.	07	2006	Jan.	03	2007	Jan.	27	2008	April	24	2009

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

ATTACHMENT A
Notice of Intent to File Suit, VTA (Redding, CA)
Significant Rain Events,* September 3, 2005 – September 3, 2010

May	01	2009	April	11	2010
May	02	2009	April	12	2010
May	03	2009	April	14	2010
May	04	2009	April	20	2010
May	06	2009	April	28	2010
May	06	2009	May	10	2010
Oct.	13	2009	May	25	2010
Oct.	19	2009	May	27	2010
Nov.	06	2009			
Nov.	17	2009			
Nov.	20	2009			
Dec.	11	2009			
Dec.	12	2009			
Dec.	15	2009			
Dec.	16	2009			
Dec.	20	2009			
Dec.	21	2009			
Dec.	27	2009			
Dec.	29	2009			
Jan.	01	2010			
Jan.	12	2010			
Jan.	13	2010			
Jan.	16	2010			
Jan.	17	2010			
Jan.	18	2010			
Jan.	19	2010			
Jan.	20	2010			
Jan.	21	2010			
Jan.	23	2010			
Jan.	24	2010			
Jan.	25	2010			
Feb.	01	2010			
Feb.	04	2010			
Feb.	06	2010			
Feb.	09	2010			
Feb.	21	2010			
Feb.	23	2010			
Feb.	24	2010			
Feb.	26	2010			
Mar.	02	2010			
Mar.	03	2010			
Mar.	08	2010			
April	02	2010			
April	04	2010			

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