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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

September 20, 2010

Doug Moreda, President
Mark Hodson, Operations Manager
M & M Services, Inc.
590 Caletti Avenue
Windsor, CA 95492

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

Dear Mssrs. Moreda and Hodson:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") and the Petaluma River Council ("PRC") (collectively "CSPA") regarding violations of the Clean Water Act ("Act") that CSPA believes are occurring at M & M Services, Inc., located at 590 Caletti Avenue in Windsor, 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 Russian River, Laguna de Santa Rosa, and other California waters. PRC is an unincorporated organization of concerned citizens committed to protecting and improving the health and character of the Petaluma River, Russian River, Laguna de Santa Rosa, and other North Coast watersheds and the surrounding environment. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "M&M").

This letter addresses M&M's unlawful discharge of pollutants from the Facility into channels that flow into the Windsor Storm Drain System, which empties into Pruitt Creek, Pruitt Creek then merges with Pool Creek which merges into Windsor Creek, Windsor Creek then joins the Laguna de Santa Rosa, which in turn flows into the Russian River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The Waste Discharge Identification Number ("WDID") for the Facility listed on documents submitted to the State Board is 149I019780. 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, CSPA hereby places M&M on formal notice 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 M & M Services, Inc., Mark Hodson, Doug Moreda, plus any other responsible managers, directors, employees, or operators, 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 October 14, 2005, M&M filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). M&M certified that the Facility is classified under SIC code 5093 ("Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials"). The Facility collects and discharges storm water from its approximately two (2) acre industrial site through at least two outfalls that flow into the Windsor Storm Drain System, which empties into Pruitt Creek, Pruitt Creek then merges with Pool Creek which merges into Windsor Creek, Windsor Creek then joins the Laguna de Santa Rosa, which in turn flows into the Russian River.

The California Regional Water Quality Control Board, North Coast Region ("Regional Board") has identified beneficial uses of the North Coast Region's waters and established water quality standards for the region in the "Water Quality Control Plan for the North Coast Region," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan.shtml. 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. Basin Plan at 2-1.00 – 2-18.00. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 2-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Laguna de Santa Rosa and Russian River for contact and non-contact water recreation.

The Basin Plan establishes numeric water quality objectives for specified pollutants for all inland surface waters of the region, including the Russian River and the Laguna de Santa

Rosa. Basin Plan at 3-3.00, 3-9.00. The Basin Plan establishes a water quality objective for aluminum of 1.0 mg/L. *Id.* at 3-9.00. Likewise, the Basin Plan establishes water quality objectives for lead of 0.05 mg/L. *Id.* The EPA has adopted freshwater numeric water quality standards for lead of 0.065 mg/L Criteria Maximum Concentration ("CMC") and 0.0025 mg/L Criteria Continuous Concentration ("CCC"); for zinc of 0.12 mg/L (CMC and CCC); and for copper of 0.013 mg/L (CMC) and 0.009 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000).

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 toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life." Basin Plan at 3-4.00. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." *Id*. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id*. 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 3-3.00. The Basin Plan establishes a pH standard for the Laguna de Santa Rose of not less than 6.5 and not more than 8.5. *Id*. at 3-8.00.

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 M&M: 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; copper – 0.0636 mg/L ; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L; total organic carbon ("TOC") – 110 mg/L; and chemical oxygen demand ("COD") – 120 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance of 200 µmho/cm.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

M&M 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 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. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

M&M has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, specific conductivity, TOC, aluminum, iron, lead, and possibly other pollutants in violation of the General Permit. M&M'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 narrative and numeric water quality standards established in the Basin Plan or promulgated by EPA 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 or EPA Water Quality Objective	Location (as identified by the Facility)
11/4/2008	pH	9.42	6.5 – 8.5	SW4
12/18/2007	pH	2.1	6.5 – 8.5	SW1
12/18/2007	pH	2.29	6.5 – 8.5	SW2
12/18/2007	pH	2.31	6.5 – 8.5	SW4
11/2/2006	pH	8.65	6.5 – 8.5	SW1
11/2/2006	pH	8.59	6.5 – 8.5	SW2
1/8/2008	Aluminum	5.4 mg/L	1.0 mg/L	SW1

Date	Parameter	Observed Concentration	Basin Plan or EPA Water Quality Objective	Location (as identified by the Facility)
1/8/2008	Aluminum	3.9 mg/L	1.0 mg/L	SW4
1/8/2008	Aluminum	11 mg/L	1.0 mg/L	PC-D
12/18/2007	Aluminum	1.2 mg/L	1.0 mg/L	SW1
12/18/2007	Aluminum	4.5 mg/L	1.0 mg/L	SW2
11/2/2006	Aluminum	14 mg/L	1.0 mg/L	SW1
11/2/2006	Aluminum	13 mg/L	1.0 mg/L	SW2
11/2/2006	Aluminum	1.7 mg/L	1.0 mg/L	SW4
1/8/2008	Lead	0.12 mg/L	0.05 mg/L	PC-D
1/8/2008	Lead	0.12 mg/L	0.065 mg/L (CMC)	PC-D
1/8/2008	Lead	0.12 mg/L	0.0025 mg/L (CCC)	PC-D
1/8/2008	Zinc	0.14 mg/L	0.12 mg/L (CMC & CCC)	SW1
1/8/2008	Zinc	0.66 mg/L	0.12 mg/L (CMC & CCC)	PC-D
12/18/2007	Zinc	0.15 mg/L	0.12 mg/L (CMC & CCC)	SW2
11/2/2006	Zinc	0.23 mg/L	0.12 mg/L (CMC & CCC)	SW1
11/2/2006	Zinc	0.54 mg/L	0.12 mg/L (CMC & CCC)	SW2
11/2/2006	Zinc	0.57 mg/L	0.12 mg/L (CMC & CCC)	SW4
1/8/2008	Copper	0.16 mg/L	0.013 mg/L (CMC)	PC-D
1/8/2008	Copper	0.16 mg/L	0.009 mg/L (CCC)	PC-D
11/2/2006	Copper	0.06 mg/L	0.013 mg/L (CMC)	SW1
11/2/2006	Copper	0.06 mg/L	0.009 mg/L (CCC)	SW1
11/2/2006	Copper	0.06 mg/L	0.013 mg/L (CMC)	SW2
11/2/2006	Copper	0.06 mg/L	0.009 mg/L (CCC)	SW2
5/25/2010	Cloudiness/ Sediment Observed		Narrative	SW1
5/25/2010	Cloudiness/ Sediment Observed		Narrative	SW2
3/12/2010	Cloudiness/ Sediment Observed		Narrative	SW1
3/12/2010	Cloudiness/ Sediment Observed		Narrative	SW2
1/25/2010	Cloudiness/ Sediment Observed		Narrative	SW1
1/25/2010	Cloudiness/ Sediment Observed		Narrative	SW2

Date	Parameter	Observed Concentration	Basin Plan or EPA Water Quality Objective	Location (as identified by the Facility)
10/13/2009	Cloudiness/ Sediment Observed		Narrative	SW1
10/13/2009	Cloudiness/ Sediment Observed		Narrative	SW2
4/7/2009	Cloudiness/ Sediment Observed		Narrative	SW1
4/7/2009	Cloudiness/ Sediment Observed		Narrative	SW4
12/15/2008	Cloudiness/ Sediment Observed		Narrative	SW1
12/15/2008	Cloudiness/ Sediment Observed		Narrative	SW4
12/15/2008	Cloudiness/ Sediment Observed		Narrative	PC-D
4/23/2008	Cloudiness/ Sediment Observed		Narrative	SW1
4/23/2008	Cloudiness/ Sediment Observed		Narrative	SW4
1/8/2008	Cloudiness/ Sediment Observed		Narrative	SW1
1/8/2008	Cloudiness/ Sediment Observed		Narrative	SW4
12/18/2007	Cloudiness/ Sediment Observed		Narrative	SW1
12/18/2007	Cloudiness/ Sediment Observed		Narrative	SW2
12/18/2007	Cloudiness/		Narrative	SW4

Date	Parameter	Observed Concentration	Basin Plan or EPA Water Quality Objective	Location (as identified by the Facility)
	Sediment Observed			
11/2/2006	Cloudiness/ Sediment Observed		Narrative	SW1
11/2/2006	Cloudiness/ Sediment Observed		Narrative	SW2
3/12/2010	Sheen Observed		Narrative	SW1
1/25/2010	Sheen Observed		Narrative	SW1
10/13/2009	Sheen Observed		Narrative	SW1

The information in the above table reflects data gathered from M&M's self-monitoring during the 2006-2007, 2007-2008, 2008-2009, and 2009-2010 rainy seasons. CSPA alleges that during each of those rainy seasons and continuing through today, M&M has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

pH – not less than 6.5 or greater than 8.5
Aluminum – 1.0 mg/L
Lead – 0.05 mg/L
Lead – 0.065 mg/L (CMC)
Lead – 0.0025 mg/L (CCC or 4-day average)
Zinc – 0.12 mg/L (CMC and CCC)
Copper – 0.013 mg/L (CMC)
Copper – 0.009 mg/L (CCC or 4-day average)
Cloudiness/Sediment – no suspended material causing nuisance or adversely affecting beneficial uses; 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.
Sheen – waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

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)

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
11/4/2008	pH	9.42	6.0 – 9.0	SW4
12/18/2007	pH	2.1	6.0 – 9.0	SW1
12/18/2007	pH	2.29	6.0 – 9.0	SW2
12/18/2007	pH	2.31	6.0 – 9.0	SW4
3/12/2010	TSS	320 mg/L	100 mg/L	SW1
10/13/2009	TSS	150 mg/L	100 mg/L	SW1
10/13/2009	TSS	180 mg/L	100 mg/L	SW2
5/1/2009	TSS	520 mg/L	100 mg/L	SW1
11/4/2008	TSS	730 mg/L	100 mg/L	SW1
11/4/2008	TSS	340 mg/L	100 mg/L	PC-D
1/8/2008	TSS	130 mg/L	100/ mg/L	SW1
1/8/2008	TSS	300 mg/L	100 mg/L	PC-D
12/18/2007	TSS	170 mg/L	100 mg/L	SW2
11/2/2006	TSS	370 mg/L	100 mg/L	SW1
11/2/2006	TSS	780 mg/L	100/ mg/L	SW2
11/2/2006	TSS	100 mg/L	100 mg/L	SW4
11/4/2008	Specific Conductivity	310 µmho/cm	200 µmho/cm (proposed)	PC-D
12/18/2007	Specific Conductivity	7500 µmho/cm	200 µmho/cm (proposed)	SW1
12/18/2007	Specific Conductivity	4900 µmho/cm	200 µmho/cm (proposed)	SW2
12/18/2007	Specific Conductivity	7700 µmho/cm	200 µmho/cm (proposed)	SW4
1/8/2008	Aluminum	5.4 mg/L	0.75 mg/L	SW1
1/8/2008	Aluminum	3.9 mg/L	0.75 mg/L	SW4
1/8/2008	Aluminum	11 mg/L	0.75 mg/L	PC-D
12/18/2007	Aluminum	1.2 mg/L	0.75 mg/L	SW1
12/18/2007	Aluminum	4.5 mg/L	0.75 mg/L	SW2
11/2/2006	Aluminum	14 mg/L	0.75 mg/L	SW1
11/2/2006	Aluminum	13 mg/L	0.75 mg/L	SW2
11/2/2006	Aluminum	1.7 mg/L	0.75 mg/L	SW4
1/8/2008	Iron	10 mg/L	1.0 mg/L	SW1
1/8/2008	Iron	5.9 mg/L	1.0 mg/L	SW4
1/8/2008	Iron	21 mg/L	1.0 mg/L	PC-D
12/18/2007	Iron	1.4 mg/L	1.0 mg/L	SW1
12/18/2007	Iron	8.1 mg/L	1.0 mg/L	SW2
11/2/2006	Iron	26 mg/L	1.0 mg/L	SW1
11/2/2006	Iron	25 mg/L	1.0 mg/L	SW2
11/2/2006	Iron	3.4 mg/L	1.0 mg/L	SW4

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
1/8/2008	Zinc	0.14 mg/L	0.117 mg/L	SW1
1/8/2008	Zinc	0.66 mg/L	0.117 mg/L	PC-D
12/18/2007	Zinc	0.15 mg/L	0.117 mg/L	SW2
11/2/2006	Zinc	0.23 mg/L	0.117 mg/L	SW1
11/2/2006	Zinc	0.54 mg/L	0.117 mg/L	SW2
11/2/2006	Zinc	0.57 mg/L	0.117 mg/L	SW4
1/8/2008	Lead	0.12 mg/L	0.0816 mg/L	PC-D
1/8/2008	Copper	0.16 mg/L	0.0636 mg/L	PC-D

The information in the above table reflects data gathered from M&M's self-monitoring during the 2006-2007, 2007-2008, 2008-2009, and 2009-2010 rainy seasons. CSPA alleges that during each of those rainy seasons and continuing through today, M&M has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

pH – 6.5 – 8.5
Total Suspended Solids – 100 mg/L
Aluminum – 0.75 mg/L
Iron – 1 mg/L
Zinc – 0.117 mg/L
Copper – 0.0636 mg/L
Lead – 0.0816 mg/L
Specific Conductivity – 200 μmho/cm

CSPA's investigation, including its review of M&M'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 M&M has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, specific conductivity, aluminum, iron, zinc, copper, lead, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. M&M was required to have implemented BAT and BCT by no later than November 19, 1996. Thus, M&M is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers and observations 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 also alleges that such violations have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least October 14, 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 M&M has discharged storm water

containing impermissible levels of pH, TSS, specific conductivity, aluminum, iron, zinc, copper, and lead 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, M&M is subject to penalties for violations of the General Permit and the Act since October 14, 2005.

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*. M&M failed to sample a second storm event from discharge point PC-D during the 2008-2009 rainy season, and failed to sample any storm events during the 2005-2006 rainy season for a total of seven (7) violations of the General Permit. 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, M&M is subject to penalties for violations of the General Permit and the Act since October 14, 2010.

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 must analyze for additional specified parameters. *Id*. at Section B(5)(c)(iii); *id.*, Table D. Facilities with SIC Code 5093, including M&M, must analyze each of its storm water samples for aluminum, iron, zinc, lead, copper, and COD. *Id.*, Table D (Sector N). CSPA's review of M&M's monitoring data indicates that it failed to analyze for aluminum, iron, zinc, lead, copper, and COD 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)
3/12/2010	SW1
3/12/2010	SW2
10/13/2009	SW1
10/13/2009	SW2

Date	Location (as identified by the Facility)
5/1/2009	SW1
5/1/2009	SW4
5/1/2009	PC-D
11/4/2008	SW1
11/4/2008	SW4
11/4/2008	PC-D

For the most recent rainy 2009-2010 rainy season, the Facility's annual report claims that analyzing for aluminum, iron, zinc, lead, copper and COD was not necessary because samples taken during the 2006-2007 and 2007-2008 rainy seasons did not detect these pollutants in significant quantities. M&M has no support for this assertion. As noted above, previous samples during the two referenced rainy seasons detected each of these parameters at levels well above both water quality standards and EPA storm water benchmark values. Such exceedances are, by definition, significant quantities of these pollutants. The above listed failures to analyze for aluminum, iron, zinc, lead, copper, and COD amount to sixty (60) violations of the General Permit, Section B(5)(c)(i). 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, M&M is subject to penalties for violations of the General Permit and the Act since October 14, 2010.

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 M&M's Annual Reports indicate that M&M has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. M&M has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. M&M has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least October 14, 2005, and will continue to be in violation every day that M&M fails to prepare, implement, review, and update an effective SWPPP. M&M is subject to penalties for violations of the Order and the Act occurring since October 14, 2005.

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(4)(c) requires visual observation records to note, among other things, the date of each monthly observation. 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."

M&M failed to make and report monthly visual observations as required under Section B(4) of the General Permit in October, November, and December of 2005; January, February, March, April, May, October and December of 2006; and January, February, March, April, and May of 2007 for a total of fifteen (15) violations of the General Permit. 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, M&M is subject to penalties for violations of the General Permit and the Act since October 14, 2005.

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 M&M is not representative of the quality of the Facility's various storm water discharges, and/or M&M failed to sample for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities" (Section B(5)(c)(ii)), 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, M&M is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since October 14, 2005.

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) & (10) and B(14).

In 2007, 2008, 2009, and 2010, M&M and its agent, Doug Moreda, inaccurately certified in the Annual Reports that the Facility was in compliance with the General Permit. Consequently, M&M has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time M&M failed to submit a complete or correct report and every time M&M or its agents falsely purported to comply with the Act. M&M is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since October 14, 2005.

IV. Persons Responsible for the Violations.

CSPA puts M&M, Mark Hodson, and Doug Moreda 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 M&M, Mark Hodson, and Doug Moreda on notice that they intend to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of CSPA and PRC are as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue,
Stockton, CA 95204

Tel. (209) 464-5067 Fax (209) 464-1028
David Keller, Executive Director
Petaluma River Council
1327 I Street

Petaluma, CA 94952 Tel. (707) 338-3833

VI. Counsel.

CSPA has retained our office to represent them in this matter. Please direct all communications to:

Michael R. Lozeau
Richard T. Drury
Lozeau Drury LLP
410 Twelfth Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
michael@lozeaudrury.com
richard@lozeaudrury.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4; 73 FR 75340) each separate violation of the Act subjects M&M to a penalty of up to $37,500 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. CSPA intends to file a citizen suit under Section 505(a) of the Act against M&M and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA 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, CSPA suggests 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. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Michael R. Lozeau
Attorney for California Sportfishing Protection Alliance
And Petaluma River Council

SERVICE LIST

Hans W. Herb [Agent for Service of Process]
M & M Services, Inc.
740 Fourth Street, Suite 102
Santa Rosa, CA 95404

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

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

Catherine Kuhlman, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

ATTACHMENT A

Rain Dates, M & M Services, Inc., Windsor, California

November 28, 2005
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ATTACHMENT A

Rain Dates, M & M Services, Inc., Windsor, California

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ATTACHMENT A

Rain Dates, M & M Services, Inc., Windsor, California

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Rain Dates, M & M Services, Inc., Windsor, California

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