



**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

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October 22, 2010

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. Robert "Bob" Taylor, Facility Manager

Mr. Robert "Bob" Zelwick, Safety/Environmental Coordinator

Sierra Pacific Industries

P.O. Box 8489

11605 Reading Road

Red Bluff, CA 96080

Mr. David H. Dun, Agent for Service of Process

Sierra Pacific Industries

2313 I Street

Eureka, CA 95501

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

Dear Sirs:

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 Sierra Pacific Industries ("SPI") millwork facility located at 11605 Reading Road in Red Bluff, California ("the Facility"). The WDID identification number for the Facility is 5R52I012189. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento River, the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, SPI, Mr. Robert "Bob" Taylor and Mr. Robert "Bob" Zelwick, shall hereinafter be collectively referred to as SPI.

This letter addresses SPI's unlawful discharges of pollutants from the Facility to storm water conveyances which in turn ultimately flow 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, SPI, Mr. Robert “Bob” Taylor and Mr. Robert “Bob” Zelwick 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 SPI, Mr. Robert “Bob” Taylor and Mr. Robert “Bob” Zelwick 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.**

SPI operates a millwork facility located in Red Bluff, California. The Facility receives, stores and processes wood-based products for commercial use. Other activities at the Facility include the use, storage, and maintenance of heavy machinery.

On or about April 8, 2008, SPI submitted its most recent notice of intent to comply with the terms of the General Permit (“NOI”).<sup>1</sup> The Facility is classified as a millwork facility under Standard Industrial Classification (“SIC”) Code 2431 (“Millwork”). The Facility collects and discharges storm water from its approximately 40-acre industrial site through at least five discharge points to storm water conveyances which in turn ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharge from the Facility 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 – 0.01;

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<sup>1</sup> SPI filed a NOI for the Facility previously on or about May 13, 1997.

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 SPI at the Facility: 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.**

SPI 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.

Based on its review of available public documents, CSPA is informed and believes that SPI continues to discharge myriad pollutants in excess of benchmarks and that SPI has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. SPI’s ongoing violations are discussed further below.

### **A. SPI Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

SPI has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Zinc (Zn) and

Chemical Oxygen Demand (COD) 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. SPI's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants 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, 1492 (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 (TSS) at Concentrations in Excess of Applicable EPA Benchmark**

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
10/13/2009	TSS	Outfall B	344 mg/L	100 mg/L
12/18/2007	TSS	Outfall B	635 mg/L	100 mg/L
12/18/2007	TSS	Outfall C	252 mg/L	100 mg/L
02/22/2007	TSS	Outfall B	444 mg/L	100 mg/L
02/22/2007	TSS	Outfall C	128 mg/L	100 mg/L
11/02/2006	TSS	Outfall B	667 mg/L	100 mg/L
11/02/2006	TSS	Outfall C	282 mg/L	100 mg/L
01/18/2006	TSS	"Ditch"	156 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed EPA Benchmark**

Date	Parameter	Discharge Point	Concentration in Discharge	Proposed Benchmark Value
12/06/2007	SC	Outfall B	311 $\mu$ mhos/cm	200 $\mu$ mhos/cm

**3. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark**

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
10/13/2009	Zn	Outfall B	0.127 mg/L	0.117 mg/L
10/13/2009	Zn	Outfall C	0.304 mg/L	0.117 mg/L
10/13/2009	Zn	Outfall D	0.951 mg/L	0.117 mg/L

12/16/2009	Zn	Outfall C	0.188 mg/L	0.117 mg/L
12/16/2009	Zn	Outfall D	0.888 mg/L	0.117 mg/L
12/15/2008	Zn	Outfall C	0.201 mg/L	0.117 mg/L
12/15/2008	Zn	Outfall D	1.06 mg/L	0.117 mg/L
12/06/2007	Zn	Outfall C	0.129 mg/L	0.117 mg/L
12/06/2007	Zn	Outfall D	1.31 mg/L	0.117 mg/L
12/18/2007	Zn	Outfall B	0.336 mg/L	0.117 mg/L
12/18/2007	Zn	Outfall C	0.320 mg/L	0.117 mg/L
12/18/2007	Zn	Outfall D	0.587 mg/L	0.117 mg/L
02/22/2007	Zn	Outfall B	0.148 mg/L	0.117 mg/L
02/22/2007	Zn	Outfall C	0.287 mg/L	0.117 mg/L
02/22/2007	Zn	Outfall D	1.01 mg/L	0.117 mg/L
11/02/2006	Zn	Outfall B	0.218 mg/L	0.117 mg/L
11/02/2006	Zn	Outfall C	0.538 mg/L	0.117 mg/L
11/02/2006	Zn	Outfall D	1.310 mg/L	0.117 mg/L
01/18/2006	Zn	"Ditch"	0.477 mg/L	0.117 mg/L
11/28/2005	Zn	"Ditch"	0.266 mg/L	0.117 mg/L

**4. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Discharge Point</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
10/13/2009	COD	Outfall B	245 mg/L	120 mg/L
12/18/2007	COD	Outfall B	323 mg/L	120 mg/L
02/22/2007	COD	Outfall B	136 mg/L	120 mg/L
11/02/2006	COD	Outfall B	328 mg/L	120 mg/L

CSPA's investigation, including its review of SPI's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for specific conductivity, indicates that SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity (SC), Zinc (Zn) and Chemical Oxygen Demand (COD), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SPI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 21, 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 October 21, 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 SPI has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Zinc (Zn) and Chemical Oxygen Demand (COD), 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, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 21, 2005.

**B. SPI 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 those operated by SPI in Red Bluff, designated under SIC Code 2431, are also required to sample for Chemical Oxygen Demand (COD). 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 SPI has failed to develop and implement an adequate Monitoring & Reporting Plan. For example, notwithstanding the fact that the Facility has at least five storm water discharge points (i.e., Outfalls A, B, C, D and E), for the previous four Wet Seasons the annual reports filed by SPI for this Facility indicate that samples of storm water discharge have never been collected and analyzed from Outfalls A and E. CSPA notes that the factually unsupported explanation provided for this failure has been repeated verbatim in the annual reports for the 2006-2007, 2007-2008, 2008-2009 and 2009-2010 Wet Seasons (i.e., “[Outfall] A has significantly similar industrial processes to B, and the tributary

area of E has significantly similar industrial processes to D.”). While that assertion may be true, CSPA is informed and believes that it is false. Given the wide range of pollutant concentrations evidenced in the Facility’s annual reports as summarized in the above tables, it strains credulity for SPI to insist that the industrial processes near Outfalls A and B, and Outfalls D and E, are so similar as to warrant SPI’s failure to collect and analyze samples of storm water discharged from Outfalls A and E.

Moreover, SPI has failed to sample and analyze storm water discharges from two qualifying storm events per year as required by the General Permit. CSPA notes that entities subject to the General Permit are required to collect and analyze samples of storm water discharges from each discharge point from at least two qualifying storm events each wet season; and, for purposes of storm water sampling under the General Permit, the “Wet Season” runs from October 1<sup>st</sup> to May 31<sup>st</sup> of any given year. CSPA further notes that SPI’s 2008-2009 annual report asserts that SPI’s failure to sample storm water from two qualifying storm events that year may be explained away because “[o]nly one qualifying storm event occurred.” Nonsense.

The First Storm Event sampled by SPI at the Facility in the 2008-2009 Wet Season as reflected on Form 1 of that year’s annual report occurred on December 15, 2008. Publicly available rainfall data for the area near the Facility indicates that on December 15, 2008, 0.31” (inches) of rain fell on the Facility. However, publicly available rainfall indicates that this was not a qualifying storm event within the meaning of the General Permit because the day prior, on December 14, 2008, 0.14” of rain was recorded as falling on or near the Facility. Further, assuming *arguendo* that 0.31” is the minimum amount of rainfall required to generate storm water discharges from the Facility, publicly available rainfall data indicates that there were at least three other dates within the 2008-2009 Wet Season during which storms of at least 0.31” of rainfall occurred and were preceded by three days without rain. To wit, on Friday, October 3, 2008, 0.44” of rainfall was recorded as falling on or near the Facility; on Thursday, April 9, 2009, 0.33” of rainfall was recorded as falling on or near the Facility; and, on Friday, May 1, 2009, 0.35” was recorded as falling on or near the Facility. Accordingly, SPI has no legitimate excuse for its failure to collect samples from two qualifying storm events per year as required by the General Permit. Moreover, this is but one example evidencing SPI’s pattern and practice of filing annual reports falsely certifying SPI’s compliance with the General Permit.

Given its well-documented failure to develop and implement an adequate Monitoring & Reporting Plan, and its pattern and practice of falsely certifying its compliance with the General Permit, CSPA is informed and believes SPI has committed and is continuing to commit ongoing violations of the Act and the General Permit. 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, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 22, 2005. These violations are set forth in greater detail below.



**1. SPI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that SPI has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years.

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

**2. SPI 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 SPI to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as SPI which are designated as SIC Code 2421 to analyze its storm water discharge for Chemical Oxygen Demand (COD). Further, based on its investigation, CSPA is informed and believes that SPI has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Other pollutants likely to be present in the Facility's storm water discharges include: aluminum, ammonia, arsenic, biological oxygen demand, copper, iron, lead, mercury, nitrate + nitrite (N+N) and total phenols. SPI's failure to monitor these pollutants extends back to at least October 22, 2005. SPI'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 Permit and the Act.

**3. SPI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since October 22, 2005.**

CSPA is informed and believes that available documents demonstrate SPI's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since October 22, 2005.

**C. SPI Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Industrial Storm Water 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 SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity, Zinc (Zn) and Chemical Oxygen Demand (COD) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, SPI 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 SPI 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), and/or prevent storm water discharge altogether. SPI has failed to adequately implement such measures.

SPI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPI 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 SPI fails to implement BAT and BCT. SPI is subject to penalties for violations of the Order and the Act occurring since October 22, 2005.

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

Section A(1) 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 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 SPI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. SPI 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 SPI fails to develop and implement an effective SWPPP. SPI is subject to penalties for violations of the Order and the Act occurring since October 22, 2005.

**E. SPI 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, SPI is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity, Zinc (Zn) and Chemical Oxygen Demand (COD) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPI 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.

Based on CSPA's review of available documents, SPI was aware of high levels of these pollutants prior to October 22, 2005. Likewise, SPI has not filed any reports describing its non-compliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). 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). SPI 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 October 22, 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. SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since October 22, 2005.

**F. SPI Has Discharged Unauthorized Non-Storm Water in Violation of the General Permit.**

Based on its investigation, CSPA is informed and believes that SPI has discharged and continues to discharge unauthorized non-storm water from the Facility. CSPA notes that SPI's 2008 NOI and its accompanying map of the Facility reveal that vehicles are washed and/or rinsed within the Facility (i.e., see "Truck Wash Area"). Given the close proximity of the "Truck Wash Area" to the nearest discharge point and the Facility's internal storm water drainage system leading thereto, and its review of the Facility, CSPA is informed and believes that SPI 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. SPI has been in continuous violation of Discharge Prohibition A(1) of the General Permit every day since October 22, 2005, and will continue to be in violation every day SPI 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, SPI is subject to penalties for violations of the General Permit and the Act occurring since October 22, 2005.

**G. SPI 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).

As discussed above, CSPA's investigation indicates that SPI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, SPI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SPI 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. SPI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since October 22, 2005.

**III. Persons Responsible for the Violations.**

CSPA puts Sierra Pacific Industries, Mr. Robert "Bob" Taylor and Mr. Robert "Bob" Zelwick 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 Sierra Pacific Industries, Mr. Robert "Bob" Taylor and Mr. Robert "Bob" Zelwick 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  
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](mailto:Andrew@PackardLawOffices.com)  
[Erik@PackardLawOffices.com](mailto:Erik@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](mailto: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 Sierra Pacific Industries, Mr. Robert “Bob” Taylor and Mr. Robert “Bob” Zelwick 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.

Notice of Violation and Intent To File Suit

October 22, 2010

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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 Sierra Pacific Industries 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 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 style with a large, looping 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, SPI (Red Bluff, CA)**  
**Significant Rain Events,\* October 22, 2005 – October 22, 2010**

Oct.	26	2005	April	02	2006	Dec.	20	2007	Oct.	19	2009
Nov.	03	2005	April	03	2006	Dec.	28	2007	Nov.	17	2009
Nov.	07	2005	April	05	2006	Dec.	29	2007	Nov.	20	2009
Nov.	25	2005	April	07	2006	Jan.	03	2008	Dec.	11	2009
Nov.	28	2005	April	09	2006	Jan.	04	2008	Dec.	12	2009
Nov.	29	2005	April	11	2006	Jan.	08	2008	Dec.	15	2009
Nov.	30	2005	April	12	2006	Jan.	10	2008	Dec.	16	2009
Dec.	01	2005	April	15	2006	Jan.	12	2008	Dec.	20	2009
Dec.	17	2005	April	16	2006	Jan.	24	2008	Dec.	21	2009
Dec.	18	2005	April	21	2006	Jan.	25	2008	Dec.	27	2009
Dec.	19	2005	April	22	2006	Jan.	26	2008	Dec.	29	2009
Dec.	20	2005	May	19	2006	Jan.	27	2008	Jan.	01	2010
Dec.	21	2005	Nov.	02	2006	Jan.	31	2008	Jan.	12	2010
Dec.	22	2005	Nov.	11	2006	Feb.	02	2008	Jan.	17	2010
Dec.	25	2005	Nov.	12	2006	Feb.	21	2008	Jan.	18	2010
Dec.	26	2005	Nov.	13	2006	Feb.	22	2008	Jan.	19	2010
Dec.	27	2005	Nov.	26	2006	Feb.	23	2008	Jan.	20	2010
Dec.	28	2005	Dec.	08	2006	Feb.	24	2008	Jan.	21	2010
Dec.	29	2005	Dec.	09	2006	May	26	2008	Jan.	23	2010
Dec.	30	2005	Dec.	11	2006	Oct.	03	2008	Jan.	24	2010
Dec.	31	2005	Dec.	12	2006	Oct.	04	2008	Jan.	25	2010
Jan.	01	2006	Dec.	13	2006	Oct.	30	2008	Jan.	30	2010
Jan.	03	2006	Dec.	21	2006	Oct.	31	2008	Feb.	01	2010
Jan.	04	2006	Dec.	26	2006	Nov.	01	2008	Feb.	04	2010
Jan.	07	2006	Feb.	07	2007	Nov.	03	2008	Feb.	06	2010
Jan.	14	2006	Feb.	08	2007	Dec.	14	2008	Feb.	08	2010
Jan.	17	2006	Feb.	09	2007	Dec.	15	2008	Feb.	09	2010
Jan.	18	2006	Feb.	10	2007	Dec.	21	2008	Feb.	20	2010
Jan.	20	2006	Feb.	22	2007	Dec.	24	2008	Feb.	21	2010
Jan.	28	2006	Feb.	24	2007	Jan.	21	2009	Feb.	23	2010
Jan.	30	2006	Mar.	20	2007	Jan.	22	2009	Feb.	24	2010
Feb.	01	2006	Mar.	26	2007	Jan.	24	2009	Feb.	26	2010
Feb.	26	2006	April	11	2007	Feb.	08	2009	Mar.	02	2010
Feb.	27	2006	April	14	2007	Feb.	11	2009	Mar.	03	2010
Mar.	02	2006	April	21	2007	Feb.	13	2009	April	02	2010
Mar.	03	2006	May	01	2007	Feb.	14	2009	April	04	2010
Mar.	05	2006	May	03	2007	Feb.	15	2009	April	11	2010
Mar.	06	2006	Oct.	09	2007	Feb.	16	2009	April	12	2010
Mar.	10	2006	Oct.	10	2007	Feb.	17	2009	April	14	2010
Mar.	12	2006	Oct.	12	2007	Feb.	18	2009	April	20	2010
Mar.	13	2006	Nov.	10	2007	Feb.	22	2009	May	10	2010
Mar.	20	2006	Nov.	19	2007	Feb.	23	2009	May	17	2010
Mar.	23	2006	Dec.	03	2007	Mar.	01	2009	May	21	2010
Mar.	24	2006	Dec.	04	2007	Mar.	04	2009	May	25	2010
Mar.	27	2006	Dec.	06	2007	April	09	2009	May	27	2010
Mar.	29	2006	Dec.	07	2007	April	10	2009			
Mar.	31	2006	Dec.	18	2007	May	01	2009			
April	01	2006	Dec.	19	2007	Oct.	13	2009			

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