California Sportfishing Protection Alliance
"An Advocate for Fisheries, Habitat and Water Quality"
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March 9, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Fred "Freddie" Espino, Facility Manager
Stockton Recycling, Inc. dba Stockton Metals Recycling
1533 Waterloo Road
Stockton, CA 95205

James "Jamie" Williams, Owner, Operator and Agent for Service of Process
Stockton Recycling, Inc.
1533 Waterloo Road
Stockton, CA 95205

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

Dear Mssrs. Espino and Williams:

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 Stockton Recycling, Inc. dba Stockton Metals Recyling ("SMR") recycling facility located at 1533 Waterloo Road in Stockton, California ("the Facility"). The WDID identification number for the Facility is 5S39I014582. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the San Joaquin River, Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, SMR, Fred "Freddie" Espino and James "Jamie" Williams shall hereinafter be collectively referred to as SMR.

This letter addresses SMR's unlawful discharges of pollutants from the Facility to the storm water drainage system for the City of Stockton and to the San Joaquin River, both of which 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, SMR, Fred "Freddie" Espino and James "Jamie" Williams 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 SMR, Fred "Freddie" Espino and James "Jamie" Williams 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 fully below.

I. Background.

SMR owns and operates a recycling facility located in Stockton, California. The Facility is used to receive, store, handle and transport scrap metals, plastics, aluminum, cans, paper, cardboard and glass to other facilities for recycling. Other activities at the Facility include the handling, use and storage of hazardous wastes and the use and storage of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility.

Industrial facilities subject to regulation under the General Permit are required to file a Notice of Intent to Comply with the terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). CSPA notes that the SMR's NOI on file for this Facility at the Central Valley Regional Water Quality Control Board office in Rancho Cordova was filed on or about September 11, 1998. The Facility is classified in that NOI as a facility that receives, processes, stores and/or transports scrap and waste materials under Standard Industrial Classification ("SIC") Code 5093 ("Processing, Reclaiming and Wholesale Distribution of Scrap and Waste Materials"). Further, CSPA notes that the NOI currently on file for the Facility may be deficient to the extent that it fails to accurately reflect the current physical conditions at the Facility. To wit, while the NOI reports that the Facility is only 20% impervious, a May 13, 2004 letter from Mr. Williams to the Regional Board reported that SMR was at that time considering expanding the Facility; if this contemplated expansion occurred and resulted in altering the impervious percentage at the Facility, SMR must file an amended NOI. Attachment 3 of the General Permit provides facility operators instructions relating to the filing of the required NOI and states, in relevant part: "[i]f the information provided on the NOI or site map changes, you should report the changes to the State Water Board using an NOI form." Accordingly, to the extent that the 1998 NOI may not reflect actual current conditions, SMR must file an amended NOI.

Setting that concern aside, SMR collects and discharges storm water from its industrial site of at least four (4) acres in size through at least two (2) discharge points to the storm water drainage system for the City of Stockton and to the San Joaquin River, both of which ultimately flow into the Sacramento River and the Sacramento-San Joaquin Delta ("the Delta"). The Delta, the San Joaquin River, the Sacramento River 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; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id*. at III-3.00, Table IIII-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 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 SMR: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.117 mg/L; and, copper – 0.0636 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

II. SMR is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutants by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.21(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point

source is defined as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a "point source" under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). "Navigable waters" means "the waters of the United States." 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The San Joaquin River, the Sacramento River and the Sacramento-San Joaquin Delta are waters of the United States. Accordingly, SMR's discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that SMR has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SMR is subject to penalties for violations of the Act since March 9, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

SMR 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.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

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

As recently as October 23, 2009, the Regional Water Quality Control Board, Region 5, sent SMR a letter ("the October 2009 letter") conveying its conclusion that, among other things, SMR's 2008-2009 Annual Report contained evidence that the BMPs then in effect were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2010 letter informed SMR that its 2009-2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered SMR to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered SMR to respond to these concerns by providing the Board a written response by no later than December 1, 2009.

Based on its review of available public documents, CSPA is informed and believes: (1) that SMR failed to provide the Board the ordered written response by December 1, 2009; (2) that SMR continues to discharge these very same pollutants in excess of benchmarks; and, (3) that SMR has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. SMR's ongoing violations are discussed further below.

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

SMR has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), 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. SMR's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water 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, 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 Specific Conductivity (SC) at Levels in Excess of Proposed EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/14/2006	West Storm Drain	SC	454 µmhos/cm	200 µmhos/cm

2. Discharges of Storm Water Containing Oil and Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
12/18/2007	North Storm Drain	O&G	30 mg/L	15 mg/L

3. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
12/19/2008	North Storm Drain	Fe	4.97 mg/L	1.0 mg/L
12/18/2007	North Storm Drain	Fe	2.26 mg/L	1.0 mg/L
03/14/2006	West Storm Drain	Fe	2.18 mg/L	1.0 mg/L

4. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
12/19/2008	North Storm Drain	Al	2.2 mg/L	0.75 mg/L
12/18/2007	North Storm Drain	Al	1.8 mg/L	0.75 mg/L

03/14/2006	West Storm Drain	Al	0.9 mg/L	0.75 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
12/19/2008	North Storm Drain	Zn	0.99 mg/L	0.117 mg/L
12/18/2007	North Storm Drain	Zn	0.41 mg/L	0.117 mg/L
03/14/2006	West Storm Drain	Zn	1.19 mg/L	0.117 mg/L

CSPA's investigation, including its review of SMR'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 SMR has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Zinc (Zn) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SMR was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, SMR is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SMR has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 9, 2006. 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 March 9, 2006, 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 SMR has discharged storm water containing impermissible levels of Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of 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 stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate 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, SMR is subject to penalties for violations of the General Permit and the Act since March 9, 2006.

B. SMR 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 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. Section B(5)(c)(ii) of the General Permit further 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 SMR has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that SMR has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that SMR has failed to analyze the Facility's storm water discharges for: (1) Chemical Oxygen Demand (also often referred to as COD) as required by Table D of the General Permit; and, (2) "[t]oxic chemicals and other pollutants that are likely to be present" therein during each of the past five years. 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, SMR is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since January 18, 2006. These violations are set forth in greater detail below:

1. SMR 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 SMR 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. For example, CSPA notes that while the Annual Report filed by SMR for the Facility for the 2005-2006 Wet Season reported that SMR analyzed samples of storm water discharged during two qualifying storm events that season, upon closer scrutiny it turns out that neither of those storms were qualifying storm events within the meaning of

the General Permit (discussed further below). Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the two discharge points currently designated by SMR. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

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

In addition to the standard pollutant parameters for which SMR must analyze the Facility's storm water discharges, Table D of the General Permit additionally requires SMR to analyze such samples for Aluminum, Chemical Oxygen Demand, Copper, Iron, Lead and Zinc. Notably, SMR has completely failed to analyze the Facility's samples of storm water discharges for Chemical Oxygen Demand as required by the General Permit for the last five (5) Wet Seasons (i.e., 2005-2006 Wet Season; 2006-2007 Wet Season; 2007-2008 Wet Season; 2008-2009 Wet Season; and, 2009-2010 Wet Season). However, CSPA notes that publicly available documents filed at the Regional Board reveal that at least back in the 2001-2002 Wet Season SMR analyzed its samples of discharged storm water for COD as reported in its 2001-2002 Annual Report. This demonstrates that SMR is fully aware of the fact that Table D of the General Permit requires it to analyze its storm water samples for COD.

Further, based on its investigation, CSPA is informed and believes that SMR has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. SMR's failure to monitor these pollutants extends back to at least March 9, 2006. SMR's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

3. SMR Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since March 9, 2006.

CSPA is informed and believes that available documents demonstrate SMR's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2008-2009 Annual Report SMR reported having collected samples of storm water discharged during two qualifying storm events, the copy of the report on file at the Regional Board only includes a lab report with sampling data for one storm. Additionally, in its 2006-2007 Annual Report, SMR reported that the reason it had not collected samples of storm water discharged from the Facility during any qualifying storm events that Wet Season was because "no storm events fell" on the Facility during operating hours. However, CSPA's review of publicly available rain data reveals this assertion to be demonstrably false (discussed further below).

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SMR is subject to penalties for these violations of the General Permit and the Act since March 9, 2006.

C. SMR 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 SMR has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, SMR 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 SMR 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. SMR has failed to adequately implement such measures.

SMR was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SMR 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 it fails to implement BAT and BCT. SMR is subject to penalties for violations of the General Permit and the Act occurring since March 9, 2006.

D. SMR 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 Water Quality Order No. 97-03-DWQ 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 SMR has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SMR has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, SMR has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. SMR is subject to penalties for violations of the Order and the Act occurring since March 9, 2006.

E. SMR 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, SMR is discharging elevated levels of Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SMR 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, SMR was aware of high levels of these pollutants prior to March 9, 2006. Likewise, SMR has generally failed to file reports describing its noncompliance with the General 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). SMR has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since March 9, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. SMR is subject to penalties for violations of the General Permit and the Act occurring since March 9, 2006.

F. SMR Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General 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 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 SMR has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2005-2006 Annual Report filed by SMR for the Facility reports that (1) SMR collected samples of storm water discharged from

the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours and (2) that the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours occurred on March 2, 2006. However, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that March 2, 2006 was the first storm event of the 2005-2006 Wet Season that produced a storm water discharge during scheduled facility operating hours. To wit, while publicly available rainfall data for the area indicates that on March 2, 2006, 0.14" of rain fell on the Facility, that same data indicates that on Tuesday, November 8, 2005, when 0.5" of rain was recorded as having fallen on the Facility, i.e., the actual first qualifying storm event of that season. Further calling the validity of the March 2nd storm into question as a qualifying storm event, let alone the first one of the season, is the fact that publicly available rainfall data demonstrates that storm water discharged from the Facility on February 28, 2010, i.e., less than three days prior to the March 2nd storm. The General Permit defines a qualifying storm event as one where storm water discharges from the facility during its operating hours on a date preceded by at least three (3) working days without storm water discharge.

Here, assuming that 0.14" of rainfall is enough to generate a storm water discharge at the Facility then there would have been storm water discharging from the Facility less than three days before the date of the reported "First Storm Event" thereby rendering March 2, 2010 a non-qualifying storm event. Furthermore, assuming again that 0.14" of rain is enough to generate a storm water discharge at the Facility, March 2, 2010 was not the first qualifying storm event of the 2007-2008 Wet Season. That distinction belongs to Tuesday, November 8, 2005, when 0.5" of rain fell on the Facility following at least three days without rain.

Similarly, the storm event that occurred at the Facility on March 14, 2006 was not a qualifying storm event because the day prior, on March 13, 2006, 0.66" of rain fell on the Facility, likely resulting in the discharge of storm water therefrom.

Finally, perhaps the most egregious example of SMR's demonstrated tendency to file false reports is found in its 2006-2007 Annual Report. As discussed above, in its 2006-2007 Annual Report, SMR reported that the reason it had not collected samples of storm water discharged from the Facility during any qualifying storm events that Wet Season was because "no storm events fell" on the Facility during operating hours. However, CSPA's review of publicly available rain data reveals that, not only was there at least one qualifying storm event that fell on the Facility during the 2006-2007 Wet Season, the Facility was in fact subjected to at least eleven (11) such qualifying storm events during that Wet Season.

These are only a few examples of how SMR has failed to file completely true and accurate reports. As indicated above, SMR has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SMR has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time SMR submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years.

SMR's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SMR is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since March 9, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Stockton Recycling, Inc. dba Stockton Metals Recycling, Fred "Freddie" Espino and James "Jamie" Williams 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 Stockton Recycling, Inc. dba Stockton Recycling & Transfer Station, Fred "Freddie" Espino and James "Jamie" Williams on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

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And to:

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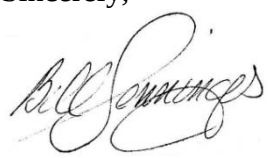
E-mail:Bob@JacksonTuerck.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Stockton Recycling, Inc. dba Stockton Metals Recycling, Fred "Freddie" Espino and James "Jamie" Williams 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 Stockton Recycling, Inc. 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,



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, SMR (Stockton, CA)
Significant Rain Events,* March 9, 2006 – March 9, 2011

Mar.	11	2006	April	22	2007	Feb.	17	2009	Oct.	23	2010
Mar.	12	2006	Oct.	10	2007	Feb.	21	2009	Oct.	24	2010
Mar.	13	2006	Oct.	12	2007	Feb.	25	2009	Nov.	07	2010
Mar.	14	2006	Nov.	11	2007	Mar.	01	2009	Nov.	19	2010
Mar.	18	2006	Jan.	04	2008	Mar.	02	2009	Nov.	20	2010
Mar.	21	2006	Jan.	05	2008	Mar.	03	2009	Nov.	23	2010
Mar.	25	2006	Jan.	06	2008	Mar.	22	2009	Nov.	27	2010
Mar.	28	2006	Jan.	07	2008	April	07	2009	Dec.	04	2010
Mar.	29	2006	Jan.	09	2008	April	09	2009	Dec.	05	2010
Mar.	31	2006	Jan.	10	2008	May	01	2009	Dec.	06	2010
April	01	2006	Jan.	11	2008	Oct.	12	2009	Dec.	08	2010
April	03	2006	Jan.	22	2008	Oct.	13	2009	Dec.	14	2010
April	04	2006	Jan.	23	2008	Nov.	20	2009	Dec.	17	2010
April	05	2006	Jan.	24	2008	Dec.	10	2009	Dec.	18	2010
April	11	2006	Jan.	25	2008	Dec.	11	2009	Dec.	19	2010
April	12	2006	Jan.	27	2008	Dec.	12	2009	Dec.	22	2010
April	13	2006	Jan.	28	2008	Dec.	26	2009	Dec.	25	2010
May	22	2006	Jan.	30	2008	Dec.	28	2009	Dec.	28	2010
Oct.	02	2006	Feb.	03	2008	Jan.	12	2010	Dec.	29	2010
Oct.	05	2006	Feb.	20	2008	Jan.	13	2010	Jan.	01	2011
Nov.	02	2006	Feb.	22	2008	Jan.	17	2010	Jan.	02	2011
Nov.	03	2006	Feb.	23	2008	Jan.	18	2010	Jan.	30	2011
Nov.	04	2006	Feb.	24	2008	Jan.	19	2010	Feb.	09	2011
Nov.	11	2006	Feb.	25	2008	Jan.	20	2010	Feb.	16	2011
Nov.	14	2006	Mar.	28	2008	Jan.	21	2010	Feb.	17	2011
Nov.	27	2006	Oct.	04	2008	Jan.	22	2010	Feb.	18	2011
Dec.	09	2006	Oct.	31	2008	Jan.	25	2010	Feb.	19	2011
Dec.	10	2006	Nov.	01	2008	Jan.	26	2010	Feb.	24	2011
Dec.	11	2006	Nov.	03	2008	Feb.	01	2010	Feb.	25	2011
Dec.	12	2006	Nov.	26	2008	Feb.	04	2010	Mar.	06	2011
Dec.	13	2006	Dec.	15	2008	Feb.	05	2010			
Dec.	15	2006	Dec.	17	2008	Feb.	08	2010			
Dec.	22	2006	Dec.	19	2008	Feb.	21	2010			
Dec.	27	2006	Dec.	22	2008	Feb.	23	2010			
Jan.	03	2007	Dec.	24	2008	Feb.	26	2010			
Jan.	27	2007	Dec.	25	2008	Mar.	02	2010			
Feb.	09	2007	Jan.	21	2009	Mar.	03	2010			
Feb.	10	2007	Jan.	22	2009	Mar.	09	2010			
Feb.	11	2007	Feb.	04	2009	Mar.	12	2010			
Feb.	13	2007	Feb.	05	2009	April	02	2010			
Feb.	22	2007	Feb.	06	2009	April	11	2010			
Feb.	25	2007	Feb.	08	2009	April	19	2010			
Feb.	26	2007	Feb.	10	2009	April	20	2010			
Feb.	27	2007	Feb.	11	2009	April	21	2010			
Feb.	28	2007	Feb.	12	2009	April	28	2010			
Mar.	21	2007	Feb.	13	2009	May	10	2010			
Mar.	27	2007	Feb.	15	2009	May	25	2010			
April	12	2007	Feb.	16	2009	Oct.	17	2010			

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