

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“AGREEMENT”) is entered into between the California Sportfishing Protection Alliance (“CSPA”) and Syar Concrete LLC (“Syar”) (collectively, the “SETTLING PARTIES”) with respect to the following facts and objectives:

RECITALS

WHEREAS, California Sportfishing Protection Alliance is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the Sacramento River, the Sacramento-San Joaquin River Delta, and other California waters. Bill Jennings is the Chairperson and a member of the California Sportfishing Protection Alliance;

WHEREAS, Syar Concrete LLC is a corporation organized under the laws of the State of California that leases and operates a Ready-Mix Concrete Plant located at 39820 Kentucky Ave in Woodland, California (“the Facility”), which discharges storm water pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter, the “General Permit”). Operations at the Facility include a ready-mix concrete plant, an office, maintenance shop, and material and equipment storage. A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, on or about May 21, 2010, CSPA provided Syar with a Notice of Violation and Intent to File Suit (“60-Day Notice Letter”) under Section 505 of the Federal Water Pollution Control Act (the “Act” or “Clean Water Act”), 33 U.S.C. § 1365;

WHEREAS, on or about August 13, 2010, CSPA filed its Complaint in the United States District Court for the Eastern District of California against Syar (*California Sportfishing Protection Alliance v. Syar Concrete LLC*, Case No. 2:10-CV-02192-JAM-GGH). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

WHEREAS, Syar denies any and all of CSPA's claims in its 60-Day Notice Letter and Complaint;

WHEREAS, CSPA and Syar, by and through their authorized representatives and without either adjudication of CSPA's claims or admission by Syar of any alleged violation or other wrongdoing, have chosen to resolve in full CSPA's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, CSPA and Syar have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CSPA's allegations set forth in the 60-Day Notice Letter and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CSPA and Syar hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF CSPA

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the expiration of the Agencies' review period specified in Paragraph 19 below, CSPA shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Eastern District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CSPA is dismissing all claims in CSPA's Complaint. Consistent with Paragraphs 27 and 28 herein, the Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through December 15, 2014, for purposes of resolving any disputes between the SETTLING PARTIES with respect to any provision of this AGREEMENT. If the District Court chooses not to enter the Order, this AGREEMENT shall be null and void.

COMMITMENTS OF SYAR

3. **Compliance with General Permit.** Syar agrees to operate the Facility in compliance with the applicable requirements of the General Permit and Clean Water Act.

4. **Implemented Storm Water Controls.** Syar shall maintain in good working order all storm water collection and treatment systems currently installed or to be installed pursuant to this AGREEMENT, including but not limited to, existing housekeeping measures.

5. **Additional Best Management Practices.** Within THIRTY (30) calendar days after the EFFECTIVE DATE, unless it has already done so, Syar shall implement the following structural and non-structural best management practices (“BMPs”) to improve the storm water pollution prevention measures for the Outfall A drainage area at the Facility, marked on Exhibit A:

- a. Syar will design removable metal or rubber covers for the three drop inlets that flow to Outfall A at the Facility to prevent the accumulation of dirt, leaves and other sediment. The covers shall be placed over all drop inlets on or before July 1st at the end of each wet season, subsequent to appropriate maintenance of the filters described above. The covers shall be removed prior to the first rain event of the subsequent wet season. The covers shall be fitted to prevent such materials from entering the drop inlets and designed such that the covers will remain firmly in place while there is normal activity at the Facility.
- b. Syar shall install, by October 1, 2011, the JF6 Jellyfish Filter System to filter stormwater prior to its discharge from Outfall A. The JF6 system is designed to handle flows up to 1 cfs.

6. **Outfall B.** Within THIRTY (30) calendar days after the EFFECTIVE DATE, unless it has already done so, Syar will provide CSPA with available documentation regarding Outfall B’s discharges to the City of Woodland’s groundwater recharge pond.

7. **Sweeping.** Syar agrees to make the following enhancements to its sweeping program.

- a. Syar shall conduct regular sweeping of the paved areas of the Facility. Specifically, Syar will sweep at least weekly during the wet season and monthly during the remainder of the year. Syar will also conduct additional sweeping prior to anticipated rain events.
- b. Syar will describe the sweeping program, including the areas to be swept, in an appendix to the Facility's Storm Water Pollution Prevention Plan ("SWPPP").
- c. All sweeping activities performed at the Facility shall be recorded in a sweeping log. A sample blank log form will be included in the Facility's SWPPP.

8. **Monitoring.** Syar agrees to perform the additional monitoring described herein during the 2011-2012, 2012-2013, and 2013-2014 wet seasons.

- a. During the 2011-2012 wet season, Syar shall sample and analyze storm water discharges from four (4) qualifying storm events that result in discharge consistent with the requirements and protocols set forth in the General Permit. During the 2012-2013 and 2013-2014 wet seasons, Syar shall sample and analyze storm water discharges from three (3) qualifying storm events that result in discharge consistent with the requirements and protocols set forth in the General Permit. If fewer than the indicated number of qualifying storm occurs, Syar shall collect samples from as many qualifying storm events as do occur.
- b. Syar shall analyze each storm water sample taken in accordance with the General Permit and this Agreement for, at a minimum, the constituents listed in Table 1.

- c. Syar shall conduct monthly visual observations of each discharge location for at least one qualifying rain event per month that results in any discharge from the Facility. Syar shall maintain written records describing these observations.
- d. All maintenance, repair, and replacement activities relating to the Facility's storm water management program shall be recorded and described on appropriate written records. Such records shall include, but not be limited to, filter repairs and replacements. The written records for each wet season shall be kept with the remaining written records required under the Facility's SWPPP.
- e. Syar shall photograph the sampling location (1) at each time a sample is taken and (2) during the monthly wet weather storm inspections required by the General Permit.
- f. All photographs required by this Settlement Agreement shall be in color and electronically formatted. Electronic copies of the photographs shall be retained and named in reference to the date it was taken, the initials of the person taking the photograph and the location of the photographed area (for example, "2012.2.13 MRL Out-A"). Any photograph required by this Settlement Agreement shall be provided to CSPA upon request via a mutually agreeable electronic format

9. **Monitoring Results.** Analytical results from Syar's storm water sampling and analysis during the term of this AGREEMENT shall be provided to CSPA within 14 days of receipt of the analytical results by Syar or its counsel.

10. **Amendment of SWPPP.** By October 1, 2011, Syar shall amend the Facility's SWPPP to incorporate all changes, improvements, sample forms, and best management practices set forth in or resulting from this AGREEMENT, if not already included in the SWPPP (or appendices thereto). Syar shall ensure that all maps, tables, and text comply with the

requirements of the General Permit. Syar shall ensure that the SWPPP describes all structural and non-structural BMPs, details the measures to be installed, and discusses why such BMPs will be effective in addressing the pollutant sources at the Facility. The SWPPP shall include appendices describing the regenerative sweeping program and the BMPs (“BMP Manual”). A copy of the amended SWPPP shall be provided to CSPA within thirty (30) days of completion.

11. **Change of Information on NOI.** Within sixty (60) days of the EFFECTIVE DATE of this AGREEMENT, Syar shall submit a Notice of Intent (NOI) with a Change of Information, with the changed information consisting of specifying the “Receiving Waters” in Section VI of the NOI form and enclosing the then-current Site Map as provided in Section VIII of the NOI form. A copy of the filed NOI with Site Map shall be provided to CSPA within thirty (30) days of submittal.

12. **Reporting and Discussion of Storm Water Constituent Levels.** If analytical results of storm water samples taken by Syar during the 2011-2012, 2012-2013, and 2013-2014 wet seasons indicate that storm water discharges from the Facility exceed the levels indicated in Table 1 then Syar agrees to take responsive actions to improve its storm water management practices, including re-evaluating its structural and non-structural BMPs and considering additional BMPs aimed at reducing levels observed in storm water samples.

In furtherance of that objective, Syar shall prepare a written statement (“Memorandum”) discussing:

- (1) Any constituent which experienced an excess of the levels indicated in Table 1;
- (2) An explanation of the possible cause(s) and/or source(s) of the excess levels; and
- (3) Responsive actions, including modified or additional feasible best management practices (“BMPs”), to reduce storm water pollutants and further reduce the possibility of future excess levels.

Such Memorandum shall be e-mailed and sent via first class mail to CSPA no later than July 30th following the conclusion of each wet season.

13. Any additional measures set forth in the Memorandum shall be implemented no later than October 1 of the year the Memorandum was prepared, and Syar's SWPPP shall be amended as necessary to include any additional BMP measures designated in the Memorandum.

14. Upon receipt of the Memorandum, CSPA may review and comment on any additional measures. If requested by CSPA within thirty (30) days of receipt of such Memorandum, CSPA and Syar shall meet and confer, which may include a site inspection, within sixty (60) days after the receipt of the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the Action Levels. If within thirty (30) days of the parties meeting and conferring, the parties do not agree on the adequacy of the additional measures set forth in the Memorandum, the SETTLING PARTIES may agree to seek a settlement conference with the Judge assigned to this action pursuant to Paragraphs 27 and 28 below. If the SETTLING PARTIES fail to reach agreement on additional measures, CSPA may bring a motion before the Judge consistent with Paragraphs 27 and 28 below. If CSPA does not request a meet and confer regarding the Memorandum within thirty (30) days of receipt, CSPA shall waive any right to object to such Memorandum pursuant to this AGREEMENT.

15. Any concurrence or failure to object by CSPA with regard to the reasonableness of any additional measures required by this AGREEMENT or implemented by Syar shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the Facility's storm water into compliance with applicable water quality criteria or the General Permit's BAT requirements.

16. In addition to any site inspections conducted as part of meeting and conferring on additional measures set forth above, Syar shall permit representatives of CSPA to perform one (1) additional site visit to the Facility during normal daylight business hours during the term of this AGREEMENT at a mutually convenient time within fourteen (14) fourteen days of CSPA's written request.

17. **Provision of Documents and Reports.** During the life of this AGREEMENT, Syar shall provide CSPA with a copy of all documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board"), or the State Water

Resources Control Board (“State Board”) concerning the Facility’s storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be mailed to CSPA with five (5) days of submission to such agency. Syar also shall provide CSPA a copy of any documents referenced in this agreement, including but not limited to logs or analyses, within fourteen (14) days of a written request (via e-mail or regular mail) by CSPA.

18. **Mitigation Payment.** In recognition of the good faith efforts by Syar to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by Syar of any penalties which may have been assessed in this action if it had proceeded to trial, the SETTLING PARTIES agree that Syar will pay the sum of thirty five thousand dollars (\$35,000) to the Rose Foundation for Communities and the Environment (“Rose Foundation”) for the sole purpose of providing grants to environmentally beneficial projects within the Sacramento – San Joaquin Delta Estuary, relating to water quality improvements in those areas, provided however that these monies will not be used for litigation of any sort, nor for advocacy against any Syar entity or its operations. Payment shall be made by Syar within fifteen (15) calendar days of the District Court’s entry of the Order described in Paragraph 2 of this AGREEMENT. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little. The Rose Foundation shall provide notice to the SETTLING PARTIES within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds

19. **Fees, Costs, and Expenses.** As reimbursement for CSPA’s investigative, expert and attorneys’ fees and costs, Syar shall pay CSPA the sum of twenty eight thousand five hundred dollars (\$28,500). Payment shall be made by Syar within fifteen (15) calendar days of the District Court’s entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by Syar to CSPA shall be made in the form of a single check payable to “Lozeau Drury LLP Attorney-Client Trust Account,” and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys’ fees and costs incurred by CSPA that have or could have been claimed in connection with CSPA’s claims, up to and including the Effective Date of this AGREEMENT.

20. **Compliance Oversight Fees and Costs:** As reimbursement for CSPA's future fees and costs that will be incurred in order for CSPA to monitor Syar's compliance with this AGREEMENT and to effectively meet and confer and evaluate monitoring results for the Facility, Syar agrees to reimburse CSPA for fees and costs incurred in overseeing the implementation of this AGREEMENT up to but not exceeding five thousand (\$5,000.00) per wet season. Fees and costs reimbursable pursuant to this paragraph may include, but are not limited to, those incurred by CSPA or its counsel to conduct site inspections, review of water quality sampling reports, review of annual reports, discussion with representatives of Syar concerning potential changes to compliance requirements, preparation and participation in meet and confer sessions and mediation, and water quality sampling. CSPA shall provide an invoice containing an itemized description for any fees and costs claimed. Up to three annual payments (one addressing any monitoring associated with the 2011-2012 wet season, a second addressing monitoring associated with the 2012-2013 wet season, and a third addressing monitoring associated with the 2013-2014 wet season) shall be made payable to "Lozeau Drury LLP Attorney-Client Trust Account" within thirty (30) days of receipt of an invoice from CSPA which contains an itemized description of fees and costs incurred by CSPA to monitor implementation of the SETTLEMENT AGREEMENT during the previous twelve (12) months.

21. **Review by Federal Agencies.** CSPA shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days after the Effective Date of this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts, copies of which shall be provided to Syar upon receipt by CSPA. In the event that the Agencies comment negatively on the provisions of this AGREEMENT, CSPA and Syar agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CSPA and Syar are unable to resolve any issue(s) raised by the Agencies in their comments, CSPA and Syar agree to expeditiously seek a settlement conference with the Judge assigned to the Complaint in this matter to resolve the issue(s).

NO ADMISSION OR FINDING

22. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

23. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which the SETTLING PARTIES have against each other arising from CSPA's allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of this AGREEMENT.

24. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of this AGREEMENT.

25. For the period beginning on the Effective Date and ending on December 15, 2014, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor

any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against Syar seeking relief for alleged violations of the Clean Water Act or violations of the General Permit at the Facility. CSPA further agrees that, beginning on the EFFECTIVE DATE and ending on December 15, 2014, CSPA will not support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against Syar that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge Syar's compliance with the Clean Water Act or the General Permit at the Facility.

TERMINATION DATE OF AGREEMENT

26. This AGREEMENT shall terminate on December 15, 2014.

DISPUTE RESOLUTION PROCEDURES

27. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer to resolve any dispute arising under this AGREEMENT. In the event that such disputes cannot be resolved through this meet and confer process, the SETTLING PARTIES agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the SETTLING PARTIES cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to submit the dispute via motion to the Magistrate Judge.

28. In resolving any dispute arising from this AGREEMENT, the Judge shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the Magistrate Judge. The Magistrate Judge shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof. The SETTLING PARTIES agree to file any waivers necessary for the Magistrate Judge to preside over any settlement conference and motion practice.

BREACH OF SETTLEMENT AGREEMENT

29. **Impossibility of Performance.** Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall notify the other in writing within seven (7) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

GENERAL PROVISIONS

30. **Construction.** The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, Clean Water Act or specifically herein.

31. **Choice of Law.** This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

32. **Severability.** In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

33. **Correspondence.** All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, or overnight mail as follows:

If to CSPA:

Bill Jennings, Chairman
California Sportfishing Protection Alliance
3536 Rainier Road
Stockton, CA 95204

Tel: (209) 464-5067
deltakeep@aol.com

And to:

Michael R. Lozeau
Douglas J. Chermak
Lozeau | Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
Tel: (510) 836-4200
michael@lozeaudrury.com
doug@lozeaudrury.com

If to Syar:

Michael D. Corrigan
Syar Industries, Inc.
P.O. Box 2540
2301 Napa-Vallejo Highway
Napa, California 94558
Tel: (707) 259-5716
mcorrigan@syar.com

And to:

Christopher J. Carr
Shaye Diveley
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Tel: (415) 268-6988
ccarr@mofo.com
sdively@mofo.com

Notifications of communications shall be deemed submitted on the date that they are emailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

34. **Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

35. **Assignment.** Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

36. **Modification of the Agreement.** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

37. **Full Settlement.** This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

38. **Integration Clause.** This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

39. **Authority.** The undersigned representatives for CSPA and Syar each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

Dated: 6/9/11

SYAR INDUSTRIES, INC.



By: Michael D. Corrigan
Title: Assistant General Counsel

Dated: _____

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

By: Bill Jennings
Title: Executive Director

APPROVED AS TO FORM:

Dated: June 9, 2011

For DEFENDANT

MORRISON & FOERSTER LLP



By: Christopher J. Carr, Esq.

Dated: _____

For PLAINTIFF

LOZEAU DRURY LLP

By: Michael R. Lozeau, Esq.

TABLE 1

<u>Constituent</u>	<u>Action Level</u>
Total Suspended Solids (TSS)	100 mg/L
pH	<6.0 or >9.0
Specific Conductance (SC)	200 µmhos/cm
Total Organic Carbon (TOC)	110 mg/L
Oil and Grease (O&G)	15 mg/L
Nitrate + Nitrite (N+N)	0.68 mg/L
Iron (Fe)	1.0 mg/L
Aluminum (Al)	0.75 mg/L
Copper (Cu)	0.0636 mg/L
Zinc (Zn)	0.117 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Lead (pb)	0.0816 mg/L