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17 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

16	_____ )	
17	CALIFORNIA SPORTFISHING )	Case No. _____
18	PROTECTION ALLIANCE, a nonprofit )	
19	corporation )	COMPLAINT FOR DECLARATORY AND
20	Plaintiff, )	INJUNCTIVE RELIEF AND CIVIL
21	v. )	PENALTIES
22	GUNTERT SALES & ZIMMERMAN, a )	(Federal Water Pollution Control Act, 33
23	California corporation, GUNTERT )	U.S.C. §§ 1251 to 1387)
24	STEEL, a California Corporation, and )	
25	RONALD M. GUNTERT, an individual )	
26	Defendants, )	
27	_____ )	

28 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
through its counsel, hereby alleges:

1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
3 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
4 or “the Act”) against Guntert Sales & Zimmerman, Guntert Steel, and Mr. Ronald M. Guntert  
5 (hereafter “Defendants”). This Court has subject matter jurisdiction over the parties and the  
6 subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. §  
7 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).  
8 The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory  
9 relief in case of actual controversy and further necessary relief based on such a declaration), 33  
10 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil  
11 penalties).

12 2. On or about August 20, 2013, Plaintiff provided notice of Defendants’  
13 violations of the Act, and of its intention to file suit against Defendants, to the Administrator of  
14 the United States Environmental Protection Agency (“EPA”); the Administrator of EPA  
15 Region IX; the Executive Director of the State Water Resources Control Board (“State  
16 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
17 Region (“Regional Board”); the U.S. Attorney General; and to Defendants, as required by the  
18 Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as  
19 Exhibit A, and is incorporated by reference.

20 3. More than sixty days have passed since notice was served on Defendants and  
21 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
22 neither the EPA nor the State of California has commenced or is diligently prosecuting a court  
23 action to redress the violations alleged in this complaint. This action’s claim for civil penalties  
24 is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. §  
25 1319(g).

26 4. Venue is proper in the Eastern District of California pursuant to Section  
27 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
28 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in

1 Sacramento, California because the source of the violations is located within San Joaquin  
2 County.

3 **II. INTRODUCTION**

4 5. This complaint seeks relief for Defendants' discharges of pollutants from a  
5 construction machinery equipment and metal services facility and ("the Facility") located in  
6 Ripon, California. The Facility is used for the processing, fabrication, and storage of various  
7 sheet metals and metal products. Other industrial activities at the Facility include the use,  
8 storage, maintenance, fueling, and washing of trucks, concrete slip-form paving equipment,  
9 trucks, and other heavy machinery.

10 6. CSPA is informed and believes that the Facility is owned and/or operated by  
11 Guntert Sales & Zimmerman and Mr. Ronald M. Guntert.

12 7. The Facility discharges surface water into local channels that flow into the City  
13 of Ripon's storm drain system, which discharges to the Stanislaus River, which is a tributary to  
14 the Sacramento River and the Sacramento-San Joaquin Delta. Discharges from the Facility  
15 ultimately end up in the Sacramento-San Joaquin Bay Delta. Defendants' discharges of  
16 pollutants from the Facility are in violation of the Act and the State of California's General  
17 Industrial Permit for storm water discharges, State Water Resources Control Board ("State  
18 Board") Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-  
19 12-DWQ and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination  
20 System ("NPDES") General Permit No. CAS000001 (hereinafter "General Permit" or  
21 "Permit"). Defendants' violations of the filing, monitoring, reporting, discharge and  
22 management practice requirements, and other procedural and substantive requirements of the  
23 General Permit and the Act are ongoing and continuous.

24 8. The failure to comply with the General Permit by industrial facility operators  
25 such as Defendants is recognized as a significant cause of the continuing decline in water  
26 quality of these receiving waters. The general consensus among regulatory agencies and water  
27 quality specialists is that storm water pollution amounts to more than half the total pollution  
28 entering the marine environment each year. With every rainfall event, hundreds of thousands of

1 gallons of polluted storm water originating from industrial facilities like the Defendants'  
2 discharge to the Stanislaus River and the Sacramento-San Joaquin Bay Delta.

3 **III. PARTIES**

4 9. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
5 (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of  
6 California with its main office in Stockton, California. CSPA has approximately 2,000  
7 members who live, recreate and work in and around waters of the State of California, including  
8 the Stanislaus River, the Sacramento River, the Sacramento-San Joaquin Bay Delta, and their  
9 tributaries. CSPA is dedicated to the preservation, protection, and defense of the environment,  
10 and the wildlife and the natural resources of all waters of California. To further these goals,  
11 CSPA actively seeks federal and state agency implementation of the Act and other laws and,  
12 where necessary, directly initiates enforcement actions on behalf of itself and its members.

13 10. Members of CSPA reside in California and use and enjoy California’s numerous  
14 rivers for recreation and other activities. Members of CSPA use and enjoy the waters of the  
15 Stanislaus River, the Sacramento River, and the Sacramento-San Joaquin Bay Delta into which  
16 Defendants have caused, are causing, and will continue to cause, pollutants to be discharged.  
17 Among other things, members of CSPA use these areas to fish, sail, boat, kayak, swim, bird  
18 watch, view wildlife and engage in scientific study, including monitoring activities.  
19 Defendants’ discharges of pollutants threaten or impair each of those uses or contribute to such  
20 threats and impairments. Thus, the interests of CSPA’s members have been, are being, and will  
21 continue to be adversely affected by Defendants’ ongoing failure to comply with the Clean  
22 Water Act. The relief sought herein will redress the harms to Plaintiff caused by Defendants’  
23 activities.

24 11. Continuing commission of the acts and omissions alleged above will irreparably  
25 harm Plaintiff and the citizens of the State of California, for which harm they have no plain,  
26 speedy or adequate remedy at law.

27 12. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
28 Guntert Sales & Zimmerman and Guntert Steel are corporations organized under the laws of

1 the State of California, and that Defendant Ronald M. Guntert is the owner and operator of the  
2 Facility. Accordingly, Defendants own and/or operate the Facility.

3 **IV. STATUTORY BACKGROUND**

4 **A. The Clean Water Act**

5 13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
6 pollutant into waters of the United States, unless such discharge is in compliance with various  
7 enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not  
8 authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402  
9 of the Act, 33 U.S.C. § 1342.

10 14. The term “discharge of pollutants” means “any addition of any pollutant to  
11 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
12 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
13 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

14 15. A point source is defined as “any discernible, confined and discrete conveyance,  
15 including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which  
16 pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

17 16. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §  
18 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.  
19 Waters of the United States also include man-made water bodies that are tributary to waters  
20 that are navigable in fact, as well as ephemeral waters that are tributary to waters that are  
21 navigable in fact.

22 17. Section 402(p) of the Act establishes a framework for regulating municipal and  
23 industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p). States with  
24 approved NPDES permit programs are authorized by Section 402(p) to regulate industrial  
25 storm water discharges through individual permits issued to dischargers and/or through the  
26 issuance of a single, statewide general permit applicable to all industrial storm water  
27 dischargers. 33 U.S.C. § 1342.

1           18.     Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement  
2 actions against any “person,” including individuals, corporations, or partnerships, for violations  
3 of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C.  
4 §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by  
5 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of  
6 up to \$32,500 per day for violations that occurred between March 15, 2004 and January 12,  
7 2009, and an assessment of civil penalties of up to \$37,500 per day for violations occurring  
8 after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d),  
9 1365 and 40 C.F.R. §§ 19.1 - 19.4.

10 **A.     The General Permit**

11           19.     Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
12 U.S. EPA has authorized California's State Board to issue NPDES permits including general  
13 NPDES permits in California.

14           20.     The State Board elected to issue a statewide general permit for industrial  
15 discharges. The State Board issued the General Permit on or about November 19, 1991,  
16 modified the General Permit on or about September 17, 1992, and reissued the General Permit  
17 on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. §  
18 1342(p).

19           21.     In order to discharge storm water lawfully in California, industrial dischargers  
20 must comply with the terms of the General Permit or have obtained and complied with an  
21 individual NPDES permit.

22           22.     The General Permit contains a variety of substantive and procedural  
23 requirements that dischargers must meet. Facilities discharging, or having the potential to  
24 discharge, storm water associated with industrial activity that have not obtained an individual  
25 NPDES permit must apply for coverage under the State's General Permit by filing a Notice of  
26 Intent ("NOI"). The General Permit requires existing dischargers to file their NOIs before  
27 March 30, 1992.

1           23. The General Permit contains certain absolute prohibitions. Discharge  
2 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
3 other than storm water (“non-storm water discharges”), which are not otherwise regulated by  
4 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
5 General Permit prohibits storm water discharges and authorized non-storm water discharges  
6 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water  
7 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
8 ground water that adversely impact human health or the environment. Receiving Water  
9 Limitation C(2) of the General Permit prohibits storm water discharges that cause or contribute  
10 to an exceedance of any applicable water quality standards contained in a Statewide Water  
11 Quality Control Plan or the applicable Regional Board’s Basin Plan.

12           24. The Regional Board has established water quality standards for the San Joaquin  
13 River, and the Sacramento-San Joaquin Bay Delta in the Water Quality Control Plan for the  
14 Sacramento River and San Joaquin River Basins, generally referred to as the Basin Plan.

15           25. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
16 waters shall be maintained free of toxic substances in concentrations that produce detrimental  
17 physiological responses in human, plant, animal, or aquatic life.”

18           26. The Basin Plan establishes a standard for electrical conductivity in the Delta of  
19 0.7 µmhos/cm from April 1 through August 31 and 1.0 µmhos/cm from September 1 through  
20 March 31.

21           27. The Basin Plan provides that “[w]aters shall not contain chemical constituents  
22 in concentrations that adversely affect beneficial uses.”

23           28. The Basin Plan provides that “[a]t a minimum, water designated for use as  
24 domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents  
25 in excess of the maximum contaminant levels (MCLs).” The waters of the San Joaquin River  
26 and the Delta have been designated by the State Board for use as municipal and domestic  
27 supply.

28

1           29.     Effluent Limitation B(3) of the General Permit requires dischargers to reduce or  
2 prevent pollutants in its storm water discharges through implementation of the Best Available  
3 Technology Economically Achievable (“BAT”) for toxic and nonconventional pollutants and  
4 the Best Conventional Pollutant Control Technology (“BCT”) for conventional pollutants.  
5 BAT and BCT include both nonstructural and structural measures. General Permit, Section  
6 A(8).

7           30.     The EPA has established Benchmark Levels as guidelines for determining  
8 whether a facility discharging industrial storm water has implemented the requisite BAT and  
9 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
10 established for certain pollutants that are known to be discharged by Defendants: pH – 6.0-9.0;  
11 total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; lead – 0.0816  
12 mg/L; and aluminum – 0.75 mg/L. The State Water Quality Control Board has proposed  
13 adding a benchmark level for specific conductance of 200 µmhos/cm.

14           31.     The General Permit requires dischargers to develop and implement a Storm  
15 Water Pollution Prevention Plan (“SWPPP”) before October 1, 1992. The SWPPP must  
16 comply with the BAT and BCT standards. (Section B(3)). The SWPPP must include, among  
17 other elements: (1) a narrative description and summary of all industrial activity, potential  
18 sources of pollutants and potential pollutants; (2) a site map showing facility boundaries, the  
19 storm water conveyance system, associated points of discharge, direction of flow, areas of  
20 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
21 storm water management practices, best management practices (“BMPs”) and preventive  
22 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
23 the location where Significant Materials are being shipped, stored, received and handled, as  
24 well as the typical quantities of such materials and the frequency with which they are handled;  
25 (5) a description of potential pollutant sources including industrial processes, material handling  
26 and storage areas, dust and particulate generating activities; (6) a summary of storm water  
27 sampling points; (7) a description of individuals and their responsibilities for developing and  
28 implementing the SWPPP (Permit, Section A(3)); (8) a description of potential pollutant



1 sources including industrial processes, material handling and storage areas, and dust and  
2 particulate generating activities; (9) a description of significant spills and leaks; (10) a list of all  
3 non-storm water discharges and their sources, and (11) a description of locations where soil  
4 erosion may occur (Section A(6)). The SWPPP must also include an assessment of potential  
5 pollutant sources at the Facility and a description of the BMPs to be implemented at the  
6 Facility that will reduce or prevent pollutants in storm water discharges and authorized non-  
7 storm water discharges, including structural BMPs where non-structural BMPs are not  
8 effective (Section A(7), (8)).

9         32. The SWPPP must be re-evaluated annually to ensure effectiveness and must be  
10 revised where necessary. (Section A(9),(10)). Section C(3) of the General Permit requires a  
11 discharger to prepare and submit a report to the Regional Board describing changes it will  
12 make to its current BMPs in order to prevent or reduce any pollutant in its storm water  
13 discharges that is causing or contributing to an exceedance of water quality standards. Once  
14 approved by the Regional Board, the additional BMPs must be incorporated into the Facility's  
15 SWPPP. The report must be submitted to the Regional Board no later than 60 days from the  
16 date the discharger first learns that its discharge is causing or contributing to an exceedance of  
17 an applicable water quality standard. Section C(4)(a). Section C(11)(d) of the General Permit's  
18 Standard Provisions also requires dischargers to report any noncompliance. *See also* Section  
19 E(6). Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water  
20 controls including the preparation of an evaluation report and implementation of any additional  
21 measures in the SWPPP to respond to the monitoring results and other inspection activities.

22         33. The General Permit requires dischargers to eliminate all non-storm water  
23 discharges to storm water conveyance systems other than those specifically set forth in Special  
24 Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special  
25 Condition D(1)(b).

26         34. The General Permit requires dischargers commencing industrial activities  
27 before October 1, 1992 to develop and implement an adequate written Monitoring and  
28 Reporting Program no later than October 1, 1992. Existing facilities covered under the General

1 Permit must implement all necessary revisions to their monitoring programs no later than  
2 August 1, 1997.

3 35. The General Permit also requires dischargers to submit yearly “Annual Reports”  
4 to the Regional Board. As part of their monitoring program, dischargers must identify all storm  
5 water discharge locations that produce a significant storm water discharge, evaluate the  
6 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
7 measures set out in the SWPPP are adequate and properly implemented. Dischargers must then  
8 conduct visual observations of these discharge locations for at least one storm per month  
9 during the wet season (October through May) and record their findings in their Annual Report.  
10 Dischargers must also collect and analyze storm water samples from at least two storms per  
11 year. Section B requires dischargers to sample and analyze during the wet season for basic  
12 parameters such as pH, total suspended solids (“TSS”), specific conductance, and total organic  
13 content (“TOC”) or oil and grease, certain industry-specific parameters, and toxic chemicals  
14 and other pollutants that are likely to be in the storm water discharged from the facility.

15 36. CSPA is informed and believes that the Defendants’ Facility is also required to  
16 analyze their storm water discharge samples for iron (“Fe”), lead (“Pb”), aluminum (“Al”), and  
17 additional pollutants that are likely to be present in the Facility’s storm water. Dischargers  
18 must also conduct dry season visual observations to identify sources of non-storm water  
19 pollution. The monitoring and reporting program requires dischargers to certify, based upon  
20 the annual site inspections, that the facility is in compliance with the General Permit and report  
21 any non-compliance, and contains additional requirements as well.

22 **V. STATEMENT OF FACTS**

23 37. Defendants operate an approximately twenty-two (22) acre construction  
24 machinery equipment and metal services facility located at 222 E. 4<sup>th</sup> Street, in Ripon,  
25 California. The Facility discharges surface water into the City of Ripon’s storm drain system,  
26 which discharges to the Stanislaus River, which is a tributary to the Sacramento River and the  
27 Sacramento-San Joaquin Delta. Discharges from the Facility ultimately end up in the  
28 Sacramento-San Joaquin Bay Delta.

1           38.     The Defendants are covered by the coverage under the State's General Permit by  
2 virtue of the NOI that was filed on or about September 22, 1992.

3           39.     The Facility is classified as a construction machinery and equipment facility  
4 under SIC Code 3531, and a metals service center under SIC Code 5051. The Facility is used  
5 for the processing, fabrication, and storage of various sheet metals and metal products. Other  
6 industrial activities at the Facility include the use, storage, maintenance, fueling, and washing  
7 of trucks, concrete slip-form paving equipment, trucks, and other heavy machinery. Many of  
8 these activities occur outside in areas that are exposed to storm water and storm flows due to  
9 the lack of overhead coverage, functional berms and other storm water controls. Plaintiff is  
10 informed and believes that Defendants' storm water controls, to the extent any exist, fail to  
11 achieve BAT and BCT standards.

12           40.     Information available to Plaintiff indicates that storm water discharges from the  
13 Defendants' facility routinely and continuously contain concentrations of pH, total suspended  
14 solids ("TSS"), oil & grease ("O&G"), and other pollutants that exceed EPA benchmark levels.

15           41.     Information available to Plaintiff also indicates that storm water discharges  
16 from the Defendants' facility routinely and continuously contain concentrations of specific  
17 conductivity that exceed proposed benchmark levels as well.

18           42.     Defendants routinely and continuously fail to test storm water discharges from  
19 the Facility for iron, lead, aluminum, and other unknown pollutants that are likely to be present  
20 in the discharges in significant quantities.

21           43.     The management practices at the Facility are wholly inadequate to prevent the  
22 sources of contamination described above from causing the discharge of pollutants to waters of  
23 the United States and fail to meet BAT and BCT. The Facility lacks essential structural  
24 controls such as grading, berming and roofing to prevent rainfall and storm water flows from  
25 coming into contact with these and other sources of contaminants, thereby allowing storm  
26 water to flow over and across these materials and become contaminated prior to leaving the  
27 Facility. In addition, the Facility lacks structural controls to prevent the discharge of water  
28

1 once contaminated. The Facility also lacks an adequate filtration system to treat water once it is  
2 contaminated.

3 44. Vehicle traffic at the Facility tracks dust and particulate matter, increasing the  
4 discharges of polluted water and mud into waters of the United States.

5 45. During rain events storm water laden with pollutants flows from the Facility  
6 into the City of Ripon's storm drain system, and then into the Stanislaus River and, ultimately,  
7 into the Sacramento-San Joaquin Delta.

8 46. Information available to Plaintiff indicates that as a result of these practices,  
9 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
10 being discharged from the Facility directly to these waters during significant rain events.

11 47. The Stanislaus River and the Sacramento-San Joaquin Bay Delta are waters of  
12 the United States.

13 48. Information available to Plaintiff indicates that Defendants have not fulfilled the  
14 requirements set forth in the General Permit for discharges from the Facility due to the  
15 continued discharge of contaminated storm water.

16 49. Plaintiff is informed and believes, and thereupon alleges, that Defendants have  
17 failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

18 50. Information available to Plaintiff indicates the continued existence of unlawful  
19 storm water discharges at the Facility.

20 51. Plaintiff is informed and believes, and thereupon alleges, that Defendants have  
21 failed to develop and implement adequate monitoring, reporting and sampling programs for the  
22 Facility. Plaintiffs are informed and believe, and thereupon allege, that Defendants have not  
23 sampled with adequate frequency, have not conducted visual monitoring, and have not  
24 analyzed the samples collected for the required pollutant parameters.

25 52. Plaintiff is informed and believes, and thereupon alleges, that all of the  
26 violations alleged in this Complaint are ongoing and continuing.

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1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**  
3 **Discharges of Contaminated Storm Water in**  
4 **Violation of Permit Conditions and the Act**  
5 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

6 53. Plaintiff incorporates the allegations contained in the above paragraphs as  
7 though fully set forth herein.

8 54. Discharge Prohibition A(2) of the General Permit requires that storm water  
9 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
10 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
11 General Permit require that storm water discharges and authorized non-storm water discharges  
12 shall not adversely impact human health or the environment, and shall not cause or contribute  
13 to a violation of any water quality standards contained in a Statewide Water Quality Control  
14 Plan or the applicable Regional Board's Basin Plan.

15 55. Plaintiff is informed and believes, and thereupon alleges, that since at least  
16 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to  
17 the Stanislaus River, the Sacramento River and the Sacramento-San Joaquin Bay Delta in  
18 violation of the General Permit.

19 56. During every significant rain event, storm water flowing over and through  
20 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
21 Facility, through the city's storm drain system, into the Stanislaus River, the Sacramento  
22 River, and the Sacramento-San Joaquin Bay Delta.

23 57. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
24 of contaminated storm water are causing pollution and contamination of the waters of the  
25 United States in violation of Discharge Prohibition A(2) of the General Permit.

26 58. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
27 of contaminated storm water are adversely affecting human health and the environment in  
28 violation of Receiving Water Limitation C(1) of the General Permit.





1 requirements each day that they fail to develop and fully implement an adequate BAT and BCT  
2 for the Facility.

3 WHEREFORE, Plaintiffs pray for relief as set forth hereinafter.

4 **FOURTH CAUSE OF ACTION**  
5 **Failure to Develop and Implement an**  
6 **Adequate Monitoring and Reporting Program**  
7 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 72. Plaintiff incorporates the allegations contained in the above paragraphs as  
8 though fully set forth herein.

9 73. Section B of the General Permit requires dischargers of storm water associated  
10 with industrial activity to develop and implement a monitoring and reporting program  
11 (including, among other things, sampling and analysis of discharges) no later than October 1,  
12 1992.

13 74. Defendants have failed to develop and implement an adequate monitoring and  
14 reporting program for the Facility. Defendants' ongoing failures to develop and implement  
15 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing  
16 failure to collect and analyze storm water samples from all discharge locations, their  
17 continuing failure to collect and analyze storm water samples for all of pollutants required  
18 under the General Permit for facilities classified under SIC Codes 3531 and 5051, their  
19 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants  
20 likely to be present in the Facility's storm water discharges in significant quantities, and/or  
21 their failure to file required Annual Reports with the Regional Board which provide required  
22 information concerning the Facility's visual observations and storm water sampling and  
23 analysis.

24 75. Each day since October 1, 1992 that Defendants have failed to develop and  
25 implement an adequate monitoring and reporting program for the Facility in violation of the  
26 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
27 1311(a). These violations are ongoing and continuous.





1 c. Enjoin Defendants from further violating the substantive and procedural  
2 requirements of the General Permit;

3 d. Order Defendant to immediately implement storm water pollution control and  
4 treatment technologies and measures that are equivalent to BAT or BCT and prevent pollutants  
5 in the Facility's storm water from contributing to violations of any water quality standards;

6 e. Order Defendant to comply with the Permit's monitoring and reporting  
7 requirements, including ordering supplemental monitoring to compensate for past monitoring  
8 violations;

9 f. Order Defendants to prepare a SWPPP consistent with the Permit's  
10 requirements and implement procedures to regularly review and update the SWPPP;

11 g. Order Defendants to provide Plaintiff with reports documenting the quality and  
12 quantity of their discharges to waters of the United States and their efforts to comply with the  
13 Act and the Court's orders;

14 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for all  
15 violations occurring between March 15, 2004 and January 11, 2009, and \$37,500 per day per  
16 violation for all violations occurring after January 12, 2009, for each violation of the Act  
17 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40  
18 C.F.R. §§ 19.1 - 19.4 (pp. 200-202) (Dec. 31, 1996);

19 i. Order Defendants to take appropriate actions to restore the quality of navigable  
20 waters impaired by their activities;

21 j. Award Plaintiffs' costs (including reasonable attorney, witness, and consultant  
22 fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

23 k. Award any such other and further relief as this Court may deem appropriate.

24  
25 Dated: October 23, 2013

Respectfully submitted,  
**JACKSON & TUERCK**

26 By: s/ Robert J. Tuerck  
27 Robert J. Tuerck  
28 Attorney for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

EXHIBIT A

CSPA's August 20, 2013  
"Notice of Violations and Intent to File Suit  
Under The Federal Water Pollution Control Act"  
to Defendants



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August 20, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Guntert Sales & Zimmerman  
222 E 4th Street  
Ripon, CA 95366

Ronald M. Guntert, Operator  
Guntert Sales & Zimmerman  
222 E 4th Street  
Ripon, CA 95366

Guntert Sales & Zimmerman  
dba Guntert Steel  
222 E 4th Street  
Ripon, CA 95366

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**NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE FEDERAL  
WATER POLLUTION CONTROL ACT**

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Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Federal Water Pollution Control Act<sup>1</sup> (commonly known as the “Clean Water Act” or “CWA”), occurring at the Guntert Sales & Zimmerman facility located at 222 E. 4<sup>th</sup> Street in Ripon, CA (“the Facility”). Guntert Sales & Zimmerman is operated by Mr. Robert M. Guntert. Guntert & Zimmerman also operate an affiliated business known as Guntert Steel at the Facility. Mr. Guntert, Guntert Steel, and Guntert Sales & Zimmerman shall collectively hereinafter be referred to as “Guntert.”

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, the Sacramento River, the Sacramento-San Joaquin Delta, their tributaries, and other California waters. This letter is being sent to you as the responsible owners, officers, and/or operators of the Facility.

This letter addresses Guntert’s unlawful discharges of pollutants from the Facility directly and indirectly into a storm drain system operated by the City of Ripon, which in turn discharges to the Stanislaus River and ultimately into the Sacramento-San Joaquin Delta. This

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<sup>1</sup> 33 U.S.C. § 1251 *et. seq.*

Notice of Violation and Intent To File Suit  
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letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act (the “Act”) and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit” or “General 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. 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, Guntert is 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 Guntert 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

Section 301(a) of the Act,<sup>2</sup> prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the Act.<sup>3</sup> Section 402(p) of the Act establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program.<sup>4</sup> States with approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers.<sup>5</sup> Pursuant to Section 402 of the Act,<sup>6</sup> the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board (the “SWRCB” of “Board”) to issue NPDES permits including general NPDES permits in California. The SWRCB elected to issue a statewide general permit for industrial discharges. The Board issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act.<sup>7</sup> Accordingly, in order to discharge storm water lawfully in California, industrial dischargers must either comply with the terms of the General Permit or obtain and comply with an individual NPDES permit.

The General Permit contains a variety of substantive and procedural requirements that dischargers must meet. For example, Facilities discharging, or having the potential to discharge,

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<sup>2</sup> 33 U.S.C. § 1311(a)

<sup>3</sup> 33 U.S.C. § 1342

<sup>4</sup> 33 U.S.C. §1342(p)

<sup>5</sup> 33 U.S.C. § 1342

<sup>6</sup> 33 U.S.C. § 1342

<sup>7</sup> 33 U.S.C. § 1342(p)

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storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the State's General Permit by filing a Notice of Intent ("NOI"). Discharge Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the San Joaquin 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) 0.01 mg/L for arsenic, 0.1 mg/L for copper, 0.3 mg/L for iron, and 0.1 mg/L for zinc. *Id.* at III-4.00. The Basin Plan also 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 the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; and iron – 0.3 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 – 1.0 mg/L (primary) and 0.2 mg/L (secondary); arsenic – 0.01 mg/L (primary); cadmium – 0.005 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; mercury 0.002 mg/L (primary); selenium – 0.05 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The 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

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§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 identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury.<sup>8</sup> Discharges of listed pollutants into 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.<sup>9</sup>

The General Industrial Storm Water Permit also 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”).<sup>10</sup> The following benchmarks have been established for pollutants discharged by Guntert: pH – 6.0-9.0; total suspended solids (“TSS”) – 100 mg/L; oil & grease (“O&G”) – 15.0 mg/L; iron (“Fe”) – 1.0 mg/L; aluminum (“Al”) – 0.75 mg/L; lead (“Pb”) – 0.0816 mg/L; copper (“Cu”) – 0.0636 mg/L; and zinc (“Zn”) – 0.117 mg/L. The SWRCB has also proposed adding a benchmark level for specific conductance (“SC”) of 200 µmho/cm.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the State's General Permit by filing a Notice of Intent (“NOI”). The General Permit requires existing dischargers to file their NOIs before March 30, 1992.

Based on its review of available public documents, CSPA is informed and believes that on or about September 22, 1992, Guntert submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit. The WDID identification number for the Facility is 5S39I009760. The Facility is classified under Standard Industrial Classification (“SIC”) codes 3531 for construction machinery and equipment, and 5051 for metals service centers and offices. The Facility is used for the processing, fabrication, and storage of various sheet metals and metal products. The Facility is also used for the storage, maintenance, fueling, and washing of trucks and vehicles, including concrete slipform paving equipment and other heavy machinery. The Facility collects and discharges storm water from its industrial site through at least three (3)

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<sup>8</sup> See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>

<sup>9</sup> 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) (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).

<sup>10</sup> *Santa Monica BayKeeper v. SunLite Salvage*, (C.D. Cal. 1999) (Compliance with the BAT requirement is determined by demonstrating that pollutant concentrations in storm water discharges are below benchmark levels set out by EPA.... [therefore] discharges of storm water containing pollutant concentrations above benchmark levels demonstrates Defendants’ failure to achieve BAT in violation of the General Permit).

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discharge points into the City of Ripon's storm drain system, which discharges to the Stanislaus River, which is a tributary to the Sacramento River and the Sacramento-San Joaquin Delta.

## II. VIOLATIONS OF THE GENERAL PERMIT.

Based on information contained in the available public documents, CSPA is informed and believes that Guntert violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit<sup>11</sup> such as the General Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

The General Permit further 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.<sup>12</sup> All other pollutants are either toxic or nonconventional.<sup>13</sup>

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.

CSPA is informed and believes that Guntert has failed, and continues to fail to comply with the requirements of the General Permit and has continued to operate in violation of the General Permit by: (1) discharging storm water containing pollutants; (2) failing to implement an adequate monitoring and reporting plan; (3) failing to implement best management practices ("BMPs") using best available technology ("BAT") and best conventional technology ("BCT"); (4) failing to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"); (5) failing to address discharges contributing to exceedances of Water Quality Standards; and (6) failing to file timely, true and correct annual reports with the Regional Water Quality Control Board. It is CSPA's intention, through this letter, to bring these violations to Guntert's attention so that they may be resolved in a comprehensive and efficient manner.

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<sup>11</sup> 33 U.S.C. § 1342

<sup>12</sup> 40 C.F.R. § 401.16

<sup>13</sup> *Id.*; 40 C.F.R. § 401.15



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## 1. Guntert Discharges Storm Water Containing Pollutants in Violation of the Permit.

Guntert has discharged, and continues to discharge, stormwater with unacceptable levels of pH, TSS, SC and other pollutants in violation of the General Industrial Storm Water 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. Guntert'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.<sup>14</sup> Over the course of the past five (5) years, 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:

### A. Confirmed Discharge of Storm Water Containing Concentrations of TSS in Excess of EPA Multi-Sector Benchmark Values

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
04/04/2013	South Drain	TSS	250 mg/L	100 mg/L
04/04/2013	Middle Drain	TSS	300 mg/L	100 mg/L
12/12/2012	South Drain	TSS	240 mg/L	100 mg/L
12/12/2012	Middle Drain	TSS	220 mg/L	100 mg/L
01/23/2012	South Drain	TSS	320 mg/L	100 mg/L
01/23/2012	North Drain	TSS	110 mg/L	100 mg/L
01/23/2012	Middle Drain	TSS	290 mg/L	100 mg/L
05/18/2011	South Drain	TSS	190 mg/L	100 mg/L
05/18/2011	Middle Drain	TSS	480 mg/L	100 mg/L
02/18/2011	Middle Drain	TSS	370 mg/L	100 mg/L
02/09/2010	South Drain	TSS	610 mg/L	100 mg/L
02/09/2010	North Drain	TSS	240 mg/L	100 mg/L
02/09/2010	Middle Drain	TSS	1,100 mg/L	100 mg/L
10/13/2009	South Drain	TSS	1,400 mg/L	100 mg/L
10/13/2009	Middle Drain	TSS	1,000 mg/L	100 mg/L
03/02/2009	South Drain	TSS	1,500 mg/L	100 mg/L
03/02/2009	North Drain	TSS	870 mg/L	100 mg/L
03/02/2009	Middle Drain	TSS	1,000 mg/L	100 mg/L

(continued on next page)

<sup>14</sup> See, *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988) (When a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error); *Santa Monica BayKeeper v. SunLite Salvage*, *supra*.

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**B. Confirmed Discharge of Storm Water Containing Concentrations of pH in Excess of SWRCB Proposed Benchmark Values**

<b>Date</b>	<b>Outfall Name</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
04/04/2013	South Drain	pH	5.8	6.0-9.0
12/12/2012	South Drain	pH	5.9	6.0-9.0
04/26/2012	North Drain	pH	5.3	6.0-9.0
04/26/2012	Middle Drain	pH	5.8	6.0-9.0
04/26/2012	South Drain	pH	4.9	6.0-9.0
01/23/2012	Middle Drain	pH	2.8	6.0-9.0
02/22/2008	Middle Drain	pH	9.9	6.0-9.0

**C. Confirmed Discharge of Storm Water Containing Concentrations of SC in Excess of Proposed EPA Multi-Sector Benchmark Values**

<b>Date</b>	<b>Outfall Name</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/23/2012	South Drain	SC	210 µmho/cm	200 µmho/cm
01/23/2012	Middle Drain	SC	350 µmho/cm	200 µmho/cm
10/13/2009	South Drain	SC	290 µmho/cm	200 µmho/cm

CSPA's investigation, including its review of Guntert's analytical results documenting pollutant levels in the Facility's storm water discharges that are well in excess of EPA's benchmark values indicates that Guntert has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, SC, and other pollutants. Guntert was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations, but instead Guntert continues discharging polluted storm water associated with its industrial operations in violation of the General Permit without having implemented BAT and BCT. CSPA is informed and believes that Guntert has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least July 29, 1993. These discharges are particularly troublesome in light of the fact that Guntert has been repeatedly warned by the Regional Water Quality Control Board ("RWQCB") that the Facility's storm water discharges contain concentrations of pollutants that exceed EPA Benchmark criteria.<sup>15</sup> 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 August 20, 2008, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit.

The rain data attached hereto and incorporated herein as Attachment A, sets forth each of the specific rain dates on which CSPA alleges that Guntert has discharged storm water containing impermissible levels of TSS, pH, SC, and other pollutants in violation of Discharge

<sup>15</sup> Publicly available records maintained by the RWQCB confirm that Guntert was warned about exceedances of EPA Benchmark levels as early as July 29, 1993. Additional notices regarding exceedances of EPA Benchmark levels were sent to Guntert on or about May 1, 2008, October 23, 2009, and October 14, 2010.

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Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit in the last five (5) years). 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, Guntert is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since August 20, 2008.

## **2. Guntert 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. Based on its investigation, CSPA is informed and believes that Guntert has failed to develop and implement an adequate Monitoring & Reporting as set forth in greater detail below:

### **A. Guntert Has Failed to Analyze the Facility's Water Samples for All of the Pollutants Likely to Be Present in Significant Quantities**

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. Testing for oil and grease may be substituted for total organic carbon. In addition, 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." Pollutants such as aluminum, iron, lead, and zinc are highly likely to be present in the storm water discharges from facilities designated under SIC 5051, such as Guntert. Guntert has not consistently analyzed storm water samples for these pollutants. 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, Guntert is subject to penalties for violations of the General Permit and the Act since August 20, 2008.

### **B. Guntert has Failed to Collect Storm Water Samples from All of the Facility's Discharge Points During at least Two Qualifying Storm Events Each Year**

Based on its review of publicly available documents, CSPA is informed and believes that Guntert has failed to collect storm water samples from all discharge points at the Facility for at least storm events during each Wet Season as required by Section B(5)(a) of the General Permit. CSPA is informed and believes that storm water discharges from the Facility at points other than the sampling/discharge points currently designated by Guntert.

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Moreover, Guntert has failed to consistently collect and analyze storm water samples for TSS throughout the past five (5) years. (See, *i.e.*, storm water sample results from January 2009). 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, Guntert is subject to penalties for violations of the General Permit and the Act since August 20, 2008.

### **3. Guntert Has Failed to Implement BMPs Using 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 Guntert has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, SC, 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, Guntert 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 Guntert 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. Guntert has failed to implement such measures adequately.

Guntert was required to have implemented BAT and BCT by no later than October 1, 1992, or the start of its operations. Guntert has therefore been in continuous violation of the BAT and BCT requirements every day since then, and it will continue to be in violation every day that it fails to implement BAT and BCT. Guntert is subject to penalties for violations of the General Permit and the Act since August 20, 2008.

### **4. Guntert Has Failed to Develop and Implement an Adequate SWPPP**

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 no later than October 1, 1992, or the start of its operations. 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.

Among other requirements, the SWPPP must 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

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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 bodies of water, 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 Guntert has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Guntert has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Guntert 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 it fails to develop and implement an effective SWPPP. Guntert is subject to penalties for violations of the General Permit and the Act occurring since August 20, 2008.

#### **5. Guntert 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

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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, Guntert is discharging elevated levels of TSS, pH, SC, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Guntert 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, Guntert has failed to do so.

Publically available documents show that Guntert had been aware of high levels of these pollutants since at least July 29, 1993. Nevertheless, the SWPPP and accompanying BMPs do not appear to have been appropriately altered as a result of the annual evaluation required by Section A(9). Guntert 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 July 29, 1993, and will continue to be in violation every day that Guntert fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Guntert is therefore subject to penalties for each violation of the General Permit and the Act occurring since August 20, 2008.

## **6. Guntert 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.<sup>16</sup>

CSPA's investigation indicates that Guntert has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. The RWQCB has also issued multiple notices of non-compliance to Guntert for failing to submit annual reports.<sup>17</sup> As indicated above, Guntert has failed to comply with the Permit and the Act consistently for at least the past five years. Guntert has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it has submitted an incomplete, untimely, or incorrect annual report, that falsely certified compliance with the Act in the past five years. Guntert's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Guntert is subject to penalties for

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<sup>16</sup> See also General Permit, Sections C(9) and (10) and B(14)

<sup>17</sup> Publically available records maintained by the RWQCB confirm that the RWQCB sent Guntert multiple notices of non-compliance for failure to submit Annual Reports on or about July 23, 2009, August 1, 2008, August 11, 2005, July 22, 1998, and November 8, 1994.

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violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since August 20, 2008.

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

CSPA puts Guntert Sales & Zimmerman, Guntert Steel, and Mr. Robert M. Guntert on notice that they are the persons or parties responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Guntert Sales & Zimmerman, Guntert Steel, and Mr. Robert M. Guntert on further 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:

Robert J. Tuerck  
JACKSON & TUERCK  
P.O. Box 148  
Quincy, CA 95971  
Tel: (530) 283-0406  
Fax: (530) 283-0416  
E-mail: bob@jacksontuerck.com

### **VI. Penalties**

Pursuant to Section 309(d) of the Act<sup>18</sup> and the Adjustment of Civil Monetary Penalties for Inflation<sup>19</sup> each separate violation of the Act subjects Guntert Sales & Zimmerman, Guntert Steel, and Mr. Robert M. Guntert to civil penalties 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. Section 505(d) of the Act<sup>20</sup> also, permits prevailing parties to recover costs and fees, including attorneys' fees.

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<sup>18</sup> 33 U.S.C. § 1319(d)

<sup>19</sup> 40 C.F.R. § 19.4

<sup>20</sup> 33 U.S.C. § 1365(d)

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## VII. Conclusion

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 Guntert Sales & Zimmerman, Guntert Steel, Mr. Robert M. Guntert and their agents for the above-referenced violations upon the expiration of the 60-day notice period. In addition to seeking the civil penalties described above, CSPA will also seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d),<sup>21</sup> recovery of costs and fees, and such other relief as permitted by law.

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", written in a cursive style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

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<sup>21</sup> 33 U.S.C. §1365(a) and (d)



**SERVICE LIST**

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

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
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State Water Resources Control Board  
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Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
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Guntert Sales & Zimmerman  
222 E 4th Street  
Ripon, CA 95366

Ronald M. Guntert, Operator  
Guntert Sales & Zimmerman  
222 E 4th Street  
Ripon, CA 95366

Guntert Sales & Zimmerman  
dba Guntert Steel  
222 E 4th Street  
Ripon, CA 95366

**ATTACHMENT A**

**Notice of Intent to File Suit**

**Guntert & Zimmerman**

**Significant Rain Events, August 19, 2008 – August 19, 2013**

October 4, 2008	March 22, 2009	January 29, 2010
October 30, 2008	April 7, 2009	February 2, 2010
October 31, 2008	April 8, 2009	February 4, 2010
November 1, 2008	April 9, 2009	February 5, 2010
November 2, 2008	April 10, 2009	February 6, 2010
November 3, 2008	May 1, 2009	February 8, 2010
November 26, 2008	May 2, 2009	February 9, 2010
December 8, 2008	May 3, 2009	February 21, 2010
December 14, 2008	May 5, 2009	February 23, 2010
December 15, 2008	May 14, 2009	February 24, 2010
December 16, 2008	June 4, 2009	February 26, 2010
December 19, 2008	June 22, 2009	February 27, 2010
December 21, 2008	September 14, 2009	March 2, 2010
December 22, 2008	October 13, 2009	March 3, 2010
December 24, 2008	October 14, 2009	March 4, 2010
December 25, 2008	November 20, 2009	March 10, 2010
January 2, 2009	November 27, 2009	March 12, 2010
January 5, 2009	December 7, 2009	March 30, 2010
January 21, 2009	December 10, 2009	March 31, 2010
January 22, 2009	December 11, 2009	April 2, 2010
January 23, 2009	December 12, 2009	April 4, 2010
January 24, 2009	December 13, 2009	April 11, 2010
February 5, 2009	December 16, 2009	April 12, 2010
February 6, 2009	December 21, 2009	April 20, 2010
February 8, 2009	December 27, 2009	April 21, 2010
February 10, 2009	December 28, 2009	April 28, 2010
February 11, 2009	December 29, 2009	May 9, 2010
February 12, 2009	January 8, 2010	May 10, 2010
February 13, 2009	January 12, 2010	May 25, 2010
February 14, 2009	January 13, 2010	May 27, 2010
February 16, 2009	January 17, 2010	June 1, 2010
February 17, 2009	January 18, 2010	October 17, 2010
February 22, 2009	January 19, 2010	October 23, 2010
February 23, 2009	January 20, 2010	October 24, 2010
February 26, 2009	January 21, 2010	November 7, 2010
March 1, 2009	January 22, 2010	November 19, 2010
March 2, 2009	January 23, 2010	November 20, 2010
March 3, 2009	January 25, 2010	November 21, 2010
March 4, 2009	January 26, 2010	November 23, 2010
March 21, 2009	January 27, 2010	November 27, 2010

December 4, 2010	May 17, 2011	April 26, 2012
December 5, 2010	May 18, 2011	May 14, 2012
December 6, 2010	May 28, 2011	June 4, 2012
December 8, 2010	June 1, 2011	August 16, 2012
December 14, 2010	June 4, 2011	October 22, 2012
December 17, 2010	June 5, 2011	October 23, 2012
December 18, 2010	June 6, 2011	November 1, 2012
December 19, 2010	June 10, 2011	November 8, 2012
December 21, 2010	June 28, 2011	November 9, 2012
December 22, 2010	September 7, 2011	November 16, 2012
December 25, 2010	October 4, 2011	November 17, 2012
December 27, 2010	October 5, 2011	November 18, 2012
December 28, 2010	October 6, 2011	November 21, 2012
December 29, 2010	November 5, 2011	November 28, 2012
January 1, 2011	November 11, 2011	November 30, 2012
January 2, 2011	November 19, 2011	December 1, 2012
January 9, 2011	November 20, 2011	December 2, 2012
January 13, 2011	November 24, 2011	December 5, 2012
January 24, 2011	November 30, 2011	December 12, 2012
January 30, 2011	December 15, 2011	December 15, 2012
February 1, 2011	January 19, 2012	December 17, 2012
February 16, 2011	January 20, 2012	December 21, 2012
February 17, 2011	January 21, 2012	December 22, 2012
February 18, 2011	January 22, 2012	December 23, 2012
February 19, 2011	January 23, 2012	December 25, 2012
February 24, 2011	February 7, 2012	December 31, 2012
February 25, 2011	February 13, 2012	January 5, 2013
March 2, 2011	February 29, 2012	January 6, 2013
March 6, 2011	March 13, 2012	January 9, 2013
March 13, 2011	March 14, 2012	January 23, 2013
March 15, 2011	March 15, 2012	January 24, 2013
March 16, 2011	March 16, 2012	January 25, 2013
March 18, 2011	March 17, 2012	February 19, 2013
March 19, 2011	March 25, 2012	March 19, 2013
March 20, 2011	March 27, 2012	March 30, 2013
March 21, 2011	March 28, 2012	March 31, 2013
March 23, 2011	March 31, 2012	April 1, 2013
March 24, 2011	April 3, 2012	April 3, 2013
March 25, 2011	April 11, 2012	April 4, 2013
March 26, 2011	April 12, 2012	April 7, 2013
May 15, 2011	April 13, 2012	July 25, 2013
May 16, 2011	April 25, 2012	