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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation,

Plaintiff,

vs.

GUNTERT SALES & ZIMMERMAN, *et.al.*

Defendants

Case No. 2:13-CV-02196-MCE-CKD

[PROPOSED] CONSENT AGREEMENT

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

WHEREAS, Plaintiff California Sportfishing Protection Alliance (hereinafter “CSPA” or “Plaintiff”) is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California’s waters;

WHEREAS, Defendants Guntert & Zimmerman Const. Div., Inc. and Guntert Sales Div., Inc. (named in the lawsuit as Guntert Sales & Zimmerman, Guntert Steel), and Ronald M. Guntert (collectively hereinafter “Guntert” or “Defendants”) own an approximately twenty-two

1 (22) acre construction machinery equipment and metal services facility located at 222 E. 4th
2 Street, in Ripon, California (“the Facility”), which is used for processing, fabrication, and storage
3 of various sheet metals and metal products, along with other industrial activity, including the use,
4 storage, maintenance, fueling, and washing of trucks, concrete slip-form paving equipment,
5 trucks, and other heavy machinery;

6 **WHEREAS**, CSPA and Defendants are collectively referred to herein as the “Parties;”

7 **WHEREAS**, the Facility collects and discharges storm water into the City of Ripon’s
8 storm drain system, which discharges to the Stanislaus River, which is a tributary to the
9 Sacramento River and the Sacramento-San Joaquin Delta. (a map of the Facility is attached
10 hereto as Exhibit A, and is incorporated herein by reference);

11 **WHEREAS**, storm water discharges associated with industrial activity are regulated
12 pursuant to the National Pollutant Discharge Elimination System (“NPDES”), General Permit
13 No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 97-03-
14 DWQ), issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter
15 “General Permit”);

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

24 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and
25 maintain that they have complied at all times with the provisions of the General Permit and the
26 Clean Water Act;

27 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United
28 States District Court, Eastern District of California, on October 21, 2013 (the “Action”);

- 1 **b.** Within ninety (90) days of the Court Approval Date, Guntert will design an
2 infiltration basin and canals with the capacity to contain the necessary runoff to
3 prevent discharge from the unpaved areas of the: (1) West Yard, (2) Middle Yard;
4 (3) South Yard; and (4) Fallow Land;
- 5 **c.** Guntert will conduct a pilot infiltration test in the proposed area of the infiltration
6 basin within sixty (60) days of the Court Approval Date;
- 7 **d.** Guntert agrees to submit plans and applications to obtain necessary approvals to
8 construct the drainage features to the City of Ripon and other state or local land
9 use authorities within ninety (90) days of the Court Approval Date;
- 10 **e.** During the 2014 Dry Season (June 1 through September 30) and after agency
11 approval, but not later than September 30, 2014, Guntert will construct the
12 infiltration basin and canals in the general area designated on the attached Facility
13 Map (see, Exhibit A);
- 14 **f.** Guntert shall annually vacuum and cover all drop inlets at the Facility during the
15 Dry Season (June 1 through September 30) to reduce the amount of sediments
16 entering the Facility's discharge point;
- 17 **g.** Within thirty (30) days of the Court Approval Date, Guntert shall conduct regular
18 sweeping (excluding rainy weather days and/or weeks) of the paved areas of the
19 Facility using a magnetic and/or vacuum sweeper. Sweeping shall occur at least
20 once per week during the Wet Season (October 1 through May 30) and at least
21 once per month during the Dry Season (June 1 through September 30);
- 22 **h.** Guntert shall keep detailed records of the sweeping activities described in
23 Paragraph 2(g). The records shall include, at minimum, sweeping dates and times,
24 the name of the operator, weather conditions, and any other notable conditions that
25 are relevant to implementation of the sweeping requirements (e.g., conditions that
26 prevent sweeping, etc.). A sample form of the sweeping log shall be included in
27 the Facility's SWPPP. Guntert shall provide CSPA with copies of the sweeping
28 records/logs on or before July 1st of each year covered by this Consent Agreement.
The documents and reports shall be provided to CSPA pursuant to the Notice
provisions herein (at ¶ 27);

West Yard

- i.** Until the infiltration basin and canals are constructed, existing catch basins in the
middle of the West Yard will be maintained using the existing permeable geo-
textile beneath a thick layer of course gravel with straw wattle that encircle each of
the catch basins and silt socks within each basin during the Wet Season (October 1
through May 30);

- 1 t. Runoff to the South Yard from the City of Ripon's adjacent property will be re-
2 directed by using a series of small berms and ditches to the City of Ripon's Pump
3 Station collection point;

4 Fallow Land

- 5 u. During the 2014 Dry Season, no later than September 30, 2014, and as part of the
6 construction of the infiltration basin and canals, Guntert will protect the slope area
7 along East Fourth Street by using permeable geo-textile beneath a thick layer of
8 course gravele, east of the main facilities, in order to minimize runoff to the North
9 Yard catch basin located on Fourth Street and maximize the infiltration on the
10 property. The fallow land will be re-graded. The grading will direct storm water,
11 by sheet flow, to a canal along the south property line, which will direct the storm
12 water to the infiltration basin;
- 13 v. Defendants shall add vegetation and check dams to the canal within thirty (30)
14 days of the completion of the Main Basin and shall continue to maintain the canal
15 to prevent erosion and siltation;

16 North Yard

- 17 w. Within thirty (30) days of the Court Approval Date, Guntert shall installed a large
18 capacity silt sock in the North Yard catch basin, located in Fourth Street;
- 19 x. At least once every week during each Wet Season (October 1 through May 30)
20 covered by the Term of this Agreement, Guntert will sweep the east manufacturing
21 area and the parking lot areas which drain to the North Yard catch basin on Fourth
22 Street; and
- 23 y. Guntert shall keep detailed records of the sweeping activities described in
24 Paragraph 2(g). The records shall include, at minimum, sweeping dates and times,
25 the name of the operator, weather conditions, and any other notable conditions that
26 are relevant to implementation of the sweeping requirements (e.g., conditions that
27 prevent sweeping, etc.). A sample form of the sweeping log shall be included in
28 the Facility's SWPPP. Guntert shall provide CSPA with copies of the sweeping
records/logs on or before July 1st of each year covered by this Amended Consent
Agreement. The documents and reports shall be provided to CSPA pursuant to the
Notice provisions herein (at ¶ 27).

If, as a result of the ongoing investigation and analysis of storm water conditions at the
Facility, Guntert determines that any of the aforementioned BMPs are impractical or impossible
to implement, the parties shall meet-and-confer to discuss possible alterations to the BMPs and
amendment to this Agreement. Guntert shall not unilaterally abandon or modify any of the
BMPs described above without prior consultation with CSPA. Guntert's failure to meet-and-

1 confer with CSPA prior to altering the BMP and schedule described herein shall constitute a
2 breach of this Agreement.

3 Unless otherwise noted above, each of the BMPs described in 2.a. – 2.y. shall be
4 completed on or before September 30, 2014. If timely implementation of any of the BMPs set
5 forth above becomes impossible, despite the timely good faith efforts of the Defendants,
6 Defendants shall notify CSPA in writing within seven (7) calendar days of the date that the
7 failure becomes apparent, and shall describe the reason for the non-performance. The Parties
8 agree to meet and confer in good faith concerning the nonperformance and, where the Parties
9 concur that the non-performance was or is impossible, despite Defendants’ timely good faith
10 efforts, new performance deadlines shall be established. In the event that the Parties cannot
11 timely agree upon the terms of such an extension, either of the Parties shall have the right to
12 invoke the dispute resolution procedure described herein. In the event Defendants are unable to
13 complete construction of any the BMPs described in Sections 2.a. – 2.y. by September 30, 2014,
14 the Term of this Consent Agreement shall be extended until September 30, 2016.

15 **3. SWPPP Amendments/Additional BMPs.** Within thirty (30) days of the Court Approval
16 Date, Guntert shall formally amend the SWPPP for the Facility to incorporate all of the relevant
17 requirements of this Consent Agreement, as well as the revised Facility map attached hereto as
18 Exhibit A. A copy of the SWPPP shall be provided to CSPA pursuant to the Notice provisions
19 herein (at ¶ 27).

20 **4. Sampling Frequency.** Guntert shall collect and analyze samples from four (4)
21 Qualifying Storm Events (“QSE”), as set forth in the General Permit¹ for sampling purposes, in
22 each of the Wet Seasons¹ occurring during the Term of this Consent Agreement. Guntert shall
23 collect and analyze storm water samples from two (2) QSEs within the first half of each Wet
24 Season (October 1st to December 31st), including the first QSE of the Wet Season, and two (2)

25
26 ¹ “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are preceded
27 by at least three (3) working days during which no storm water discharges from the Facility have occurred; (ii) the
28 samples are collected within the first hour that flow is observed when Guntert’s designated safety officer is present
at the Discharge Point being sampled; and (iii) the samples are collected during daylight and scheduled facility
operating hours.

² The “Wet Season” includes October 1st – May 30th of each calendar year.

1 QSEs within the second half of each Wet Season (January 1st to May 30th). The QSE sample
2 results shall be compared with the values set forth in Exhibit C, attached hereto, and
3 incorporated herein by reference. If the results of any QSE samples exceed the parameter values
4 set forth in Exhibit C, Guntert shall comply with the “Action Memorandum” requirements set
5 forth below (at ¶ 6).

6 **5. Sampling Parameters.** QSE samples shall be analyzed for each of the constituents listed
7 in Exhibit C by a laboratory accredited by the State of California. QSE samples collected from
8 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold
9 time” is not exceeded. Analytical methods used by the laboratory shall be adequate to detect the
10 individual constituents at or below the values specified on Exhibit C. Sampling results shall be
11 provided to CSPA within seven (7) days of Guntert’s receipt of the laboratory report from each
12 QSE sampling event pursuant to the Notice provisions herein (at ¶ 27).

13 **6. “Action Memorandum” Trigger; CSPA Review of “Action Memorandum”; Meet-**
14 **and-Confer.** If any QSE sample taken during the Wet Seasons occurring during the Term of
15 this Agreement exceeds the evaluation levels set forth in Exhibit C, Guntert shall prepare a
16 detailed, written statement describing the excess, the possible cause(s) and/or source of the
17 excess, additional measures that will be taken to address and eliminate the problem and future
18 exceedances, and a time line for implementing said additional measures (“Action
19 Memorandum”). The Action Memorandum shall be provided to CSPA no later than thirty (30)
20 days after Guntert’s receipt of the sample results at issue. Recognizing that a SWPPP is an
21 ongoing iterative process meant to encourage innovative BMPs, the additional measures
22 described in the Action Memorandum may include, but are not limited to, taking confirmation
23 samples, increasing the storage and/or treatment capacity of the infiltration basin and canals,
24 further material improvements to the storm water collection and discharge system, changing the
25 frequency of sweeping activities, changing the type and extent of industrial activities and/or
26 Best Management Practices at the Facility. Such additional measures, to the extent feasible,
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1 shall be implemented no later than seventy-five (75) days after the due date of the Action
2 Memorandum, except where: (1) structural changes require longer than seventy-five
3 (75)calendar days to complete; (2) weather-related conditions render timely implementation
4 infeasible; or (3) the Parties otherwise agree in writing. If the additional measures cannot be
5 implemented within seventy-five (75) days of the due date of the Action Memorandum, Guntert
6 will include an explanation for why additional time is needed in the Action Memorandum.
7 Within thirty (30) days of implementation of any such additional measures, the Facility SWPPP
8 shall be amended to include all additional BMP measures designated in the Action
9 Memorandum. CSPA may review and comment on an Action Memorandum and suggest any
10 additional pollution prevention measures it believes are appropriate. CSPA will provide
11 Guntert with any such comments and suggestions within sixty (60) days of its receipt of the
12 Action Memorandum; however, CSPA's failure to do so shall not be deemed to constitute
13 agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA,
14 Guntert agrees to meet and confer in good faith (at the Facility, if requested by CSPA)
15 regarding the contents and sufficiency of the Action Memorandum.
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18 **7. Inspections During the Term of this Agreement.** In addition to any site inspections
19 conducted as part of the meet-and-confer process concerning an Action Memorandum as set
20 forth above, Guntert shall permit representatives of CSPA to perform up to three (3) physical
21 inspections of the Facility during normal daylight business hours during the Term of this Consent
22 Agreement. These inspections shall be performed by CSPA's counsel and consultants and may
23 include stormwater water quality sampling, photographing, and/or videotaping and CSPA shall
24 provide Guntert with a copy of all sampling reports, photographs and/or video. CSPA shall not
25 inspect the interior of the buildings located on the Facility without the express written permission
26 of Guntert or its legal representative. CSPA shall provide Guntert with at least seventy-two (72)
27 hours prior written Notice via email transmission (as set forth in ¶27) of such physical
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1 inspection, except that Guntert shall have the right to deny access if circumstances would make
2 the inspection unduly burdensome and pose significant interference with business operations of
3 Guntert or its attorney, or threaten the safety of individuals. In such case, Guntert shall specify at
4 least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by
5 CSPA may proceed. Guntert shall not make any material alterations to Facility conditions during
6 the period between receiving CSPA's initial advance notice and the start of CSPA's inspection
7 that Guntert would not otherwise have made but for receiving notice of CSPA's request to
8 conduct a physical inspection of the Facility, excepting any actions taken in compliance with any
9 applicable laws or regulations. Guntert shall provide CSPA with written documentation of any
10 alterations to Facility conditions during the period between receiving CSPA's notice of
11 inspection and the start of CSPA's inspection. Nothing herein shall be construed to prevent
12 Guntert from continuing to implement any BMPs identified in the SWPPP during the period
13 prior to an inspection by CSPA or at any time.

14 **8. Guntert's Communications with Regional and State Boards.** During the Term of this
15 Consent Agreement, Guntert shall provide CSPA with copies of all documents submitted to the
16 Regional Board or the State Board concerning storm water discharges from the Facility,
17 including, but not limited to, all documents and reports submitted to the Regional Board and/or
18 State Board as required by the General Permit. Such documents and reports shall be provided to
19 CSPA pursuant to the Notice provisions herein (at ¶ 27) and contemporaneously with Guntert's
20 submission to such agencies.

21 **9. Future SWPPP Amendments.** Guntert shall provide CSPA with a copy of any
22 amendments to the Facility SWPPP made during the Term of the Consent Agreement within
23 fourteen (14) days of such amendment.

24 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

25 **10. Mitigation.** As mitigation of the Clean Water Act violations alleged in CSPA Complaint,
26 Guntert agrees to pay the sum of \$45,000.00 to the Rose Foundation for Communities and the
27 Environment (the "Rose Foundation") for projects to improve water quality in local watersheds
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1 of San Joaquin County, the Stanislaus River, the San Joaquin River, and/or the Sacramento-San
2 Joaquin Delta. The mitigation payment shall be made in three installments. The first installment
3 payment of \$15,000 shall be made within seven (7) days after the Court Approval Date. The
4 second installment payment of \$15,000 shall be made on or before January 1, 2015. The third
5 installment payment of \$15,000 shall be made on or before January 1, 2016. The Rose
6 Foundation shall endeavor to apply the funds to projects within 50 miles of the Facility. If the
7 Rose Foundation cannot identify a suitable project within 50 miles of the Facility, then the funds
8 shall be used on any applicable project in the watersheds described above. The Rose Foundation
9 will direct the funds to a project that specifically describes and quantifies the project's
10 anticipated benefits to water quality in the waters identified above. None of the funds paid to the
11 Rose Foundation shall be used to pay attorneys' fees in litigation against any of the Defendants
12 to this action. Payment shall be provided directly to the Rose Foundation as follows: Rose
13 Foundation, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little. The Rose Foundation
14 shall provide notice to the Parties within thirty (30) days of when the funds are dispersed by the
15 Rose Foundation, setting forth the recipient and purpose of the funds.
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18 **11. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative, expert,
19 consultant and attorneys' fees and costs associated with monitoring Guntert's compliance with
20 this Consent Agreement, Guntert agrees to contribute \$10,000 to a compliance monitoring fund
21 maintained by CSPA. Compliance monitoring activities may include, but shall not be limited to,
22 site inspections, review of water quality sampling reports, review of annual reports, discussions
23 with representatives of Guntert concerning the Action Memoranda referenced above, and
24 potential changes to compliance requirements herein, preparation for and participation in meet-
25 and-confer sessions, water quality sampling and analysis, and compliance-related activities. The
26 \$10,000 shall be paid to the Jackson & Tuerck Attorney-Client Trust Account, and sent to
27 JACKSON & TUERCK at P.O. Box 148, Quincy, CA 95971, in two (2) annual installments.
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1 The first installment shall be paid on or before June 1, 2015; the second installment shall be paid
2 on or before June 1, 2016. Guntert further agrees to reimburse CSPA for actual, reasonable and
3 necessary fees and costs in excess of the aforementioned \$10,000.00 up to a maximum of
4 \$5,000.00, if said fees and costs are incurred as a result of investigations, inspections, or any
5 meet and confer that becomes necessary because any or all of the following occur:

6 **a.** Guntert fails to implement any of the BMPs, or comply with any of the conditions
7 set forth in Section 2 of this Agreement;

8 **b.** Guntert fails to comply with the Action Memorandum requirements set forth in
9 Section 6 of this Agreement;

10 Such fees and costs shall include reasonable investigative, expert, consultant and
11 attorneys' fees and costs, incurred as a result of the investigation, inspection and meet and confer
12 process.

13 **12. Fees and Costs.** Guntert agrees to reimburse CSPA in the amount of \$29,000 in two
14 installments, consisting of \$14,500 per installment to defray CSPA's reasonable investigative,
15 expert, consultant and attorneys' fees and costs, incurred as a result of investigating the activities
16 at the Facility, bringing the Action and negotiating a resolution in the public interest. The first
17 installment is payable within seven (7) days of the Court Approval Date and the second
18 installment is payable six (6) months thereafter. Such payments shall be made to the Jackson &
19 Tuerck Attorney-Client Trust Account, and sent to JACKSON & TUERCK at P.O. Box 148,
20 Quincy, CA 95971.

21 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

22 **13. Jurisdiction of the Court.** Upon the Court Approval Date, the Parties shall file with the
23 Court a Stipulation and Order that shall provide that: (1) the Complaint and all claims therein
24 shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2), and (2)
25 the Court shall retain and have jurisdiction over the Parties with respect to disputes arising under
26 this Consent Agreement. Nothing in this Consent Agreement shall be construed as a waiver of
27 any Party's right to appeal from an order that arises from an action to enforce the terms of this
28 Consent Agreement.

1 **14. Meet and Confer.** With the exception of the timelines set forth above for addressing
2 exceedances of values specified on Exhibit C and Action Memoranda, if a dispute under this
3 Consent Agreement arises, or either Party believes that a breach of this Consent Agreement has
4 occurred, the Parties shall meet and confer within seven (7) days of receiving written notification
5 from the other Party of a request for a meeting to determine whether a violation has occurred and
6 to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute.
7 If the Parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at
8 least seven (7) days have passed after the meet-and-confer occurred or should have occurred,
9 either Party shall be entitled to all rights and remedies under the law, including filing a motion
10 with the District Court of California, Northern District, which shall retain jurisdiction over the
11 Action for the limited purposes of enforcement of the terms of this Consent Agreement. The
12 Parties shall be entitled to seek: (1) injunctive relief as needed to remedy the alleged
13 breach/breaches of the Consent Agreement, (2) additional mitigation payments to the Rose
14 Foundation, and/or (3) reimbursement of fees and costs incurred in the litigation of any such
15 motion, and such fees and costs may be awarded, pursuant to the provisions set forth in Section
16 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such
17 provision.

18 **15. Right to Cure.** Except in case of an emergency but subject to the regulatory authority of
19 any applicable governmental authority, any breach of or default under this Consent Agreement
20 capable of being cured shall be deemed cured if, within five (5) days of first receiving notice of
21 the alleged breach or default, or within such other period approved in writing by the Party
22 making such allegation, which approval shall not be unreasonably withheld, the party allegedly
23 in breach or default has completed such cure or, if the breach or default can be cured but is not
24 capable of being cured within such five (5) day period, has commenced and is diligently
25 pursuing to completion such cure.

26 **IV. MISCELLANEOUS PROVISIONS**

27 **16. Purpose.** The Parties enter into this Consent Agreement for the purpose of avoiding
28 prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as, and
[PROPOSED] CONSENT AGREEMENT Case No. 2:13-CV-02196-MCE-CKD

1 Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law,
2 or violation of law, nor shall compliance with this Consent Agreement constitute or be construed
3 as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law.
4 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities,
5 and duties of the Parties under this Consent Agreement.

6 **17. Parties.** This Consent Agreement and its attachments are made for the sole benefit of the
7 Parties named herein, and no other person or entity shall have any rights or remedies under or by
8 reason of this Consent Agreement, unless otherwise expressly provided for therein.

9 **18. CSPA's Waiver and Release.** Upon the Court Approval Date and entry of this Consent
10 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,
11 assigns, directors, officers, agents, attorneys, representatives, and employees, releases
12 Defendants and their officers, directors, employees, shareholders, parents, subsidiaries, and
13 affiliates, and each of their predecessors, successors and assigns, and each of their agents,
14 attorneys, consultants, and other representatives (each a "Released Defendant Party") from, and
15 waives all claims which arise from or pertain to the Action, including, without limitation, all
16 claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees
17 of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which
18 could have been claimed in this Action, for the alleged failure of Defendants to comply with the
19 Clean Water Act at the Facility, up to the Effective Date of this Consent Agreement.
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21
22 During the term of the Consent Agreement, CSPA agrees that neither CSPA, its officers,
23 executive staff, or members of its governing board nor any organization under the control of
24 CSPA, its officers, executive staff, or members of its governing board, will file any new lawsuit
25 against the Defendants seeking relief related to storm water discharged from the Facility. CSPA
26 further agrees that, during the term of the Consent Agreement, CSPA will not support other
27 lawsuits, by providing financial assistance, personnel time or other affirmative actions, against
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1 the Defendants arising from its operation of the Facility that may be proposed by other groups or
2 individuals who would rely upon the citizen suit provision of the Clean Water Act or state law
3 claims to challenge the City's management of storm water at the Facility. Nothing in this section
4 shall be construed as limiting CSPA's right to enforce the terms and conditions of this
5 Agreement or its right to appeal from an order that arises from an action to enforce the terms of
6 this Consent Agreement.

7
8 **19. Defendants' Waiver and Release.** Defendants, on their own behalf and on behalf of
9 those Released Defendant Parties under their control, release CSPA (and its officers, directors,
10 employees, members, parents, subsidiaries, and affiliates, and each of their successors and
11 assigns, and its agents, attorneys, and other representative) from, and waive all claims which
12 arise from or pertain to the Action, including all claims for fees (including fees of attorneys,
13 experts, and others), costs, expenses or any other sum incurred or claimed or which could have
14 been claimed for matters associated with or related to the Action up to the Effective Date of this
15 Consent Agreement.

16 **20. Term.** It is the intent of the Parties that the Term of this Agreement cover two (2)
17 complete Wet Season following the implementation of the BMPs set forth in Section 2 above.
18 Therefore, the Term of this Consent Agreement shall run from the Court Approval date until
19 September 30, 2016, unless implementation of any the BMPs indentified in Section 2 are not
20 completed prior to September 30, 2014, in which case the Term of this Agreement shall be
21 extended to September 30, 2017.

22 **21. Execution.** The undersigned are authorized to execute this Consent Agreement on behalf
23 of their respective parties and have read, understood and agreed to be bound by all of the terms
24 and conditions of this Consent Agreement.

25 **22. Formalities of Execution.** The Consent Agreement may be executed in one or more
26 counterparts which, taken together, shall be deemed to constitute one and the same document.
27 An executed copy of this Consent Agreement shall be valid as an original. Signatures of the
28 Parties transmitted by facsimile or email shall be deemed binding.

1 **23. Invalidity and Severability.** In the event that any of the provisions of this Consent
2 Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall
3 not be adversely affected.

4 **24. Disapproval by Court.** If for any reason the Court should decline to approve this
5 Consent Agreement in the form presented, the Parties shall use reasonable efforts to work
6 together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the
7 Court. If the Parties are unable to modify this Consent Agreement in a mutually acceptable
8 manner, this Consent Agreement shall become null and void. Should this proposed Consent
9 Agreement fail to be entered for any reason, this proposed Consent Agreement, and any
10 statement or other provision contained in this proposed Consent Agreement shall have no legal
11 effect and shall not be used for any purpose in any subsequent proceeding in this or any other
12 litigation.

13 **25. Construction/Applicable Law.** The language in all parts of this Consent Agreement,
14 unless otherwise stated, shall be construed according to its plain and ordinary meaning. This
15 Consent Agreement shall be construed pursuant to California law, without regarding to conflict
16 of law principles.

17 **26. Entirety of the Agreement.** This Consent Agreement and the attachments contain all of
18 the terms and conditions agreed upon by the Parties relating to the matters covered by the
19 Consent Agreement, and supersede any and all prior and contemporaneous agreements,
20 negotiations, correspondence, understandings, and communications of the Parties, whether oral
21 or written, respecting the matters covered by this Consent Agreement. All agreements,
22 covenants, representations and warranties, express or implied, oral or written, of the Parties
23 concerning the subject matter of this Consent Agreement are contained herein.

24 **27. Notice.** Unless otherwise stipulated to by the receiving party, any notices or documents
25 required or provided for by this Consent Agreement or related thereto that are to be provided to
26 CSPA pursuant to this Consent Agreement shall be hand-delivered or sent by U.S. Mail, postage
27 prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail
28 transmission to the email addresses listed below:

1
2
3
4 Bill Jennings, Executive Director
5 California Sportfishing Protection Alliance
6 3536 Rainier Avenue
7 Stockton, CA 95204
8 E-mail: DeltaKeep@aol.com

9 With copies sent to:

10 Robert J. Tuerck, Esq.
11 Jackson & Tuerck
12 P.O. Box 148
13 Quincy, CA 95971
14 Tel: (530) 283-0406
15 Fax: (530) 283-0416
16 E-mail: bob@JacksonTuerck.com

17 And to:

18 Andrew L. Packard
19 Law Offices of Andrew L. Packard
20 100 Petaluma Boulevard North, Suite 301
21 Petaluma, CA 94952
22 Tel: (707) 763-7227
23 E-mail: andrew@packardlawoffices.com

24 Any notices or documents required or provided for by this Consent Agreement or related
25 thereto that are to be provided to Defendants pursuant to this Consent Agreement shall be sent by
26 U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by
27 electronic mail transmission to the email addresses listed below:

28 Ronald M. Guntert, Jr., CEO
Guntert & Zimmerman Const. Div. Inc.
Guntert Sales Div. Inc.
222 East Fourth Street
Ripon, California 95366
Tel: (209) 599-0066
Fax: (209) 599-2021
E-mail: gz@guntert.com

1 With copies sent to:

2 Cecelia C. Fusich
3 Vernon Law Office
4 2300 Geng Road, Suite 200
5 Palo Alto, California 94303
6 Tel: (650) 493-8483
7 Fax.: (650) 493-6160
8 E-mail: Cecelia.Fusich@vernonlawoffice.com

9 Each Party shall promptly notify all other Parties of any change in the above-listed
10 contact information.

11 **28. Force Majeure.** No Party shall be considered to be in default in the performance of any
12 of its obligations when a failure to perform is due to a “Force Majeure.” A Force Majeure event
13 is any circumstances beyond the Party’s reasonable control, including, without limitation, any act
14 of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force
15 Majeure event does not include normal inclement weather, such as anything less than or equal to
16 a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this
17 paragraph shall have the burden of establishing that it could not reasonably have been expected
18 to avoid, and which by exercise of due diligence has been unable to overcome, the Force
19 Majeure.

20 **29. Regulatory Approval.** If for any reason the United States Department of Justice, the
21 United States Environmental Protection Agency or the Court should decline to approve this
22 Consent Agreement in the form presented, the Parties shall use their best efforts to work
23 together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the
24 United States Department of Justice, the United States Environmental Protection Agency or the
25 Court.

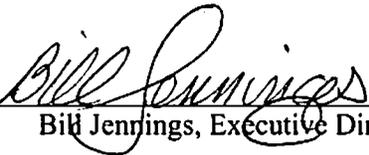
26 **30. Modification and Amendment.** This Consent Agreement may be amended or modified
27 only by a writing signed by the Parties or their authorized representatives, and then by order of
28 the Court.

1 31. **Drafting.** This Consent Agreement shall be deemed to have been drafted equally by the
2 Parties, and shall not be interpreted for or against any Party on the ground that any such party
3 drafted it.

4 The Parties hereto enter into this Consent Agreement and respectfully submit it to the
5 Court for its approval and entry as an Order and Final Judgment.

6
7 Dated: 6 April 2014

California Sportfishing Protection Alliance

8
9 By: 
Bill Jennings, Executive Director

10
11
12 Dated: _____

Guntert & Zimmerman Const. Div. Inc. and
Guntert Sales Div., Inc.

13
14
15 By: _____
Ronald. M Guntert, Jr., CEO

1 **31. Drafting.** This Consent Agreement shall be deemed to have been drafted equally by the
2 Parties, and shall not be interpreted for or against any Party on the ground that any such party
3 drafted it.

4 The Parties hereto enter into this Consent Agreement and respectfully submit it to the
5 Court for its approval and entry as an Order and Final Judgment.

6
7 Dated: _____

California Sportfishing Protection Alliance

8
9 By: _____
10 Bill Jennings, Executive Director

11
12 Dated: 4/4/14

Guntert & Zimmerman Const. Div. Inc. and
Guntert Sales Div., Inc.

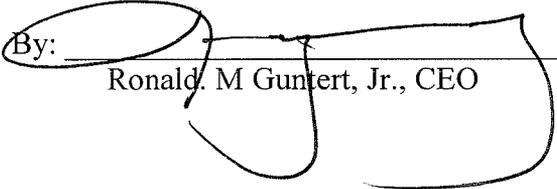
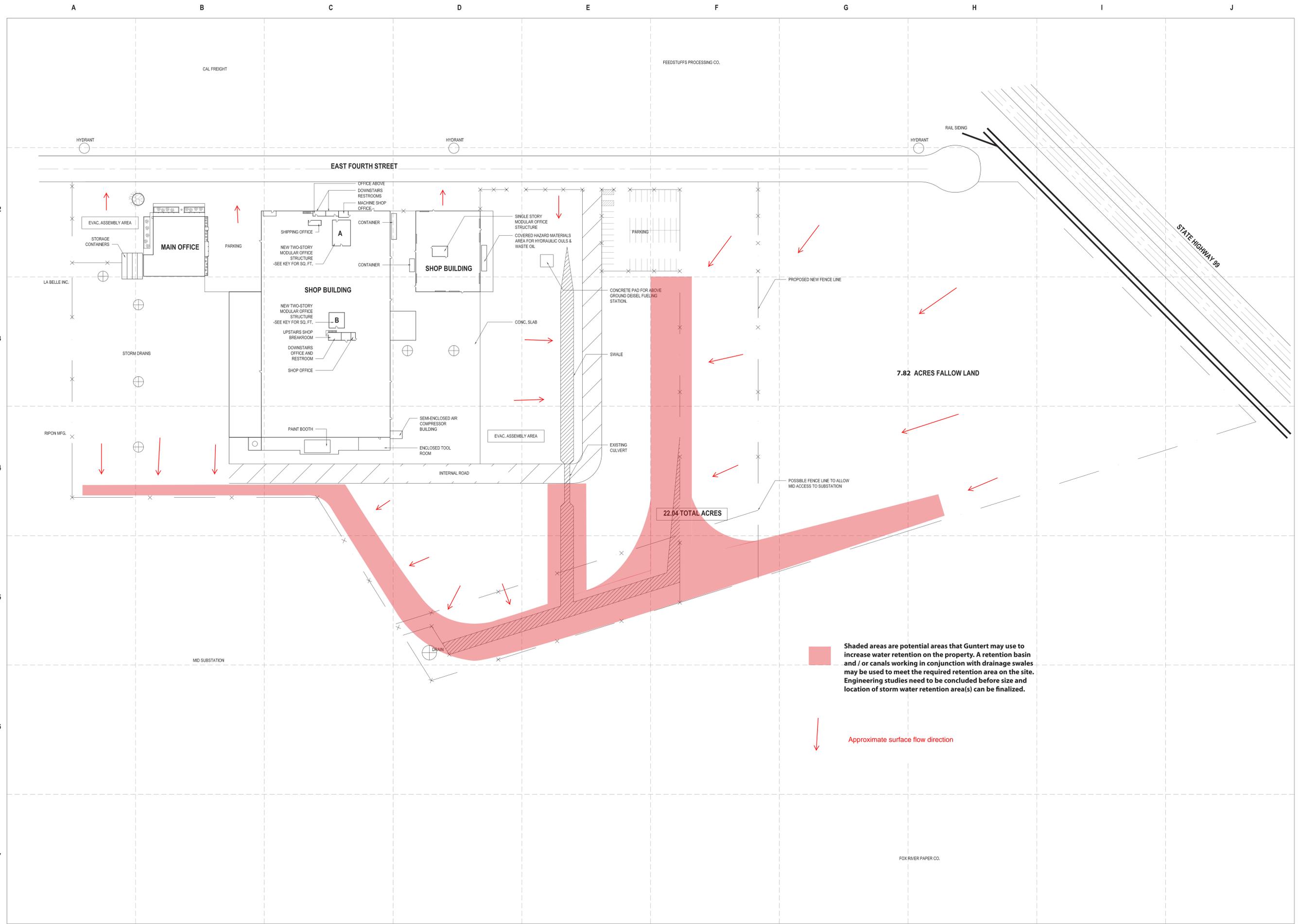
13
14
15 By:  _____
16 Ronald M Guntert, Jr., CEO

EXHIBIT A

Facility Map

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MODULAR BUILDING AREAS:	
A. SALES OFFICE	FIRST FLOOR: 1120 SQ. FT. SECOND FLOOR: 1120 SQ. FT. TOTAL AREA: 2240 SQ. FT.
B. SHOP OFFICE	FIRST FLOOR: 576 SQ. FT. SECOND FLOOR: 528 SQ. FT. TOTAL AREA: 1096 SQ. FT.



Shaded areas are potential areas that Guntert may use to increase water retention on the property. A retention basin and / or canals working in conjunction with drainage swales may be used to meet the required retention area on the site. Engineering studies need to be concluded before size and location of storm water retention area(s) can be finalized.

Approximate surface flow direction

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EXHIBIT B
Notice of Violation



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

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

Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Federal Water Pollution Control Act¹ (commonly known as the “Clean Water Act” or “CWA”), occurring at the Guntert Sales & Zimmerman facility located at 222 E. 4th 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

¹ 33 U.S.C. § 1251 *et. seq.*

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,² 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.³ Section 402(p) of the Act establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program.⁴ 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.⁵ Pursuant to Section 402 of the Act,⁶ 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.⁷ 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,

² 33 U.S.C. § 1311(a)

³ 33 U.S.C. § 1342

⁴ 33 U.S.C. §1342(p)

⁵ 33 U.S.C. § 1342

⁶ 33 U.S.C. § 1342

⁷ 33 U.S.C. § 1342(p)

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

§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.⁸ 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.⁹

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”).¹⁰ 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)

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

⁹ 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).

¹⁰ *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).

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 permit¹¹ 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.¹² All other pollutants are either toxic or nonconventional.¹³

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.

¹¹ 33 U.S.C. § 1342

¹² 40 C.F.R. § 401.16

¹³ *Id.*; 40 C.F.R. § 401.15

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.¹⁴ 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)

¹⁴ 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*.

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

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
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

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
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.¹⁵ 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

¹⁵ 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.

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.

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

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

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.¹⁶

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.¹⁷ 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

¹⁶ See also General Permit, Sections C(9) and (10) and B(14)

¹⁷ 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.

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 Act¹⁸ and the Adjustment of Civil Monetary Penalties for Inflation¹⁹ 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 Act²⁰ also, permits prevailing parties to recover costs and fees, including attorneys' fees.

¹⁸ 33 U.S.C. § 1319(d)

¹⁹ 40 C.F.R. § 19.4

²⁰ 33 U.S.C. § 1365(d)

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),²¹ 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

²¹ 33 U.S.C. §1365(a) and (d)

SERVICE LIST

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Regional Water Quality Control Board
Central Valley Region, Redding Office
364 Knollcrest Drive, Suite 205
Redding, CA 96002

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

Guntert Sales & Zimmerman
dba Guntert Steel
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Ripon, CA 95366

Lisa Jackson, Administrator
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U.S. Department of Justice
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Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Ronald M. Guntert, Operator
Guntert Sales & Zimmerman
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	

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EXHIBIT C

Sampling Parameter Values

Parameter	Value
Total Suspended Solids (“TSS”)	100 mg/L
pH	6.0 – 9.0
Specific Conductivity (“SC”)	200 µmhos/cm
Oil & Grease (“O&G”)	15 mg/L
Iron (“Fe”)	1.0 mg/L
Lead (“Pb”)	0.0816 mg/L
Aluminum (“Al”)	0.75 mg/L
Zinc (“Zn”)	0.117 mg/L
Cadmium (“Cd”)	0.0159 mg/L
Chromium (“Cr”)	0.085 mg/L
Copper (“Cu”)	0.063 mg/L
Total Petroleum Hydrocarbons (“TPH”) ²	100 mg/L
Benzene	0.01 mg/L

²Testing must be done using “Method 8015(m)” and the laboratory should report all peaks.