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10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

12  
13  
14 IN THE UNITED STATES DISTRICT COURT  
15 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	NORTHERN RECYCLING & WASTE )	(Federal Water Pollution Control Act, 33
23	SERVICES, a California corporation, and )	U.S.C. §§ 1251 to 1387)
24	DOUGLAS SPEICHER, an individual )	
25	Defendants, )	
26	_____ )	

27 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
28 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 Northern Recycling & Waste Services and Mr. Douglas Speicher  
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 May 7, 2014, Plaintiff provided notice of Defendants’ violations of  
13 the Act, and of its intention to file suit against Defendants, to the Administrator of the United  
14 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the  
15 Executive Director of the State Water Resources Control Board (“State Board”); the Executive  
16 Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional  
17 Board”); the U.S. Attorney General; and to Defendants, as required by the Act, 33 U.S.C. §  
18 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and is  
19 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

1 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in  
2 Sacramento, California because the source of the violations is located within Butte County.

3 **II. INTRODUCTION**

4 5. This complaint seeks relief for Defendants' discharges of pollutants from a  
5 waste transfer and recycling center facility and ("the Facility") located in Paradise, California.  
6 The Facility is used for the collection, management and sorting of solid waste, household  
7 hazardous waste processing and storage, used oil recycling and associated activities (*e.g.*,  
8 vehicle fueling, maintenance and washing, etc.). Other industrial activities at the Facility  
9 include the use, storage, maintenance, fueling, and washing of equipment, trucks, and other  
10 heavy machinery.

11 6. CSPA is informed and believes that the Facility is owned and/or operated by  
12 Northern Recycling & Waste Services and managed by Mr. Douglas Speicher.

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

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 Feather 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 Feather 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 Northern Recycling & Waste Services is a corporation organized under the laws of the State of

1 California, and that Defendant Mr. Douglas Speicher is the general manager and operator of  
2 the 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 Sacramento  
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 (“TSS”) – 100 mg/L; oil & grease (“O&G”) – 15.0 mg/L; iron (“Fe”) –  
12 1.0 mg/L; lead (“Pb”) – 0.0816 mg/L; zinc (“Zn”) – 0.117 mg/L, copper (“Cu”) – 0.0636  
13 mg/L, mercury (“Hg”) – .0024 mg/L, ammonia (“NH<sub>3</sub>”)– 19 mg/L, and aluminum (“Al”) –  
14 0.75 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for  
15 specific conductance of 200 µmhos/cm. The following benchmarks have been established for  
16 pollutants that are believed to be discharged by Defendants: magnesium (“Mg”) – 0.0636  
17 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, arsenic (“As”)– 0.16854 mg/L,  
18 cadmium (“Cd”) – 0.0159 mg/L, selenium (“Se”) – 0.2385 mg/L, and silver (“Ag”) – 0.0318  
19 mg/L.

20           31.     The General Permit requires dischargers to develop and implement a Storm  
21 Water Pollution Prevention Plan (“SWPPP”) before October 1, 1992. The SWPPP must  
22 comply with the BAT and BCT standards. (Section B(3)). The SWPPP must include, among  
23 other elements: (1) a narrative description and summary of all industrial activity, potential  
24 sources of pollutants and potential pollutants; (2) a site map showing facility boundaries, the  
25 storm water conveyance system, associated points of discharge, direction of flow, areas of  
26 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
27 storm water management practices, best management practices (“BMPs”) and preventive  
28 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)

1 the location where Significant Materials are being shipped, stored, received and handled, as  
2 well as the typical quantities of such materials and the frequency with which they are handled;  
3 (5) a description of potential pollutant sources including industrial processes, material handling  
4 and storage areas, dust and particulate generating activities; (6) a summary of storm water  
5 sampling points; (7) a description of individuals and their responsibilities for developing and  
6 implementing the SWPPP (Permit, Section A(3)); (8) a description of potential pollutant  
7 sources including industrial processes, material handling and storage areas, and dust and  
8 particulate generating activities; (9) a description of significant spills and leaks; (10) a list of all  
9 non-storm water discharges and their sources, and (11) a description of locations where soil  
10 erosion may occur (Section A(6)). The SWPPP must also include an assessment of potential  
11 pollutant sources at the Facility and a description of the BMPs to be implemented at the  
12 Facility that will reduce or prevent pollutants in storm water discharges and authorized non-  
13 storm water discharges, including structural BMPs where non-structural BMPs are not  
14 effective (Section A(7), (8)).

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

28

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

5           34. The General Permit requires dischargers commencing industrial activities  
6 before October 1, 1992 to develop and implement an adequate written Monitoring and  
7 Reporting Program no later than October 1, 1992. Existing facilities covered under the General  
8 Permit must implement all necessary revisions to their monitoring programs no later than  
9 August 1, 1997.

10           35. The General Permit also requires dischargers to submit yearly “Annual Reports”  
11 to the Regional Board. As part of their monitoring program, dischargers must identify all storm  
12 water discharge locations that produce a significant storm water discharge, evaluate the  
13 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
14 measures set out in the SWPPP are adequate and properly implemented.

15           36. The monitoring and reporting program requires dischargers to certify, based  
16 upon the annual site inspections, that the facility is in compliance with the General Permit and  
17 report any non-compliance, and contains additional requirements as well.

18           37. Dischargers must conduct visual observations of these discharge locations for at  
19 least one storm per month during the wet season (October through May) and record their  
20 findings in their Annual Report.

21           38. Dischargers must conduct dry season visual observations to identify sources of  
22 non-storm water pollution and record their findings in their Annual Report.

23           39. Dischargers must also collect and analyze storm water samples from at least two  
24 storms per year. Section B requires dischargers to sample and analyze during the wet season  
25 for basic parameters such as pH, total suspended solids (“TSS”), specific conductance, and  
26 total organic content (“TOC”) or oil and grease (“O&G”), certain industry-specific parameters,  
27 and toxic chemicals and other pollutants that are likely to be in the storm water discharged  
28 from the facility.



1           45. Information available to Plaintiff also indicates that storm water discharges  
2 from the Defendants' facility routinely and continuously contain concentrations of specific  
3 conductivity that exceed proposed benchmark levels as well.

4           46. Defendants routinely and continuously fail to test storm water discharges from  
5 the Facility for Hg, Mg, NH<sub>3</sub>, COD, As, Cd, Cn, Se, Ag, and other unknown pollutants that are  
6 likely to be present in the discharges in significant quantities.

7           47. The management practices at the Facility are wholly inadequate to prevent the  
8 sources of contamination described above from causing the discharge of pollutants to waters of  
9 the United States and fail to meet BAT and BCT. The Facility lacks essential adequate  
10 housekeeping measure and structural controls such as grading, berming and roofing to prevent  
11 rainfall and storm water flows from coming into contact with these and other sources of  
12 contaminants, thereby allowing storm water to flow over and across these materials and  
13 become contaminated prior to leaving the Facility. In addition, the Facility lacks structural  
14 controls to prevent the discharge of storm water once it has been contaminated. The Facility  
15 also lacks an adequate filtration system to treat contaminated storm water.

16           48. Vehicle traffic at the Facility tracks dust and particulate matter, increasing the  
17 discharges of polluted water into waters of the United States.

18           49. During rain events, storm water laden with pollutants flows from the Facility  
19 into the storm drain system and Clear Creek, ultimately discharging into the Sacramento-San  
20 Joaquin Delta.

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

24           51. Clear Creek, the Feather River, the Sacramento River and the Sacramento-San  
25 Joaquin Bay Delta are waters of the United States.

26           52. Information available to Plaintiff indicates that Defendants have not fulfilled the  
27 requirements set forth in the General Permit for discharges from the Facility due to the  
28 continued discharge of contaminated storm water.







1 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
2 pollutants.

3 73. Defendants have failed to implement BAT and BCT at the Facility for its  
4 discharges of pH, TSS, O&G, and other unmonitored pollutants in violation of Effluent  
5 Limitation B(3) of the General Permit.

6 74. Each day since October 6, 2009 that Defendants have failed to develop and  
7 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
8 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

9 75. Defendants have been in violation of the BAT and BCT requirements every day  
10 since at least October 6, 2009. Defendants continue to be in violation of the BAT and BCT  
11 requirements each day that they fail to develop and fully implement an adequate BAT and BCT  
12 for the Facility.

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

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

17 76. Plaintiff incorporates the allegations contained in the above paragraphs as  
18 though fully set forth herein.

19 77. Section B of the General Permit requires dischargers of storm water associated  
20 with industrial activity to develop and implement a monitoring and reporting program  
21 (including, among other things, sampling and analysis of discharges) no later than October 1,  
22 1992, or the start of business.

23 78. Defendants have failed to develop and implement an adequate monitoring and  
24 reporting program for the Facility. Defendants' ongoing failures to develop and implement  
25 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing  
26 failure to collect and analyze storm water samples from all discharge locations, their  
27 continuing failure to collect and analyze storm water samples for all of pollutants required by  
28 the General Permit for facilities classified under SIC Code 4953 which receive hazardous

1 waste, their continuing failure to analyze storm water samples for all toxic chemicals and other  
2 pollutants likely to be present in the Facility's storm water discharges in significant quantities,  
3 and/or their failure to file required Annual Reports with the Regional Board and provide  
4 required information concerning the Facility's visual observations and storm water sampling  
5 and analysis.

6 79. Each day since October 6, 2009 that Defendants have failed to develop and  
7 implement an adequate monitoring and reporting program for the Facility in violation of the  
8 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
9 1311(a). These violations are ongoing and continuous.

10 80. Defendants have been in violation of the monitoring and reporting program  
11 requirements every day since at least October 6, 2009. Defendants continue to be in violation  
12 of the program requirements each day that they fail to develop and fully implement an  
13 adequate monitoring and reporting program for the Facility.

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

15 **FIFTH CAUSE OF ACTION**  
16 **False Certification of Compliance in Annual Report**  
**(Violations of Permit conditions and the Act 33 U.S.C. §§ 1311, 1342)**

17 81. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully  
18 set forth herein.

19 82. As required by section B(14) of the General Permit, Defendants have submitted  
20 signed annual reports certifying that the Facility is in compliance with the General Permit each  
21 of the last five (5) years.

22 83. Defendants have falsely certified compliance with the General Permit in the  
23 Annual Reports submitted to the Regional Board.

24 84. Each day since at least October 6, 2009, that Defendants have falsely certified  
25 compliance with the General Permit is a separate and distinct violation of the General Permit  
26 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of  
27 the General Permit's verification requirement each day that they maintain their false  
28 certification of its compliance with the General Permit.



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

Dated: July 7, 2014

Respectfully submitted,  
**JACKSON & TUERCK**

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

EXHIBIT A

CSPA's May 7, 2014  
"Notice of Violations and Intent to File Suit  
Under The Federal Water Pollution Control Act"  
to Defendants



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May 7, 2014

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Northern Recycling & Waste Services  
920 American Way  
Paradise, CA 95967

Douglas Speicher, General Manager  
Northern Recycling & Waste Services  
P.O. Box 2529  
Paradise, CA 95967

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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 Northern Recycling & Waste Services facility located at 920 American Way in Paradise, CA (“the Facility”). Northern Recycling & Waste Services is operated by Mr. Douglas Speicher, General Manager. Mr. Speicher and Northern Recycling & Waste Services shall collectively hereinafter be referred to as “NRWS.”

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 NRWS’s unlawful discharges of pollutants from the Facility directly and indirectly into Clear Creek, which in turn discharges to the Feather River and ultimately into the Sacramento-San Joaquin Delta. This 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”).

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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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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, NRWS 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 NRWS 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 complies 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, 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

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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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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

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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 NRWS: 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 October 6, 2009, NRWS 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 5R04I022379. The Facility is classified as a landfill facility under Standard Industrial Classification (“SIC”) code 4953. The Facility is primarily used to dispose of household and commercial waste, including household hazardous wastes. The Facility is also used for recycling household and commercial waste materials. As such, CSPA is informed and believes that the Facility should also be classified as a scrap recycling facility under SIC code 5093. Other current activities at the Facility include recycling, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility. The Facility collects and discharges storm water from its industrial site through at least two (2) discharge points into Clear Creek, which discharges to the Feather River, which is a tributary to the Sacramento River and the Sacramento-San Joaquin Delta.

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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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## II. VIOLATIONS OF THE GENERAL PERMIT

Based on information contained in the available public documents, CSPA is informed and believes that NRWS 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 NRWS 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 NRWS’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. NRWS Discharges Storm Water Containing Pollutants in Violation of the Permit

NRWS has discharged, and continues to discharge, stormwater with unacceptable levels of TSS, SC, Fe, Al, Zn, Pb 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. NRWS'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
11/28/2012	Southern Outfall	TSS	172 mg/L	100 mg/L

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

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
03/31/2010	Southern Outfall	SC	260 $\mu$ mho/cm	200 $\mu$ mho/cm
03/31/2010	Northern Outfall	SC	260 $\mu$ mho/cm	200 $\mu$ mho/cm

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

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
11/28/2012	Southern Outfall	Fe	11.3 mg/L	1.0 mg/L
11/28/2012	Northern Outfall	Fe	8.24 mg/L	1.0 mg/L
10/22/2012	Southern Outfall	Fe	4.49 mg/L	1.0 mg/L
10/22/2012	Northern Outfall	Fe	3.5 mg/L	1.0 mg/L
01/19/2012	Northern Outfall	Fe	7.44 mg/L	1.0 mg/L
10/10/2011	Southern Outfall	Fe	2.52 mg/L	1.0 mg/L
10/10/2011	Northern Outfall	Fe	5.12 mg/L	1.0 mg/L
03/02/2011	Southern Outfall	Fe	1.48 mg/L	1.0 mg/L
03/02/2011	Northern Outfall	Fe	2.73 mg/L	1.0 mg/L

<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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02/14/2011	Southern Outfall	Fe	4.75 mg/L	1.0 mg/L
02/14/2011	Northern Outfall	Fe	1.78 mg/L	1.0 mg/L
10/13/2009	Northern Outfall	Fe	10.0 mg/L	1.0 mg/L

D. Confirmed Discharge of Storm Water Containing Concentrations of Al in Excess of Proposed EPA Multi-Sector Benchmark Values

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
11/28/2012	Southern Outfall	Al	8.7 mg/L	.75 mg/L
11/28/2012	Northern Outfall	Al	6.0 mg/L	.75 mg/L
10/22/2012	Southern Outfall	Al	2.4 mg/L	.75 mg/L
10/22/2012	Northern Outfall	Al	2.3 mg/L	.75 mg/L
03/02/2011	Southern Outfall	Al	1.1 mg/L	.75 mg/L
03/02/2011	Northern Outfall	Al	1.1 mg/L	.75 mg/L
02/14/2011	Southern Outfall	Al	4.2 mg/L	.75 mg/L
02/14/2011	Northern Outfall	Al	1.2 mg/L	.75 mg/L

E. Confirmed Discharge of Storm Water Containing Concentrations of Zn in Excess of Proposed EPA Multi-Sector Benchmark Values

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
11/28/2012	Southern Outfall	Zn	0.46 mg/L	.117 mg/L
11/28/2012	Northern Outfall	Zn	0.29 mg/L	.117 mg/L
10/22/2012	Southern Outfall	Zn	0.19 mg/L	.117 mg/L
03/02/2011	Southern Outfall	Zn	0.22 mg/L	.117 mg/L
03/02/2011	Northern Outfall	Zn	0.25 mg/L	.117 mg/L
02/14/2011	Southern Outfall	Zn	0.27 mg/L	.117 mg/L
02/14/2011	Northern Outfall	Zn	0.49 mg/L	.117 mg/L

F. Confirmed Discharge of Storm Water Containing Concentrations of Pb in Excess of Proposed EPA Multi-Sector Benchmark Values

Date	Outfall Name	Parameter	Concentration in Discharge	EPA Benchmark Value
10/13/2009	Northern Outfall	Pb	12.0 mg/L	0.0816 mg/L

CSPA's investigation, including its review of NRWS'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 NRWS has not implemented BAT and BCT at the Facility for its discharges of TSS, SC, Fe, Al, Zn, Pb and other pollutants. NRWS was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations, but

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instead NRWS 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 NRWS has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 13, 2009. These discharges are particularly troublesome in light of the fact that NRWS has been 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 is even more disturbed by the fact that lead is listed as a chemical known to the State of California to cause cancer, or birth defects or other reproductive harm under the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since October 6, 2009, 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 NRWS has discharged storm water containing impermissible levels of TSS, SC, Fe, Al, Zn, Pb and other pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit 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, NRWS is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 6, 2009.

## **2. NRWS 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 NRWS has failed to develop and implement an adequate Monitoring & Reporting as set forth in greater detail below:

### **A. NRWS 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)

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<sup>15</sup> Publicly available records maintained by the RWQCB confirm that NRWS was warned about exceedances of EPA Benchmark levels as early as February 17, 2012.

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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.” Facilities designated under SIC 4953 that accept hazardous waste, such as NRWS, are also required to sample for Fe, ammonia (“NH<sub>3</sub>”), magnesium (“Mg”), chemical oxygen demand (“COD”), arsenic (“As”), cadmium (“Cd”), cyanide (“Cn”), lead (“Pb”), mercury (“Hg”), selenium (“Se”), and silver (“Ag”). 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.” NRWS 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, NRWS is subject to penalties for violations of the General Permit and the Act since October 6, 2009.

B. NRWS 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 NRWS 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 NRWS.

Moreover, NRWS has failed to consistently collect and analyze storm water samples for Cu, Al, Zn, Hg, Mg, NH<sub>3</sub>, COD, As, Cd, Cn, Se, and Ag throughout the past five (5) years. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NRWS is subject to penalties for violations of the General Permit and the Act since October 6, 2009.

C. NRWS has Failed to Collect Storm Water Samples During the First Hour of the First Storm Event of the Wet Season Each Year

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.” The “Wet Season” includes October 1<sup>st</sup> through May 30<sup>th</sup> of each calendar year. In the “2010-2011 Annual Report for Storm Water Discharges Associated with Industrial Activities” that NRWS filed with the RWQCB, the first reported storm water sample that NRWS collected from the Facility and analyzed was February 14, 2011. Based on its review of publicly available documents, CSPA is informed and believes that there were numerous qualifying storm events that produced discharges from the Facility during that Wet Season prior to February 14, 2011. Similarly, based on publicly available data, CSPA is informed and believes that the October 10, 2011 storm water sample reported as the first event on the 2010-2011 Annual Report. Each of these failures constitutes a separate and ongoing violation of the

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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, NRWS is subject to penalties for violations of the General Permit and the Act since October 6, 2009.

### **3. NRWS 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 NRWS has not implemented BAT and BCT at the Facility for its discharges of TSS, SC, Fe, Al, Zn, Pb, 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, NRWS 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 NRWS 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. NRWS has failed to implement such measures adequately.

NRWS was required to have implemented BAT and BCT by no later than October 1, 1992, or the start of its operations. NRWS 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. NRWS is subject to penalties for violations of the General Permit and the Act since October 6, 2009.

### **4. NRWS 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

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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 NRWS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. NRWS has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. NRWS 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. NRWS is subject to penalties for violations of the General Permit and the Act occurring since October 6, 2009.

## **5. NRWS 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.

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As indicated above, NRWS 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, NRWS 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, NRWS has failed to do so.

Publicly available documents show that NRWS had been aware of high levels of these pollutants since at least October 13, 2009. 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). NRWS has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since October 13, 2009, and will continue to be in violation every day that NRWS 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, NRWS is therefore subject to penalties for each violation of the General Permit and the Act occurring since October 6, 2009.

## **6. NRWS 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 NRWS 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 NRWS for failing to submit annual reports.<sup>17</sup> As indicated above, NRWS has failed to comply with the Permit and the Act consistently for at least the past five years. NRWS 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. NRWS's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. NRWS is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since October 6, 2009.

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

<sup>17</sup> Publicly available records maintained by the RWQCB confirm that the RWQCB sent NRWS 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.

Notice of Violation and Intent To File Suit  
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### **III. Persons Responsible for the Violations**

CSPA puts Northern Recycling & Waste Services and Mr. Douglas Speicher 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 Northern Recycling & Waste Services and Mr. Douglas Speicher 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 Northern Recycling & Waste Services and Mr. Douglas Speicher 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.

### **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 Northern Recycling & Waste Services and Mr. Douglas Speicher and their agents for the above-referenced violations upon the expiration of the 60-day notice period. In

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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)

Notice of Violation and Intent To File Suit  
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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". The signature is written in a cursive style with a large, looping initial "B".

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**

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

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

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

Pamela Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Northern Recycling & Waste Services  
920 American Way  
Paradise, CA 95967

Douglas Speicher, General Manager  
Northern Recycling & Waste Services  
P.O. Box 2529  
Paradise, CA 95967

**ATTACHMENT A**

**Notice of Intent to File Suit  
Northern Recycling & Waste Services  
Significant Rain Events, October 6, 2009 – May 7, 2014**

May 1, 2009	January 26, 2010	October 17, 2010
May 2, 2009	January 30, 2010	October 22, 2010
May 3, 2009	February 4, 2010	October 23, 2010
May 4, 2009	February 5, 2010	October 24, 2010
June 3, 2009	February 6, 2010	October 30, 2010
June 4, 2009	February 8, 2010	November 7, 2010
September 13, 2009	February 9, 2010	November 9, 2010
September 14, 2009	February 11, 2010	November 10, 2010
October 13, 2009	February 12, 2010	November 19, 2010
October 14, 2009	February 21, 2010	November 20, 2010
October 19, 2009	February 24, 2010	November 21, 2010
November 5, 2009	February 26, 2010	November 23, 2010
November 6, 2009	March 2, 2010	November 27, 2010
November 11, 2009	March 3, 2010	December 2, 2010
November 17, 2009	March 8, 2010	December 3, 2010
November 20, 2009	March 9, 2010	December 4, 2010
November 21, 2009	March 10, 2010	December 5, 2010
November 27, 2009	March 12, 2010	December 6, 2010
December 11, 2009	March 24, 2010	December 8, 2010
December 12, 2009	March 29, 2010	December 9, 2010
December 13, 2009	March 30, 2010	December 10, 2010
December 14, 2009	March 31, 2010	December 14, 2010
December 16, 2009	April 2, 2010	December 17, 2010
December 20, 2009	April 4, 2010	December 18, 2010
December 21, 2009	April 5, 2010	December 19, 2010
December 27, 2009	April 11, 2010	December 20, 2010
December 29, 2009	April 12, 2010	December 21, 2010
December 30, 2009	April 13, 2010	December 22, 2010
January 1, 2010	April 20, 2010	December 25, 2010
January 12, 2010	April 21, 2010	December 26, 2010
January 13, 2010	April 27, 2010	December 28, 2010
January 17, 2010	April 28, 2010	December 29, 2010
January 18, 2010	May 10, 2010	January 1, 2011
January 19, 2010	May 17, 2010	January 2, 2011
January 20, 2010	May 19, 2010	January 11, 2011
January 21, 2010	May 25, 2010	January 13, 2011
January 22, 2010	May 27, 2010	January 30, 2011
January 23, 2010	May 28, 2010	February 14, 2011
January 24, 2010	June 4, 2010	February 15, 2011
January 25, 2010	August 29, 2010	February 16, 2011

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

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

California Sportfishing Protection Alliance

(b) County of Residence of First Listed Plaintiff San Joaquin (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert J. Tuerck (Jackson & Tuerck, 429 Main Street, Ste. C, P.O. Box 148, Quincy, CA 95971, 530-283-0406)

DEFENDANTS

NORTHERN RECYCLING & WASTE SERVICES and DOUGLAS SPEICHER

County of Residence of First Listed Defendant Butte (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Rights, and Labor.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Federal Water Pollution Control Act, 33 U.S.C. sections 1251 et seq. and 1365.

Brief description of cause: Citizen action to enforce requirements of a federal storm water discharge permit.

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMANDS, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

07/07/2014

Robert J. Tuerck

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE