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7 Attorneys for Plaintiff
8 GLOBAL COMMUNITY MONITOR

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 GLOBAL COMMUNITY MONITOR, a
non-profit corporation,
12 Plaintiff,
13 vs.
14 CUSTOM ALLOY SCRAP SALES, INC., a
corporation,
15 Defendant.
16

Case No. CO9-04186 MHP
[PROPOSED] CONSENT DECREE

17 **WHEREAS**, Plaintiff Global Community Monitor (hereinafter “GCM” or “Plaintiff”) is a
18 non-profit corporation dedicated to the protection, enhancement and restoration of waters of the
19 State of California, including waters adjacent to urbanized areas of San Francisco Bay;

20 **WHEREAS**, Defendant Custom Alloy Scrap Sales, Inc. (“CASS”) is a corporation
21 organized under the laws of the State of California;

22 **WHEREAS**, Defendant owns and operates an aluminum smelting and metal recycling
23 facility located at 2730 Peralta Street in Oakland, California (the “Facility”), where Defendant
24 engages in metal collection, storage, sorting, and baling, aluminum recycling and forging, vehicle
25 maintenance and repair, and related activities;

26 **WHEREAS**, Defendant discharges storm water at the Facility pursuant to State Water
27 Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge
28

1 Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges
2 of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter,
3 the “General Permit”). A map of the Facility is attached hereto as Exhibit 1 and incorporated by
4 reference;

5 **WHEREAS**, on or about June 18, 2009, GCM served Defendant, the United States Attorney
6 General, the national and Region IX offices of the United States Environmental Protection Agency,
7 the State Water Resources Control Board (“State Board”) and the Regional Water Quality Control
8 Board – San Francisco Bay Region (“Regional Board”) with a Notice of Violation and Intent to File
9 Suit (“60-Day Notice”) under Sections 505(a)(1) and (f) of the Federal Water Pollution Control Act
10 (the “Act” or “Clean Water Act”), 33 U.S.C. § 1365(a)(1) and (f);

11 **WHEREAS**, the 60-Day Notice alleged that Defendant has violated and continues to violate
12 Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. § 1311(a) and 1342(p), due to
13 discharges of polluted storm water from the Facility in violation of the General Permit;

14 **WHEREAS**, on September 10, 2009, GCM filed a complaint against Defendant in the
15 United States District Court for the Northern District of California, entitled *Global Community*
16 *Monitor v. Custom Alloy Scrap Sales, Inc* (Case No. C-09-04186 MHP) (hereinafter “Complaint” or
17 “Action”). A true and correct copy of the Complaint as well as the 60-Day Notice is attached hereto
18 as Exhibit 2;

19 **WHEREAS**, CASS previously installed several storm water treatment units, including two
20 Stormwater Rx units, and since receiving GCM’s notice and the filing of the Complaint, CASS has
21 installed significant roofing over large portions of the Facility in order to eliminate exposure of
22 industrial activities to storm water at portions of the Facility;

23 **WHEREAS**, GCM and Defendant (hereinafter, collectively referred to as the “Settling
24 Parties”) have agreed that it is in the parties’ mutual interest to enter into a Consent Decree setting
25 forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without
26 further proceedings;
27

28 **WHEREAS**, after agreement of the parties to this proposed Consent Decree, the proposed

1 Consent Decree will be submitted to the United States Department of Justice and the national and
2 Region IX offices of the United States Environmental Protection Agency for the statutory review
3 period pursuant to 33 U.S.C. § 1365(c) at least 45 days prior to the submittal of this Consent Decree
4 to the Court for entry;

5 **WHEREAS**, all actions taken by the Settling Parties pursuant to this Consent Decree shall
6 be taken in compliance with all applicable federal, state and local rules and regulations;

7 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
8 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

9 1. CASS agrees, to the extent it has not already done so, to operate the Facility in
10 compliance with the applicable requirements of the General Permit and Clean Water Act. If,
11 because of any other court order, change in law, and/or upon the effective date of an amended or
12 revised General Permit, CASS agrees to comply with the controlling law, including revisions to the
13 General Permit as authorized by law.
14

15 2. In order to prevent storm water from coming into contact with contaminants at the
16 Facility and/or to prevent the discharge of waste or contaminated storm water from the Facility into
17 the waters of the State and of the United States, CASS shall implement additional and/or different
18 structural and non-structural best management practices (“BMPs”) as described more fully below.
19 CASS shall maintain all structural BMPs at the site in good operating condition. The effectiveness
20 of the BMPs shall be measured by comparing analytical results of storm water discharge samples
21 with the “Levels of Concern” set forth in Paragraph 15. Exceeding Levels of Concern shall cause
22 the initiation of actions as discussed below.

23 **IMPROVEMENTS TO THE FACILITY’S**
24 **STORM WATER POLLUTION CONTROL MEASURES**

25 3. CASS agrees to maintain the roofing installed over and around the Facility’s
26 Maintenance Building and Public Work Area. CASS shall maintain the roofing to assure that there
27 are no gaps between the Maintenance Building roof and the new roof that would allow any
28 stormwater potentially to fall in the covered areas. CASS agrees that the berms surrounding the

1 work areas beneath the new roof will remain in place.

2 4. Not later than October 1, 2010, CASS agrees to install roofing or an awning over the
3 loading dock area located on the Poplar Street side of the Main Yard designed to prevent storm
4 water from falling onto the loading dock area.

5 5. CASS agrees to maintain the existing storm water treatment units installed in the
6 Furnace/Gardener Yard, Main Yard, and New Yard. With respect to the two Stormwater Rx units
7 installed in the Main Yard and New Yard, CASS agrees to continue its actions with Stormwater Rx
8 LLC to review and, where feasible, improve the treatment performance of the two units. If the
9 average analytical results for all samples of a given pollutant taken of effluent from the Stormwater
10 Rx units in any single rainy season during the term of this Agreement indicate pollutants at levels in
11 excess of the Levels of Concern described in Paragraph 15 below, CASS shall engage Stormwater
12 Rx LLC to review the data and Stormwater Rx units' performance, analyze the feasibility of
13 additional modifications or additions to the units designed to further reduce pollutant levels in the
14 effluent discharged from the units, and propose an implementation schedule for any feasible
15 modifications or additions to the units. CASS agrees to implement any feasible modifications or
16 additions to the units recommended by Stormwater Rx LLC. The review and recommendations by
17 Stormwater Rx LLC required by this paragraph shall be included in the Memorandum required by
18 Paragraph 16 below.

19 6. CASS agrees to minimize tracking of sediment and dirt onto 26th Street resulting
20 from the operation of trucks utilizing the rear gate of the Main Yard. Prior to October 1, 2010,
21 CASS agrees to spread appropriately sized gravel on the unpaved portion of that property across the
22 street from the Main Yard's rear gate. The location, size and depth of the gravel shall be designed to
23 reduce or eliminate tracking of dirt and dust from that area onto 26th Street and the Facility's rear
24 gate.

25 7. CASS agrees to limit the use of the employee parking lot adjacent to the north side of
26 the Maintenance Building to parking only. CASS agrees to conduct frequent inspections of the
27 parking lot to ensure that no vehicles remain on site for more than a few days.
28

1 Memorandum shall be implemented as soon as practicable, but not later than sixty (60) days from
2 the due date of the Memorandum, except where 1) structural changes require longer than sixty (60)
3 days to complete; 2) weather-related conditions render immediate implementation infeasible; or 3)
4 the Settling Parties agree in writing to defer implementation of specific measures in order to
5 effectively meet and confer in accordance with Paragraph 27. Within thirty (30) days of
6 implementation, CASS's SWPPP shall be amended to include all additional BMP measures
7 designated in the Memorandum.

8 18. Upon receipt of the Memorandum, GCM may review and comment on any additional
9 measures. If requested by GCM within thirty (30) days of receipt of such Memorandum, GCM and
10 CASS shall meet and confer and conduct a site inspection within ninety (90) days after the receipt of
11 the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed
12 measures to improve the quality of the Facility's storm water to levels at or below the Levels of
13 Concern. If within thirty (30) days of the parties meeting and conferring, the parties do not agree on
14 the adequacy of the additional measures set forth in the Memorandum, the Settling Parties may
15 agree to seek a settlement conference before a Mediator assigned to this action by the District Court
16 pursuant to Paragraph 27 below. If the Settling Parties fail to reach agreement on additional
17 measures, GCM may bring a motion before the District Court Judge consistent with Paragraph 27
18 below. If GCM does not request a meet and confer regarding the Memorandum within the thirty
19 (30) day comment period provided for in this paragraph, GCM shall waive any right to object to
20 such Memorandum pursuant to this Agreement.

21 19. Any concurrence or failure to object by GCM with regard to the reasonableness of
22 any additional measures required by this Agreement or implemented by CASS shall not be deemed
23 to be an admission of the adequacy of such measures should they fail to bring the Facility's storm
24 water within the General Permit's best available technology requirements.

25 20. In addition to any site inspections conducted as part of meeting and conferring on
26 additional measures set forth above, CASS shall permit representatives of GCM to perform one (1)
27 additional site visit to the Facility during normal daylight business hours during the term of this
28

1 Agreement; provided that GCM provides CASS with at least one week prior notice via e-mail and
2 telephone using the contact information listed in Paragraph 37 below.

3 21. Within thirty (30) days of the Effective Date of this Consent Decree, CASS shall
4 amend the Facility Storm Water Pollution Prevention Plan (“SWPPP”) to incorporate all changes,
5 improvements and best management practices set forth in this Consent Decree. A copy of the
6 amended SWPPP shall be provided to GCM within seven (7) business days of completion.

7 22. During the life of this AGREEMENT, CASS shall provide GCM with a copy of all
8 documents submitted to the Regional Board or the State Board concerning the Facility’s storm water
9 discharges, including but not limited to all documents and reports submitted to the Regional Board
10 and/or State Board as required by the General Permit. Such documents and reports shall be mailed
11 to GCM contemporaneously with submission to such agency. CASS also shall provide GCM a copy
12 of all documents referenced in this agreement, including but not limited to logs or analyses, within
13 fourteen (14) days of a written request (via e-mail or regular mail) by GCM.

14 **MITIGATION FEES AND COSTS**

15 23. As mitigation of the violations alleged in GCM’s Notice and Complaint, CASS shall
16 pay the sum of Twenty-Two Thousand dollars (\$22,500.00) (the “Payment”) to the Rose Foundation
17 for Communities and the Environment (“Rose Foundation”). The Payment shall be conditioned on
18 the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted
19 directly or indirectly to GCM or CASS, (b) projects funded by the Payment shall be designed to
20 benefit water quality in the San Francisco Bay or its tributaries, and (c) projects funded by the
21 Payment shall be designed to benefit water quality within 60 miles of the Facility. Within fifteen
22 (15) days of the Effective Date of the Consent Decree, CASS shall make the Payment to the Rose
23 Foundation.

24 24. CASS shall reimburse GCM in the total amount of \$56,500.00 to defray GCM’s
25 investigation fees and costs, expert fees and costs, reasonable attorneys’ fees, and all other costs
26 incurred as a result of investigating the activities at the Facility, bringing these matters to CASS’s
27 attention, and negotiating a resolution of this action in the public interest. Such payment shall be
28

1 made within fifteen (15) days of the Effective Date of the Consent Decree.

2 25. Unless otherwise ordered by the Court pursuant to the terms of this Consent Decree,
3 none of the parties will be reimbursed for monitoring CASS's compliance with this Consent Decree.
4 Monitoring activities include site inspections, review of water quality sampling reports, review of
5 annual reports, discussion with representatives of CASS concerning potential changes to compliance
6 requirements, preparation and participation in meet and confer sessions and mediation, and water
7 quality sampling.

8 **DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

9 26. The Effective Date shall be the date this Consent Decree is approved and entered by
10 the Court. The Consent Decree shall continue in effect until September 30, 2012. This Court shall
11 retain jurisdiction in this matter from the Effective Date through the date of its termination, for the
12 purposes of enforcing the terms of this Consent Decree. In addition, following the date of
13 termination of this Decree, this Court shall retain jurisdiction for the purposes of enforcing this
14 Decree for any disputes which arose prior to the termination of the Consent Decree.

15 27. Except as specifically noted herein, any disputes with respect to any of the provisions
16 of this Consent Decree shall be resolved through the following procedure. The parties agree to first
17 meet and confer to resolve any dispute arising under this Consent Decree. The Parties shall meet
18 and confer within fourteen (14) days of receiving written notification from the other Party of a
19 request for a meeting to determine the merits of the dispute or whether a violation has occurred and
20 to develop a mutually agreed upon plan, including implementation dates, to resolve the violation or
21 dispute. In the event that such disputes cannot be resolved through this meet and confer process or
22 the Parties fail to meet and confer, the Parties agree to request a settlement meeting before a
23 magistrate judge of the District Court or a Court-appointed mediator. In the event that the Parties
24 cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge or
25 mediator, the Parties may submit the dispute via motion to the District Court Judge. The prevailing
26 party may seek recovery of reasonable attorney fees and costs incurred in bringing any such motion,
27 and such fees and costs shall be awarded, pursuant to the provisions set forth in the Section 505(d)
28

1 of the Clean Water Act, 33 U.S.C. § 1365(d) or any other legal authority, and applicable case law
2 interpreting such provisions. The parties expressly consent to have all disputes arising from this
3 Consent Decree resolved by the District Court, and the parties waive any appeal or judicial review
4 of a decision entered by the District Court Judge made within the parameters of this Consent Decree.

5 **MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

6 28. In consideration of the above, and except as otherwise provided by this Consent
7 Decree, the Settling Parties hereby forever and fully release each other and their respective
8 successors, assigns, officers, agents, employees, and all persons, firms and corporations having an
9 interest in them, from any and all claims and demands of any kind, nature, or description
10 whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at
11 law or in equity, which the Settling Parties have against each other arising from GCM's allegations
12 and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the
13 Termination Date of this Consent Decree.

14 29. The Settling Parties acknowledge that they are familiar with section 1542 of the
15 California Civil Code, which provides:

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

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

24 30. The Parties enter into this Consent Decree for the purpose of avoiding prolonged and
25 costly litigation. Nothing in this Consent Decree shall be construed as, and CASS expressly does
26 not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall
27 compliance with this Consent Decree constitute or be construed as an admission by CASS of any
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1 fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not
2 diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this
3 Consent Decree.

4 31. GCM shall submit this Consent Decree to the U.S. EPA and the U.S. Department of
5 Justice (hereinafter, the “Agencies”) via certified mail, return receipt requested, within five (5) days
6 after the Effective Date of this Consent Decree for review consistent with 40 C.F.R. § 135.5. The
7 Agencies’ review period expires forty-five (45) days after receipt of the Consent Decree by both
8 Agencies, as evidenced by the return receipts, copies of which shall be provided to CASS upon
9 receipt by GCM. In the event that the Agencies comment negatively on the provisions of this
10 Consent Decree, GCM and CASS agree to meet and confer to attempt to resolve the issue(s) raised
11 by the Agencies. If GCM and CASS are unable to resolve any issue(s) raised by the Agencies in
12 their comments, GCM and CASS agree to expeditiously seek a settlement conference with the Judge
13 assigned to the Complaint in this matter or Court-appointed mediator to resolve the issue(s).

14 **MISCELLANEOUS PROVISIONS**

15 32. The Consent Decree may be executed in one or more counterparts which, taken
16 together, shall be deemed to constitute one and the same document.

17 33. In the event that any of the provisions of this Consent Decree is held by a court to be
18 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

19 34. The language in all parts of this Consent Decree, unless otherwise stated, shall be
20 construed according to its plain and ordinary meaning.

21 35. The undersigned are authorized to execute this Consent Decree on behalf of their
22 respective parties and have read, understood and agreed to all of the terms and conditions of this
23 Consent Decree.

24 36. All agreements, covenants, representations and warranties, express or implied, oral or
25 written, of the Parties concerning the subject matter of this Consent Decree are contained herein.

26 37. Any notices or documents required or provided for by this Consent Decree or related
27 thereto that are to be provided to GCM pursuant to this Consent Decree shall be e-mailed and sent
28

1 by U.S. Mail, postage prepaid, and addressed as follows:

2 Denny Larson
3 Global Community Monitor
4 P.O. Box 1784
5 El Cerrito, CA 94530
6 denny@gcmonitor.org

7 With copies sent to:

8 Michael R. Lozeau
9 Lozeau Drury LLP
10 1516 Oak Street, Suite 216
11 Alameda, CA 94501
12 michael@lozeaudrury.com

13 Any notices or documents required or provided for by this Consent Decree or related thereto that are
14 to be provided to CASS pursuant to this Consent Decree shall be sent by e-mail and U.S. Mail,
15 postage prepaid, and addressed as follows:

16 Edward Kangeter
17 Custom Alloy Scrap Sales, Inc.
18 2730 Peralta Street
19 Oakland, CA 94607
20 cass@customalloy.com

21 With copies sent to:

22 Ruben Castellon
23 Castellon & Funderburk LLP
24 3200 Danville Boulevard, Suite 100
25 Alamo, CA 94507
26 rcastellon@candffirm.com

27 Each party shall notify the other parties of any change in their contact information within 14 days of
28 any such change.

38. Signatures of the Parties transmitted by facsimile or by e-mail shall be deemed
binding.

39. No Party shall be considered to be in default in the performance of any of its
obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any act
of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force

1 Majeure event does not include normal inclement weather, such as anything less than or equal to a
2 100 year/24 hour storm event or inability to pay. Any Party seeking to rely upon this paragraph
3 shall have the burden of establishing that it could not reasonably have been expected to avoid, and
4 which by exercise of due diligence has been unable to overcome, the Force Majeure.

5 40. If for any reason the Court should decline to approve this Consent Decree in the form
6 presented, the Parties shall agree to work together to modify the Consent Decree within 30 days so
7 that it is acceptable to the Court.

8 41. Nothing in this Consent Decree shall preclude CASS from implementing protective
9 measures for storm water drainage in excess of the protections set forth herein.

10 42. The settling Parties hereto enter into this Consent Decree, Order and Final Judgment
11 and submit it to the Court for its approval and entry as a final judgment.

12
13 Dated: 6/4/10

Global Community Monitor

14
15 By: 
16 Denny Larson, Executive Director

17 Dated: 4/7/10

Custom Alloy Scrap Sales, Inc.

18
19 By: 
20 Chal Sulpizio, President

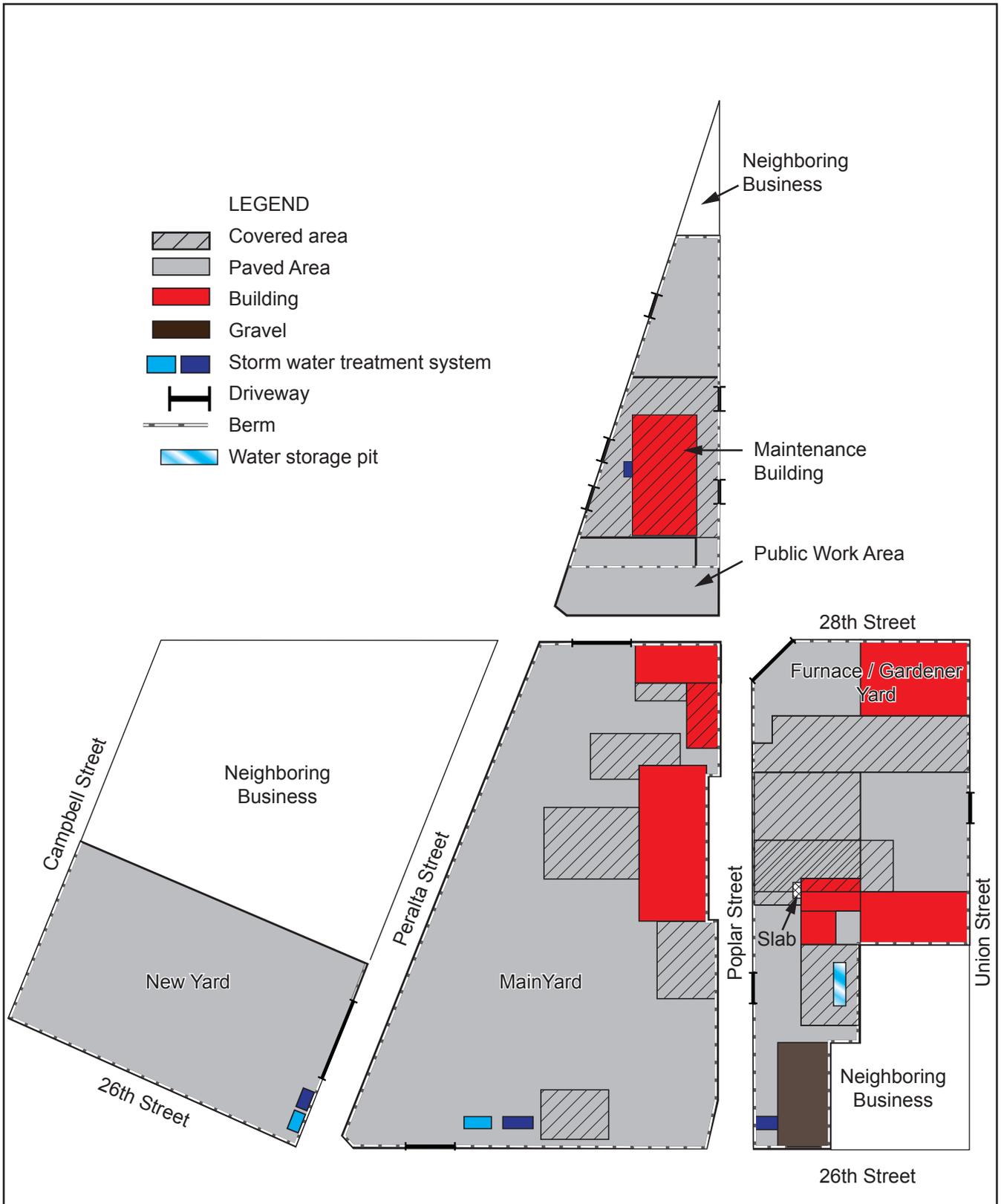
21 **APPROVED AND SO ORDERED.**

22
23 Date: _____

UNITED STATES DISTRICT COURT JUDGE

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EXHIBIT 1



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FACILITY DIAGRAM CASS, Inc. 2730 Peralta Street Oakland, California		
By: JH	Date: 11/13/09	Project No. 15301.000
AMEC Geomatrix		Figure 1

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EXHIBIT 2

E-filing

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7 Attorneys for Plaintiff
GLOBAL COMMUNITY MONITOR

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 GLOBAL COMMUNITY MONITOR, a
non-profit corporation,

12 Plaintiff,

13 vs.

14 CUSTOM ALLOY SCRAP SALES,
INC., a corporation,

15 Defendant.
16
17

Case No.

C09-04186

MHP

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

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

ORIGINAL
FILED
SEP 10 2009
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND
ADR

18 GLOBAL COMMUNITY MONITOR ("GCM"), a California non-profit corporation,
19 by and through its counsel, hereby alleges:

20 **I. JURISDICTION AND VENUE**

21 1. This is a civil suit brought under the citizen suit enforcement provisions of the
22 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or
23 "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter
24 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
25 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
26 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
27 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
28 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

1 2. On or about June 18, 2009, Plaintiff provided notice of Defendant’s violations
2 of the Act, and of its intention to file suit against Defendant, to the Administrator of the
3 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region
4 IX; the Executive Director of the State Water Resources Control Board (“State Board”); the
5 Executive Officer of the California Regional Water Quality Control Board, San Francisco
6 Bay Region (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. §
7 1365(b)(1)(A). A true and correct copy of GCM’s notice letter is attached as Exhibit A, and
8 is incorporated by reference.

9 3. More than sixty days have passed since notice was served on Defendant and
10 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
11 neither the EPA nor the State of California has commenced or is diligently prosecuting a
12 court action to redress the violations alleged in this complaint. This action’s claim for civil
13 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,
14 33 U.S.C. § 1319(g).

15 4. Venue is proper in the Northern District of California pursuant to Section
16 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
17 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in
18 Oakland, California, because the source of the violations is located within Alameda County.

19 **II. INTRODUCTION**

20 5. This complaint seeks relief for Defendant’s discharges of polluted storm water
21 and non-storm water pollutants from Defendant CUSTOM ALLOY SCRAP SALES, INC.’s
22 (“CASS” or “Defendant”) metal recycling facility located at 2730 Peralta Street in Oakland,
23 California (“the Facility”) in violation of the Act and National Pollutant Discharge
24 Elimination System (“NPDES”) Permit No. CAS000001, State Water Resources Control
25 Board Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-
26 12-DWQ and Water Quality Order No. 97-03-DWQ (hereinafter “the Order” or “Permit” or
27 “General Permit”). Defendant’s violations of the discharge, treatment technology,
28 monitoring requirements, and other procedural and substantive requirements of the Permit

1 and the Act are ongoing and continuous.

2 6. The failure on the part of persons and facilities such as Defendant and its
3 industrial facility to comply with storm water requirements is recognized as a significant
4 cause of the continuing decline in water quality of the San Francisco Bay and other area
5 receiving waters. The general consensus among regulatory agencies and water quality
6 specialists is that storm pollution amounts to more than half of the total pollution entering
7 the aquatic environment each year. In most areas of Alameda County, storm water flows
8 completely untreated through storm drain systems or other channels directly to the waters of
9 the United States.

10 **III. PARTIES**

11 7. Plaintiff GLOBAL COMMUNITY MONITOR (“GCM”) is a non-profit
12 public benefit corporation organized under the laws of the State of California with its main
13 office in El Cerrito, California. GCM has approximately 70 members who live, recreate and
14 work in and around waters of the State of California, including the San Francisco Bay, as
15 well is in the vicinity of Defendant’s Facility. GCM is dedicated to the preservation,
16 protection, and defense of the environment, particularly with respect to areas and waters near
17 industrial communities. To further these goals, GCM actively seeks federal and state agency
18 implementation of the Act and other laws and, where necessary, directly initiates
19 enforcement actions on behalf of itself and its members.

20 8. Members of GCM reside in and around the San Francisco Bay (the “Bay”) and
21 enjoy using the Bay for recreation and other activities. Members of GCM use and enjoy the
22 waters into which Defendant has caused, is causing, and will continue to cause, pollutants to
23 be discharged. Members of GCM use those areas to fish, sail, boat, kayak, swim, bird
24 watch, view wildlife and engage in scientific study including monitoring activities, among
25 other things. Defendant’s discharges of pollutants threaten or impair each of those uses or
26 contribute to such threats and impairments. Thus, the interests of GCM’s members have
27 been, are being, and will continue to be adversely affected by Defendant’s failure to comply
28 with the Clean Water Act and the Permit. The relief sought herein will redress the harms to

1 Plaintiff caused by Defendant's activities.

2 9. Continuing commission of the acts and omissions alleged above will irreparably
3 harm Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy
4 at law.

5 10. Defendant CUSTOM ALLOY SCRAP SALES, INC. is a corporation
6 organized under the laws of California. Defendant CASS operates a metal recycling facility
7 in Oakland, California.

8 **IV. STATUTORY BACKGROUND**

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

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

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

23 14. The State Board elected to issue a statewide general permit for industrial storm
24 water discharges. The State Board issued the General Permit on or about November 19,
25 1991, modified the General Permit on or about September 17, 1992, and reissued the
26 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
27 Act, 33 U.S.C. § 1342(p).

28 15. In order to discharge storm water lawfully in California, industrial dischargers

1 must comply with the terms of the General Permit or have obtained and complied with an
2 individual NPDES permit. 33 U.S.C. § 1311(a).

3 16. The General Permit contains several prohibitions. Effluent Limitation B(3) of
4 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
5 discharges through implementation of the Best Available Technology Economically
6 Achievable (“BAT”) for toxic and nonconventional pollutants and the Best Conventional
7 Pollutant Control Technology (“BCT”) for conventional pollutants. BAT and BCT include
8 both nonstructural and structural measures. General Permit, Section A(8). Discharge
9 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-
10 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
11 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to
12 any surface or ground water that adversely impact human health or the environment.
13 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that
14 cause or contribute to an exceedance of any applicable water quality standards contained in
15 Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

16 17. The General Permit requires that facility operators “investigate the facility to
17 identify all non-storm water discharges and their sources. As part of this investigation, all
18 drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm
19 drain system. All non-storm water discharges shall be described. This shall include the
20 source, quantity, frequency, and characteristics of the non-storm water discharges and
21 associated drainage area.” Section A(6)(a)(v). The General Permit authorizes certain non-
22 storm water discharges providing that the non-storm water discharges are in compliance with
23 Regional Board requirements; that the non-storm water discharges are in compliance with
24 local agency ordinances and/or requirements; that BMPs are included in the SWPPP to (1)
25 prevent or reduce the contact of non-storm water discharges with significant materials or
26 equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm
27 water discharges; that the non-storm water discharges do not contain significant quantities of
28 pollutants; and that the monitoring program includes quarterly visual observations of each

1 non-storm water discharge and its sources to ensure that BMPs are being implemented and
2 are effective (Special Conditions D). Section B(3) of the General Permit requires
3 dischargers to conduct visual observations of all drainage areas for the presence of non-
4 storm water discharges, to observe the non-storm water discharges, and maintain records of
5 such observations.

6 18. In addition to absolute prohibitions, the General Permit contains a variety of
7 substantive and procedural requirements that dischargers must meet. Facilities discharging,
8 or having the potential to discharge, storm water associated with industrial activity that have
9 not obtained an individual NPDES permit must apply for coverage under the State's General
10 Permit by filing a Notice of Intent to Comply ("NOI"). The General Permit requires existing
11 dischargers to have filed their NOIs before March 30, 1992.

12 19. EPA has established Parameter Benchmark Values as guidelines for
13 determining whether a facility discharging industrial storm water has implemented the
14 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
15 Parameter Benchmark Values for the following parameters, among others: pH – 6.0-9.0
16 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, total
17 organic carbon ("TOC") – 110 mg/L, chemical oxygen demand ("COD") – 120 mg/L,
18 aluminum – 0.75 mg/L, zinc – 0.117 mg/L, iron – 1 mg/L, copper – 0.0636 mg/L, lead –
19 0.0816 mg/L, and nickel – 1.417 mg/L. The State Board has proposed a Benchmark Value
20 for electrical conductance of 200 µmhos/cm.

21 20. Dischargers must develop and implement a Storm Water Pollution Prevention
22 Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures
23 that comply with the BAT and BCT standards. The General Permit requires that an initial
24 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
25 among other requirements, identify and evaluate sources of pollutants associated with
26 industrial activities that may affect the quality of storm and non-storm water discharges from
27 the facility and identify and implement site-specific best management practices ("BMPs") to
28 reduce or prevent pollutants associated with industrial activities in storm water and

1 authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must
2 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
3 individuals and their responsibilities for developing and implementing the SWPPP (Section
4 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
5 pattern and nearby water bodies, the location of the storm water collection, conveyance and
6 discharge system, structural control measures, impervious areas, areas of actual and potential
7 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
8 handled and stored at the site (Section A(5)); a description of potential pollutant sources
9 including industrial processes, material handling and storage areas, dust and particulate
10 generating activities, and a description of significant spills and leaks, a list of all non-storm
11 water discharges and their sources, and a description of locations where soil erosion may
12 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
13 at the Facility and a description of the BMPs to be implemented at the Facility that will
14 reduce or prevent pollutants in storm water discharges and authorized non-storm water
15 discharges, including structural BMPs where non-structural BMPs are not effective (Section
16 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
17 where necessary (Section A(9),(10)).

18 21. Section C(3) of the General Permit requires a discharger to prepare and submit
19 a report to the Regional Board describing changes it will make to its current BMPs in order
20 to prevent or reduce any pollutant in its storm water discharges that is causing or
21 contributing to an exceedance of water quality standards. Once approved by the Regional
22 Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report
23 must be submitted to the Regional Board no later than 60 days from the date the discharger
24 first learns that its discharge is causing or contributing to an exceedance of an applicable
25 water quality standard. Section C(4)(a).

26 22. Section C(11)(d) of the General Permit's Standard Provisions requires
27 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
28 Section A(9) of the General Permit requires an annual evaluation of storm water controls

1 including the preparation of an evaluation report and implementation of any additional
2 measures in the SWPPP to respond to the monitoring results and other inspection activities.

3 23. The General Permit requires dischargers commencing industrial activities
4 before October 1, 1992 to develop and implement an adequate written monitoring and
5 reporting program no later than October 1, 1992. Existing facilities covered under the
6 General Permit must implement all necessary revisions to their monitoring programs no later
7 than August 1, 1997.

8 24. As part of their monitoring program, dischargers must identify all storm water
9 discharge locations that produce a significant storm water discharge, evaluate the
10 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
11 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
12 conduct visual observations of these discharge locations for at least one storm per month
13 during the wet season (October through May) and record their findings in their Annual
14 Report. Dischargers must also collect and analyze storm water samples from at least two
15 storms per year. Section B(5)(a) of the General Permit requires that dischargers “shall
16 collect storm water samples during the first hour of discharge from (1) the first storm event
17 of the wet season, and (2) at least one other storm event in the wet season. All storm water
18 discharge locations shall be sampled.” Section B(5)(c)(i) requires dischargers to sample and
19 analyze during the wet season for basic parameters, such as pH, total suspended solids,
20 electrical conductance, and total organic content or oil & grease, certain industry-specific
21 parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other
22 pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii)
23 requires discharges to sample for parameters dependent on a facility’s standard industrial
24 classification (“SIC”) code. Dischargers must also conduct dry season visual observations to
25 identify sources of non-storm water pollution. Section B(7)(a) indicates that the visual
26 observations and samples must represent the “quality and quantity of the facility’s storm
27 water discharges from the storm event.” Section B(7)(c) requires that “if visual observation
28 and sample collection locations are difficult to observe or sample... facility operators shall

1 identify and collect samples from other locations that represent the quality and quantity of
2 the facility's storm water discharges from the storm event.”

3 25. Section B(14) of the General Permit requires dischargers to submit an annual
4 report by July 1 of each year to the executive officer of the relevant Regional Board. The
5 annual report must be signed and certified by an appropriate corporate officer. Sections
6 B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include
7 in their annual report an evaluation of their storm water controls, including certifying
8 compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

9 26. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
10 enforcement actions against any “person,” including individuals, corporations, or
11 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
12 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
13 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up
14 \$32,500 per day per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§
15 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

16 27. The Regional Board has established water quality standards for the San
17 Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally
18 referred to as the Basin Plan.

19 28. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
20 waters shall be maintained free of toxic substances in concentrations that are lethal or that
21 produce other detrimental responses in aquatic organisms.”

22 29. The Basin Plan provides that “[s]urface waters shall not contain concentrations
23 of chemical constituents in amounts that adversely affect any designated beneficial use.”

24 30. The Basin Plan includes a narrative oil and grease standard which states that
25 “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that
26 result in a visible film or coating on the surface of the water or on objects in the water, that
27 cause nuisance, or otherwise adversely affect beneficial uses.”

28 31. The Basin Plan provides that “[w]aters shall not contain suspended material in

1 concentrations that cause nuisance or adversely affect beneficial uses.”

2 32. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor
3 raised above 8.5.”

4 33. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081
5 mg/L (4-day average) and 0.090 mg/L (1-hour average); for nickel of 0.0082 mg/L (4-day
6 average) and 0.074 mg/L (1-hour average); for copper of 0.0031 mg/L (4-day average) and
7 0.0048 mg/L (1-hour average); and for lead of 0.0081 mg/L (4-day average) and 0.210 mg/L
8 (1-hour average).

9 34. The EPA has adopted saltwater numeric water quality standards for zinc of
10 0.090 mg/L (Criteria Maximum Concentration – “CMC”) and 0.081 mg/L (Criteria
11 Continuous Concentration – “CCC”); for copper of 0.0031 mg/L (CMC) and 0.0048 mg/L
12 (CCC); and for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC).

13 **V. STATEMENT OF FACTS**

14 35. Defendant CASS operates a metal recycling facility located at 2730 Peralta
15 Street in Oakland, California. The Facility engages in the transformation of scrap aluminum
16 into aluminum ingot. The Facility falls within SIC Codes 3341, 4214, and 5051. The
17 Facility covers approximately 7 acres, spread out across several parcels divided by public
18 streets. The majority of the Facility is paved and used for transporting and storing materials
19 throughout the Facility. On information and belief, Plaintiff alleges that there are at least
20 seven large building located on the property. Plaintiff is informed and believes, and
21 thereupon alleges that metal recycling and the movement of materials is conducted both
22 inside and outside of these buildings. Metal is transported in and out of these buildings for
23 storage in the paved and unpaved areas of the Facility.

24 36. Defendant channels and collects storm water falling on the Facility through a
25 series of storm water drains that lead to at least one storm water outfall. The outfall(s)
26 collect storm water runoff from a particular area of the Facility. The Facility’s outfall(s)
27 discharge to municipal storm drains adjacent to the Facility, part the City of Oakland’s storm
28 drain system, which flows to the Bay.

1 37. The industrial activities at the site include the storage, processing, and
2 recycling of a variety of scrap metals. This includes smelting to produce secondary
3 aluminum ingot. On information and belief, Plaintiff alleges that activities also include the
4 outdoor storage, maintenance, and cleaning of equipment and other materials used to process
5 and recycle metals.

6 38. Significant activities at the site take place outside and are exposed to rainfall.
7 These activities include the storage of scrap and recycled metals, equipment used in the
8 recycling processes; the storage and use of vehicles and equipment for materials handling;
9 and the storage, handling, and disposal of waste materials. Loading and delivery of scrap
10 and recycled metals occurs outside. Trucks enter and exit the Facility directly from and to a
11 public road. Fork lifts are the primary means of moving scrap and recycled metals around
12 the unpaved storage areas of the Facility. Plaintiff is informed and believes, and thereupon
13 alleges, that metal recycling activities also occur in exposed areas at the Facility. The
14 Facility's exposed areas contain large quantities of scrap and recycled metals. Plaintiff
15 alleges on information and belief that many of the exposed surfaces at the Facility include
16 metal shavings, filings, fines, and other materials that are the result of the metal recycling
17 process. These areas are exposed to storm water and storm flows due to the lack of overhead
18 coverage, berms and other storm water controls.

19 39. Industrial machinery, heavy equipment and vehicles, including fork lifts, are
20 operated and stored at the Facility in areas exposed to storm water flows. Plaintiff is
21 informed and believes, and thereupon alleges, that such machinery and equipment leak
22 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
23 to storm water flows, and that such machinery and equipment track sediment and other
24 contaminants throughout the Facility. On information and belief, Plaintiff alleges that trucks
25 leaving the Facility track substantial amounts of material onto adjoining public roads.
26 During rain events, material that has been tracked from the Facility onto public roads during
27 dry weather is transported via storm water to storm drain channels.

28 40. Plaintiff is informed and believes, and thereupon alleges that the storm water

1 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
2 and other pollutants as it flows toward the storm water drains. Storm water and any
3 pollutants contained in that storm water entering the drains flows directly to the Facility's
4 outfalls.

5 41. The management practices at the Facility are wholly inadequate to prevent the
6 sources of contamination described above from causing the discharge of pollutants to waters
7 of the United States. The Facility lacks sufficient structural controls such as grading,
8 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
9 flows from coming into contact with these and other exposed sources of contaminants. The
10 Facility lacks sufficient structural controls to prevent the discharge of water once
11 contaminated. The Facility lacks adequate storm water pollution treatment technologies to
12 treat storm water once contaminated. The Facility lacks any controls to prevent the tracking
13 and flow of pollutants onto adjacent public roads.

14 42. Since at least October 19, 2004, Defendant has taken samples or arranged for
15 samples to be taken of storm water discharges at the Facility. The sample results were
16 reported in the Facility's annual reports submitted to the Regional Board. Defendant CASS
17 certified each of those annual reports pursuant to Sections A and C of the General Permit.

18 43. Since at least October 19, 2004, the Facility has detected pH, copper and
19 electrical conductance in storm water discharged from the Facility. Since at least March 29,
20 2006, the Facility has detected zinc in storm water discharged from the Facility. Since at
21 least April 4, 2006, the Facility has detected lead and aluminum in storm water discharged
22 from the Facility. Since at least February 26, 2007, the Facility has detected nickel in storm
23 water discharged from the Facility. Levels of these pollutants detected in the Facility's
24 storm water have been in excess of EPA's numeric parameter benchmark values and the
25 State Board's proposed value for electrical conductance. Levels of these pollutants detected
26 in the Facility's storm water have been in excess of water quality standards established in the
27 Basin Plan.

28 44. The following discharges on the following dates contained concentrations of

1 pollutants in excess of numeric water quality standards established in the Basin Plan:

2	3	4	5	6
Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
7	8	9	10	11
2/20/2008	Copper	0.16 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
2/20/2008	Copper	0.16 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
2/20/2008	Lead	0.34 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
2/20/2008	Lead	0.34 mg/L	0.210 mg/L (1-hour average) – Marine	#1 WM
2/20/2008	Nickel	0.029 mg/L	0.0082 mg/L (4-day average) – Marine	#1 WM
2/20/2008	Zinc	0.57 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
2/20/2008	Zinc	0.57 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
1/25/2008	pH	9.79	6.5 – 8.5	#1 WM
1/25/2008	Copper	0.17 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Copper	0.17 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
1/25/2008	Lead	0.23 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Lead	0.23 mg/L	0.210 mg/L (1-hour average) – Marine	#1 WM

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1/25/2008	Nickel	0.0088 mg/L	0.0082 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Zinc	0.46 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Zinc	0.46 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
1/4/2008	Copper	0.11 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
1/4/2008	Copper	0.11 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
1/4/2008	Lead	0.12 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
1/4/2008	Zinc	0.3 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
1/4/2008	Zinc	0.3 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
3/20/2007	Copper	0.32 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
3/20/2007	Copper	0.32 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
3/20/2007	Lead	0.031 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
3/20/2007	Zinc	0.53 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
3/20/2007	Zinc	0.53 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
2/26/2007	Copper	0.21 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM

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			average) – Marine	
2/26/2007	Copper	0.21 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
2/26/2007	Nickel	0.016 mg/L	0.0082 mg/L (4-day average) – Marine	#1 WM
2/26/2007	Lead	0.13 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
2/26/2007	Zinc	0.71 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
2/26/2007	Zinc	0.71 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
12/21/2006	Copper	0.068 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
12/21/2006	Copper	0.068 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
12/21/2006	Lead	0.03 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
12/21/2006	Zinc	0.42 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
12/21/2006	Zinc	0.42 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	pH	6.22	6.5 – 8.5	#1 WM
4/4/2006	Copper	0.1 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Copper	0.1 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	Zinc	0.69 mg/L	0.081 mg/L (4-day	#1 WM

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			average) – Marine	
4/4/2006	Zinc	0.69 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	pH	6.2	6.5 – 8.5	#1 WM
4/4/2006	Copper	0.17 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Copper	0.17 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	Lead	0.14 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Zinc	0.59 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Zinc	0.59 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
3/29/2006	Copper	0.025 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
3/29/2006	Copper	0.025 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
3/29/2006	Zinc	0.39 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
3/29/2006	Zinc	0.39 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
5/4/2005	pH	8.75	6.5 – 8.5	#1 WM
5/4/2005	Copper	0.0034 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
3/18/2005	pH	8.52	6.5 – 8.5	#1 WM
11/11/2004	Copper	0.017 mg/L	0.0031 mg/L (4-day	#1 WM

			average) – Marine	
11/11/2004	Copper	0.017 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
10/19/2004	pH	8.75	6.5 – 8.5	#1 WM
10/19/2004	Copper	0.0038 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM

45. The levels of aluminum in storm water detected by the Facility have exceeded the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on February 20, 2008, the level of aluminum measured by Defendant in the Facility’s discharged storm water was 1.3 mg/L. That level of aluminum is nearly twice the benchmark value for aluminum established by EPA. The Facility also has measured levels of aluminum in storm water discharged from the Facility in excess of EPA’s benchmark value of 100 mg/L on January 25, 2008; February 26, 2007; and April 4, 2006.

46. The levels of zinc in storm water detected by the Facility have exceeded the benchmark value for zinc of 0.117 mg/L established by EPA. For example, on February 20, 2008, the level of zinc measured by Defendant in the Facility’s discharged storm water was 0.57 mg/L. That level of zinc is almost five times the benchmark value for zinc established by EPA. The Facility also has measured levels of zinc in storm water discharged from the Facility in excess of EPA’s benchmark value of 0.117 mg/L on January 25, 2008; January 4, 2008; March 20, 2007; February 26, 2007; December 21, 2006; April 4, 2006; and March 29, 2006.

47. The levels of lead in storm water detected by the Facility have exceeded the benchmark value for lead of 0.0816 mg/L established by EPA. For example, on February 20, 2008, the level of lead measured by Defendant in the Facility’s discharged storm water was 0.34 mg/L. That level of lead is over four times the benchmark value for lead established by EPA. The Facility also has measured levels of lead in storm water discharged from the Facility in excess of EPA’s benchmark value of 0.68 mg/L on January 25, 2008;

1 January 4, 2008; February 26, 2007; and April 4, 2006.

2 48. The levels of iron in storm water detected by the Facility have exceeded the
3 benchmark value for iron of 1.0 mg/L established by EPA. For example, on February 20,
4 2008, the level of iron measured by Defendant in the Facility's discharged storm water was
5 2.5 mg/L. That level of iron is two and a half times the benchmark value for iron established
6 by EPA. The Facility also has measured levels of iron in storm water discharged from the
7 Facility in excess of EPA's benchmark value of 1.0 mg/L on January 25, 2008; February 26,
8 2007; and April 4, 2006.

9 49. The levels of copper in storm water detected by the Facility have exceeded the
10 benchmark value for copper of 0.0636 mg/L established by EPA. For example, on February
11 20, 2008, the level of copper measured by Defendant in the Facility's discharged storm
12 water was 0.16 mg/L. That level of copper is over two and a half times the benchmark value
13 for copper established by EPA. The Facility also has measured levels of copper in storm
14 water discharged from the Facility in excess of EPA's benchmark value of 1.0 mg/L on
15 January 25, 2008; January 4, 2008; March 20, 2006; February 26, 2007; December 21, 2006;
16 and April 4, 2006.

17 50. The levels of pH in storm water detected by the Facility have exceeded the
18 benchmark value for pH of 6.0 – 9.0 established by EPA. On January 25, 2008, the level of
19 pH measured by Defendant in the Facility's discharged storm water was 9.79.

20 51. The electrical conductance levels detected by the Facility in its storm water
21 have been greater than the numeric water quality standards applicable to electrical
22 conductance in California. The electrical conductance levels detected by the Facility in its
23 storm water have been greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the
24 State Board. For example, on January 4, 2008, the electrical conductance level measured by
25 Defendant in the Facility's discharged storm water was 283 $\mu\text{mho/cm}$. That electrical
26 conductance level is almost one and a half times the State Board's proposed benchmark
27 value. The Facility also has measured levels of electrical conductance in storm water
28 discharged from the Facility in excess of the proposed benchmark value of 200 $\mu\text{mho/cm}$ on

1 February 20, 2008 and October 19, 2004.

2 52. On information and belief, Plaintiff alleges that since at least October 19,
3 2004, Defendant has failed to implement BAT and BCT at the Facility for its discharges of
4 aluminum, zinc, lead, nickel, iron, copper, pH, electrical conductance, and other pollutants.
5 Section B(3) of the General Permit requires that Defendant implement BAT for toxic and
6 nonconventional pollutants and BCT for conventional pollutants by no later than October 1,
7 1992. As of the date of this Complaint, Defendant has failed to implement BAT and BCT.

8 53. On information and belief, Plaintiff alleges that since at least September 10,
9 2004, Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan
10 for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP
11 prepared for the Facility does not set forth site-specific best management practices for the
12 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and
13 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an
14 adequate assessment of potential pollutant sources, structural pollutant control measures
15 employed by the Defendant, a list of actual and potential areas of pollutant contact, or an
16 adequate description of best management practices to be implemented at the Facility to
17 reduce pollutant discharges. According to information available to GCM, Defendant's
18 SWPPP has not been evaluated to ensure its effectiveness and revised where necessary to
19 further reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges,
20 that the SWPPP does not include each of the mandatory elements required by Section A of
21 the General Permit.

22 54. Information available to GCM indicates that as a result of these practices,
23 storm water containing excessive pollutants is being discharged during rain events from the
24 Facility directly to the City of Oakland storm drain system, which flows to the Bay.

25 55. Plaintiff alleges that during the 2008-2009 rainy season, Defendant discharged
26 storm water from un-monitored discharge locations that exceeded the EPA benchmark
27 values for the following pollutants: TSS, O&G, COD, aluminum, zinc, iron, copper, and
28 lead.

1 56. Plaintiff alleges that Defendant has failed to collect the two required storm
2 samples from each storm water discharge location during each wet season since at least
3 September 10, 2004. Plaintiff alleges that Defendant has failed to collect samples from at
4 least five of its discharge locations during the past five wet seasons.

5 57. Plaintiff alleges that during the 2008-2009 rainy season, Defendant discharged
6 storm water from at least two discharge locations in violation of the narrative oil and grease
7 standard set forth in the Basin Plan.

8 58. Plaintiff is informed and believes, and thereupon alleges that Defendant has
9 discharged unauthorized non-storm water at the Facility, including discharges from pipes
10 located on the westernmost edge of the facility abutting Union Street, since at least
11 September 10, 2004. Plaintiff is informed and believes, and thereupon further alleges that
12 the Facility has failed to identify and control non-storm water discharges in violation of
13 Sections A(6)(a)(v) and B(3) and D of the General Permit since at least September 10, 2004.

14 59. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
15 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent
16 with Section A(9) of the General Permit.

17 60. Plaintiff is informed and believes that Defendant failed to submit to the
18 Regional Board a true and complete annual report certifying compliance with the General
19 Permit since at least July 1, 2005. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the
20 General Permit, Defendant must submit an annual report, that is signed and certified by the
21 appropriate corporate officer, outlining the Facility's storm water controls and certifying
22 compliance with the General Permit. Plaintiff is informed and believes, and thereupon
23 alleges, that Defendant has signed incomplete annual reports that purported to comply with
24 the General Permit when there was significant noncompliance at the Facility.

25 61. Information available to Plaintiff indicates that Defendant has not fulfilled the
26 requirements set forth in the General Permit for discharges from the Facility due to the
27 continued discharge of contaminated storm water. Plaintiff is informed and believes, and
28 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and

1 continuing.

2 **VI. CLAIMS FOR RELIEF**

3 **FIRST CAUSE OF ACTION**

4 **Failure to Implement the Best Available and**
5 **Best Conventional Treatment Technologies**
6 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 62. Plaintiff realleges and incorporate Paragraphs 1-61, as if fully set forth herein.

8 63. The General Permit's SWPPP requirements and Effluent Limitation B(3)
9 require dischargers to reduce or prevent pollutants in their storm water discharges through
10 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
11 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its
12 discharges of TSS, O&G, COD, aluminum, nickel, zinc, lead, iron, copper, pH, electrical
13 conductance, and other un-monitored pollutants in violation of Effluent Limitation B(3) of
14 the General Permit.

15 64. Each day since September 10, 2004, that Defendant has failed to develop and
16 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
17 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

18 65. Defendant has been in violation of the BAT/BCT requirements every day since
19 September 10, 2004. Defendant continues to be in violation of the BAT/BCT requirements
20 each day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

21 **SECOND CAUSE OF ACTION**

22 **Discharges of Contaminated Storm Water**
23 **in Violation of Permit Conditions and the Act**
24 **(Violations of 33 U.S.C. §§ 1311, 1342)**

25 66. Plaintiff re-alleges and incorporates Paragraphs 1-65, inclusive, as if fully set
26 forth herein.

27 67. Discharge Prohibition A(2) of the General Permit requires that storm water
28 discharges and authorized non-storm water discharges shall not cause or threaten to cause
pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
General Permit require that storm water discharges and authorized non-storm water discharges
shall not adversely impact human health or the environment, and shall not cause or contribute

1 to a violation of any water quality standards contained in a Statewide Water Quality Control
2 Plan or the applicable Regional Board's Basin Plan.

3 68. Plaintiff is informed and believes, and thereupon alleges, that since at least
4 September 10, 2004, Defendant has been discharging polluted storm water from the Facility in
5 excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of
6 the General Permit.

7 69. During every rain event, storm water flows freely over exposed materials, waste
8 products, and other accumulated pollutants at the Facility, becoming contaminated with TSS,
9 O&G, COD, aluminum, nickel, zinc, lead, iron, copper, pH, electrical conductance, and other
10 unmonitored pollutants at levels above applicable water quality standards. The storm water
11 then flows untreated from the Facility into municipal drain part of the City of Oakland storm
12 drain system, which then flows into the Bay.

13 70. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
14 contaminated storm water are causing or contributing to the violation of the applicable water
15 quality standards in a Statewide Water Quality Control Plan and/or the applicable Regional
16 Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

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

20 72. Every day since at least TSS, O&G, COD, aluminum, zinc, lead, iron, copper,
21 pH, electrical conductance, 2004, that Defendant has discharged and continues to discharge
22 polluted storm water from the Facility in violation of the General Permit is a separate and
23 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are
24 ongoing and continuous.

25 **THIRD CAUSE OF ACTION**
26 **Failure to Prepare, Implement, Review, and Update**
27 **an Adequate Storm Water Pollution Prevention Plan**
28 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

73. Plaintiff realleges and incorporate Paragraphs 1-72, as if fully set forth herein.

1 requirements of the Permit;

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

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

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

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

14 h. Order Defendant to pay civil penalties of \$32,500 per day per violation for
15 all violations occurring through January 12, 2009, and \$37,500 per day per violation for all
16 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections
17 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

18 i. Order Defendant to take appropriate actions to restore the quality of waters
19 impaired or adversely affected by their activities;

20 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,
21 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

23 Dated: September 10, 2009

Respectfully submitted,

24 LOZEAU DRURY LLP

25 By:

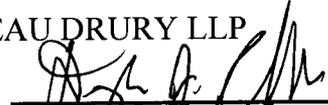

26 Douglas J. Chermak
27 Attorneys for Plaintiff
28 GLOBAL COMMUNITY MONITOR

EXHIBIT A



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F 510.749.9103

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doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 10, 2009

Chal Sulprizio, President and Agent for Service of Process
Steven D. Ybarra, Operations Manager
Custom Alloy Scrap Sales, Inc.
2730 Peralta Street
Oakland, CA 94607

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

Dear Mr. Sulprizio and Mr. Ybarra:

I am writing on behalf of Global Community Monitor (“GCM”) in regard to violations of the Clean Water Act (“Act”) that GCM believes are occurring at the Custom Alloy Scrap Sales, Inc. (“Facility”) located at 2730 Peralta Street in Oakland, California. Global Community Monitor is a non-profit public benefit corporation dedicated to working with industrial communities to create clean, healthy, and sustainable environments. GCM works directly with and has members living in the community directly adjacent to the CASS facility and the San Francisco Bay. GCM and its members are deeply concerned with protecting the environment in and around their communities, including the San Francisco Bay itself. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as “CASS”).

This letter addresses CASS’s unlawful discharge of pollutants from the Facility into San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”) Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”). The WDID identification number for the Facility listed on documents submitted to the Regional Board is 2011007363. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CASS is hereby placed on formal notice by GCM that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, GCM intends to file suit in federal court against Custom Alloy Scrap Sales, Inc. and Chal Sulprizio under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On May 8, 2003, CASS filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). CASS certifies that the Facility is classified under SIC code 3341 (“secondary smelting and refining of nonferrous metals”), SIC code 4214 (“local trucking with storage”), and under SIC code 5051 (“metals service centers and offices”). The Facility collects and discharges storm water from its 7-acre industrial site through at least one outfall that discharges into channels that flows into the San Francisco Bay (the “Bay”).

The Regional Board has identified beneficial uses of the Bay region’s waters and established water quality standards for the San Francisco Bay in the “Water Quality Control Plan for the San Francisco Bay Basin,” generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features.” *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan provides that

“[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3.3.21. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at 3.3.7. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at 3.3.9.

The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); for nickel of 0.0082 mg/L (4-day average) and 0.074 mg/L (1-hour average); for copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and for lead of 0.0081 mg/L (4-day average) and 0.210 mg/L (1-hour average). *Id.* at Table 3-3. The EPA has adopted saltwater numeric water quality standards for zinc of 0.090 mg/L (Criteria Maximum Concentration – “CMC”) and 0.081 mg/L (Criteria Continuous Concentration – “CCC”); for copper of 0.0031 mg/L (CMC) and 0.0048 mg/L (CCC); and for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by CASS: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, total organic carbon (“TOC”) – 110 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, aluminum – 0.75 mg/L, zinc – 0.117 mg/L, iron – 1 mg/L, copper – 0.0636 mg/L, lead – 0.0816 mg/L, and nickel – 1.417 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

CASS has 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 (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40

C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General 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 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 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 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.

CASS has discharged and continues to discharge storm water with unacceptable levels of pH, total suspended solids, specific conductivity, oil & grease, chemical oxygen demand, aluminum, copper, iron, nickel, lead, zinc and other pollutants in violation of the General Permit. CASS's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan and thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
2/20/2008	Copper	0.16 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
2/20/2008	Copper	0.16 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
2/20/2008	Lead	0.34 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
2/20/2008	Lead	0.34 mg/L	0.210 mg/L (1-hour average) – Marine	#1 WM
2/20/2008	Nickel	0.029 mg/L	0.0082 mg/L) (4-day	#1 WM

			average) – Marine	
2/20/2008	Zinc	0.57 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
2/20/2008	Zinc	0.57 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
1/25/2008	pH	9.79	6.5 – 8.5	#1 WM
1/25/2008	Copper	0.17 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Copper	0.17 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
1/25/2008	Lead	0.23 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Lead	0.23 mg/L	0.210 mg/L (1-hour average) – Marine	#1 WM
1/25/2008	Nickel	0.0088 mg/L	0.0082 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Zinc	0.46 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
1/25/2008	Zinc	0.46 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
1/4/2008	Copper	0.11 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
1/4/2008	Copper	0.11 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
1/4/2008	Lead	0.12 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
1/4/2008	Zinc	0.3 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
1/4/2008	Zinc	0.3 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
3/20/2007	Copper	0.32 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
3/20/2007	Copper	0.32 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
3/20/2007	Lead	0.031 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
3/20/2007	Zinc	0.53 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
3/20/2007	Zinc	0.53 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
2/26/2007	Copper	0.21 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM

2/26/2007	Copper	0.21 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
2/26/2007	Nickel	0.016 mg/L	0.0082 mg/L (4-day average) – Marine	#1 WM
2/26/2007	Lead	0.13 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
2/26/2007	Zinc	0.71 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
2/26/2007	Zinc	0.71 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
12/21/2006	Copper	0.068 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
12/21/2006	Copper	0.068 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
12/21/2006	Lead	0.03 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
12/21/2006	Zinc	0.42 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
12/21/2006	Zinc	0.42 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	pH	6.22	6.5 – 8.5	#1 WM
4/4/2006	Copper	0.1 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Copper	0.1 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	Zinc	0.69 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Zinc	0.69 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	pH	6.2	6.5 – 8.5	#1 WM
4/4/2006	Copper	0.17 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Copper	0.17 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
4/4/2006	Lead	0.14 mg/L	0.0081 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Zinc	0.59 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
4/4/2006	Zinc	0.59 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
3/29/2006	Copper	0.025 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM

3/29/2006	Copper	0.025 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
3/29/2006	Zinc	0.39 mg/L	0.081 mg/L (4-day average) – Marine	#1 WM
3/29/2006	Zinc	0.39 mg/L	0.09 mg/L (1-hour average) – Marine	#1 WM
5/4/2005	pH	8.75	6.5 – 8.5	#1 WM
5/4/2005	Copper	0.0034 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
3/18/2005	pH	8.52	6.5 – 8.5	#1 WM
11/11/2004	Copper	0.017 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM
11/11/2004	Copper	0.017 mg/L	0.0048 mg/L (1-hour average) – Marine	#1 WM
10/19/2004	pH	8.75	6.5 – 8.5	#1 WM
10/19/2004	Copper	0.0038 mg/L	0.0031 mg/L (4-day average) – Marine	#1 WM

The information in the above table reflects data gathered from CASS’ self-monitoring during the 2004-2005, 2005-2006, 2006-2007, and 2007-2008 rainy seasons. GCM alleges that during the 2008-2009 rainy season, CASS has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- Copper – 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average)
- Nickel – 0.0082 mg/L (4-day average) and 0.074 mg/L (1-hour average)
- Zinc - 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average)
- Lead – 0.0081 mg/L (4-day average) and 0.210 mg/L (1-hour average)
- Oil & Grease – no sheen
- pH – not less than 6.5 or greater than 8.5

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) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
2/20/2008	Specific Conductivity	204 µmho/cm	200 µmho/cm (proposed)	#1 WM
2/20/2008	Iron	2.5 mg/L	1.0 mg/L	#1 WM
2/20/2008	Aluminum	1.3 mg/L	0.75 mg/L	#1 WM
2/20/2008	Copper	0.16 mg/L	0.0636 mg/L	#1 WM

2/20/2008	Lead	0.34 mg/L	0.0816 mg/L	#1 WM
2/20/2008	Zinc	0.57 mg/L	0.117 mg/L	#1 WM
1/25/2008	pH	9.79	6.0 – 9.0	#1 WM
1/25/2008	Oil & Grease	18 mg/L	15 mg/L	#1 WM
1/25/2008	Iron	1.2 mg/L	1.0 mg/L	#1 WM
1/25/2008	Aluminum	1 mg/L	0.75 mg/L	#1 WM
1/25/2008	Copper	0.17 mg/L	0.0636 mg/L	#1 WM
1/25/2008	Lead	0.23 mg/L	0.0816 mg/L	#1 WM
1/25/2008	Zinc	0.46 mg/L	0.117 mg/L	#1 WM
1/4/2008	Specific Conductivity	283 µmho/cm	200 µmho/cm (proposed)	#1 WM
1/4/2008	Copper	0.11 mg/L	0.0636 mg/L	#1 WM
1/4/2008	Lead	0.12 mg/L	0.0816 mg/L	#1 WM
1/4/2008	Zinc	0.3 mg/L	0.117 mg/L	#1 WM
3/20/2007	Copper	0.32 mg/L	0.0636 mg/L	#1 WM
3/20/2007	Zinc	0.53 mg/L	0.117 mg/L	#1 WM
2/26/2007	Iron	1.2 mg/L	1.0 mg/L	#1 WM
2/26/2007	Aluminum	0.85 mg/L	0.75 mg/L	#1 WM
2/26/2007	Copper	0.21 mg/L	0.0636 mg/L	#1 WM
2/26/2007	Lead	0.13 mg/L	0.0816 mg/L	#1 WM
2/26/2007	Zinc	0.71 mg/L	0.117 mg/L	#1 WM
12/21/2006	Copper	0.068 mg/L	0.0636 mg/L	#1 WM
12/21/2006	Zinc	0.42 mg/L	0.117 mg/L	#1 WM
4/4/2006	Copper	0.1 mg/L	0.0636 mg/L	#1 WM
4/4/2006	Zinc	0.69 mg/L	0.117 mg/L	#1 WM
4/4/2006	Iron	1.4 mg/L	1.0 mg/L	#1 WM
4/4/2006	Aluminum	0.75 mg/L	0.75 mg/L	#1 WM
4/4/2006	Copper	0.17 mg/L	0.0636 mg/L	#1 WM
4/4/2006	Lead	0.14 mg/L	0.0816 mg/L	#1 WM
4/4/2006	Zinc	0.59 mg/L	0.117 mg/L	#1 WM
3/29/2006	Zinc	0.39 mg/L	0.117 mg/L	#1 WM
10/19/2004	Specific Conductivity	210 µmho/cm	200 µmho/cm (proposed)	#1 WM

The information in the above table reflects data gathered from CASS' self-monitoring during the 2004-2005, 2005-2006, 2006-2007, and 2007-2008 rainy seasons. GCM alleges that during the 2008-2009 rainy season, CASS has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

Total Suspended Solids – 100 mg/L
 Oil & Grease – 15 mg/L

Chemical Oxygen Demand – 120 mg/L
Aluminum – 0.75 mg/L
Zinc – 0.117 mg/L
Iron – 1 mg/L
Copper – 0.0636 mg/L
Lead – 0.0816 mg/L

GCM's investigation, including its review of CASS's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that CASS has not implemented BAT and BCT at the Facility for its discharges of total suspended solids, chemical oxygen demand, specific conductivity, oil & grease, iron, aluminum, copper, lead, nickel, zinc and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. CASS was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, CASS is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, during the 2008-2009 rainy season, CASS discharged storm water from at least two locations with a visible, oily sheen. Coupled with the numbers listed above, this indicates that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. GCM alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since June 10, 2004, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit.

Attachment A, attached hereto, sets forth each of the specific rain dates on which GCM alleges that CASS has discharged storm water containing impermissible levels of total suspended solids, specific conductivity, chemical oxygen demand, oil & grease, iron, aluminum, copper, lead, nickel, and zinc in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit. These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants 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, CASS is subject to penalties for violations of the General Permit and the Act since June 10, 2004.

B. Failure to Sample, Analyze, and Inspect Storm Events

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators 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." *Id.* "All storm water discharge locations shall be sampled." *Id.* "Facility

operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.” *Id.*

CASS has failed to collect the two required storm water samples from each storm water discharge location in each of the last five years despite discharging storm water from its facility. During the past five years, CASS has only sampled and analyzed storm water discharges from one location at the Facility. GCM alleges that CASS discharges storm water from at least four locations. The failure to collect two samples from three discharge locations for five rainy seasons results in thirty distinct violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CASS is subject to penalties for violations of the General Permit and the Act since June 10, 2004.

C. Failure to Identify and Control Non-Storm Water Discharges

The General Permit requires that facility operators “investigate the facility to identify all non-storm water discharges and their sources. As part of this investigation, all drains (inlets and outlets) shall be evaluated to identify whether they connect to the storm drain system. All non-storm water discharges shall be described. This shall include the source, quantity, frequency, and characteristics of the non-storm water discharges and associated drainage area.” Section A(6)(a)(v).

The General Permit authorizes certain non-storm water discharges providing that the non-storm water discharges are in compliance with Regional Board requirements; that the non-storm water discharges are in compliance with local agency ordinances and/or requirements; that BMPs are included in the SWPPP to (1) prevent or reduce the contact of non-storm water discharges with significant materials or equipment and (2) minimize, to the extent practicable, the flow or volume of non-storm water discharges; that the non-storm water discharges do not contain significant quantities of pollutants; and that the monitoring program includes quarterly visual observations of each non-storm water discharge and its sources to ensure that BMPs are being implemented and are effective (Special Conditions D). Section B(3) of the General Permit requires dischargers to conduct visual observations of all drainage areas for the presence of non-storm water discharges, to observe the non-storm water discharges, and maintain records of such observations.

GCM alleges that the Facility discharges unauthorized non-storm water at the Facility, including discharges from pipes located on the westernmost edge of the facility abutting Union Street. GCM further alleges that the Facility has failed to identify and control non-storm water discharges in violation of Sections A(6)(a)(v) and B(3) and D of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CASS is subject to penalties for violations of the General Permit and the Act since June 10, 2004.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

The above referenced data was obtained from the Facility’s monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by CASS is not representative of the quality of the Facility’s various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, GCM, alleges that the Facility’s monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. GCM also alleges that CASS has failed to conduct monthly visual observations of all storm water discharge locations at the Facility. GCM alleges that CASS failed to conduct monthly visual observations from at least three of its storm water discharge locations during each month of the rainy season during the past five years. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CASS is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since June 10, 2004.

E. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Section A 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 (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must

include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

GCM's investigation of the conditions at the Facility as well as CASS's Annual Reports indicate that CASS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. CASS has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. CASS has been in continuous violation of Section A and Provision E(2) of the General Permit every day since June 10, 2004 at the very latest, and will continue to be in violation every day that CASS fails to prepare, implement, review, and update an effective SWPPP. CASS is subject to penalties for violations of the Order and the Act occurring since June 10, 2004.

F. Failure to File True and Correct Annual 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. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, CASS and its agent, Chal Sulprizio, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, CASS has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time CASS failed to submit a complete or correct report and every time CASS or its agents falsely purported to comply with the Act. CASS is subject to penalties for

Chal Sulprizio
Custom Alloy Scrap Sales, Inc.
June 10, 2009
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violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since June 10, 2004.

IV. Persons Responsible for the Violations.

GCM puts Custom Alloy Scrap Sales, Inc. and Chal Sulprizio on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, GCM puts Custom Alloy Scrap Sales, Inc. and Chal Sulprizio on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of Global Community Monitor is as follows:

Denny Larson, Executive Director
Global Community Monitor
P.O. Box 1784
El Cerrito, CA 94530
Tel. (510) 233-1870

VI. Counsel.

GCM has retained our office to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
michael@lozeaudrury.com
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VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects CASS to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, GCM will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief

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Custom Alloy Scrap Sales, Inc.
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as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

GCM believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. GCM intends to file a citizen suit under Section 505(a) of the Act against CASS and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, GCM would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, GCM suggests 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. GCM does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas Chermak
Attorney for Global Community Monitor

SERVICE LIST

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
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Eric H. Holder, Jr., U.S. Attorney General
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950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Laura Yoshii, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A
Rain Dates, CASS, Oakland, California

August 23, 2004	January 11, 2005	March 21, 2005
August 24, 2004	January 12, 2005	March 22, 2005
September 19, 2004	January 13, 2005	March 23, 2005
October 17, 2004	January 16, 2005	March 27, 2005
October 19, 2004	January 17, 2005	March 28, 2005
October 20, 2004	January 18, 2005	March 29, 2005
October 23, 2004	January 19, 2005	April 3, 2005
October 25, 2004	January 20, 2005	April 4, 2005
October 26, 2004	January 21, 2005	April 7, 2005
November 3, 2004	January 22, 2005	April 8, 2005
November 4, 2004	January 23, 2005	April 22, 2005
November 9, 2004	January 24, 2005	April 23, 2005
November 10, 2004	January 25, 2005	April 27, 2005
November 11, 2004	January 26, 2005	April 28, 2005
November 13, 2004	January 27, 2005	May 4, 2005
November 27, 2004	January 28, 2005	May 5, 2005
December 6, 2004	February 7, 2005	May 8, 2005
December 7, 2004	February 11, 2005	May 9, 2005
December 8, 2004	February 14, 2005	May 18, 2005
December 10, 2004	February 15, 2005	May 19, 2005
December 26, 2004	February 16, 2005	June 9, 2005
December 27, 2004	February 17, 2005	June 16, 2005
December 28, 2004	February 18, 2005	June 18, 2005
December 29, 2004	February 19, 2005	October 26, 2005
December 30, 2004	February 20, 2005	November 3, 2005
December 31, 2004	February 21, 2005	November 4, 2005
January 1, 2005	February 27, 2005	November 7, 2005
January 2, 2005	February 28, 2005	November 8, 2005
January 3, 2005	March 1, 2005	November 9, 2005
January 4, 2005	March 2, 2005	November 25, 2005
January 5, 2005	March 3, 2005	November 28, 2005
January 6, 2005	March 4, 2005	November 29, 2005
January 7, 2005	March 9, 2005	December 1, 2005
January 8, 2005	March 18, 2005	December 2, 2005
January 9, 2005	March 19, 2005	December 7, 2005
January 10, 2005	March 20, 2005	December 17, 2005

ATTACHMENT A
Rain Dates, CASS, Oakland, California

December 18, 2005		
December 19, 2005	December 19, 2005	December 19, 2005
December 20, 2005	December 20, 2005	December 20, 2005
December 21, 2005	December 21, 2005	December 21, 2005
December 22, 2005	December 22, 2005	December 22, 2005
December 25, 2005	December 25, 2005	December 25, 2005
December 26, 2005	December 26, 2005	December 26, 2005
December 27, 2005	December 27, 2005	December 27, 2005
December 28, 2005	December 28, 2005	December 28, 2005
December 29, 2005	December 29, 2005	December 29, 2005
December 30, 2005	December 30, 2005	December 30, 2005
December 31, 2005	December 31, 2005	December 31, 2005
January 1, 2006	January 1, 2006	January 1, 2006
January 2, 2006	January 2, 2006	January 2, 2006
January 3, 2006	January 3, 2006	January 3, 2006
January 6, 2006	January 6, 2006	January 6, 2006
January 7, 2006	January 7, 2006	January 7, 2006
January 8, 2006	January 8, 2006	January 8, 2006
January 11, 2006	January 11, 2006	January 11, 2006
January 13, 2006	January 13, 2006	January 13, 2006
January 14, 2006	January 14, 2006	January 14, 2006
January 17, 2006	January 17, 2006	January 17, 2006
January 18, 2006	January 18, 2006	January 18, 2006
January 21, 2006	January 21, 2006	January 21, 2006
January 27, 2006	January 27, 2006	January 27, 2006
January 28, 2006	January 28, 2006	January 28, 2006
January 30, 2006	January 30, 2006	January 30, 2006
February 1, 2006	February 1, 2006	February 1, 2006
February 2, 2006	February 2, 2006	February 2, 2006
February 4, 2006	February 4, 2006	February 4, 2006
February 17, 2006	February 17, 2006	February 17, 2006
February 26, 2006	February 26, 2006	February 26, 2006
February 27, 2006	February 27, 2006	February 27, 2006
March 1, 2006	March 1, 2006	March 1, 2006
March 2, 2006	March 2, 2006	March 2, 2006
March 3, 2006	March 3, 2006	March 3, 2006
March 4, 2006	March 4, 2006	March 4, 2006

ATTACHMENT A
Rain Dates, CASS, Oakland, California

February 11, 2007		
February 12, 2007	February 12, 2007	February 12, 2007
February 21, 2007	February 21, 2007	February 21, 2007
February 22, 2007	February 22, 2007	February 22, 2007
February 23, 2007	February 23, 2007	February 23, 2007
February 24, 2007	February 24, 2007	February 24, 2007
February 25, 2007	February 25, 2007	February 25, 2007
February 26, 2007	February 26, 2007	February 26, 2007
February 27, 2007	February 27, 2007	February 27, 2007
February 28, 2007	February 28, 2007	February 28, 2007
March 20, 2007	March 20, 2007	March 20, 2007
March 26, 2007	March 26, 2007	March 26, 2007
April 7, 2007	April 7, 2007	April 7, 2007
April 9, 2007	April 9, 2007	April 9, 2007
April 11, 2007	April 11, 2007	April 11, 2007
April 14, 2007	April 14, 2007	April 14, 2007
April 19, 2007	April 19, 2007	April 19, 2007
April 20, 2007	April 20, 2007	April 20, 2007
April 21, 2007	April 21, 2007	April 21, 2007
April 22, 2007	April 22, 2007	April 22, 2007
April 27, 2007	April 27, 2007	April 27, 2007
May 2, 2007	May 2, 2007	May 2, 2007
May 3, 2007	May 3, 2007	May 3, 2007
May 4, 2007	May 4, 2007	May 4, 2007
May 10, 2007	May 10, 2007	May 10, 2007
May 11, 2007	May 11, 2007	May 11, 2007
May 14, 2007	May 14, 2007	May 14, 2007
May 15, 2007	May 15, 2007	May 15, 2007
May 16, 2007	May 16, 2007	May 16, 2007
May 17, 2007	May 17, 2007	May 17, 2007
May 20, 2007	May 20, 2007	May 20, 2007
May 21, 2007	May 21, 2007	May 21, 2007
May 23, 2007	May 23, 2007	May 23, 2007
May 24, 2007	May 24, 2007	May 24, 2007
May 27, 2007	May 27, 2007	May 27, 2007
May 29, 2007	May 29, 2007	May 29, 2007
May 30, 2007	May 30, 2007	May 30, 2007

ATTACHMENT A
Rain Dates, CASS, Oakland, California

November 3, 2008	
November 8, 2008	November 8, 2008
November 26, 2008	November 26, 2008
December 12, 2008	December 12, 2008
December 14, 2008	December 14, 2008
December 15, 2008	December 15, 2008
December 16, 2008	December 16, 2008
December 18, 2008	December 18, 2008
December 19, 2008	December 19, 2008
December 21, 2008	December 21, 2008
December 22, 2008	December 22, 2008
December 24, 2008	December 24, 2008
December 25, 2008	December 25, 2008
January 2, 2009	January 2, 2009
January 21, 2009	January 21, 2009
January 22, 2009	
January 23, 2009	
January 24, 2009	
February 5, 2009	
February 6, 2009	
February 8, 2009	
February 9, 2009	
February 10, 2009	
February 11, 2009	
February 13, 2009	
February 14, 2009	
February 15, 2009	
February 16, 2009	
February 17, 2009	
February 22, 2009	
February 23, 2009	
February 24, 2009	
February 25, 2009	
February 26, 2009	
March 1, 2009	
March 2, 2009	
March 3, 2009	