

1 LAWYERS FOR CLEAN WATER, INC.  
Daniel Cooper (Bar No. 153576)  
2 Email: Daniel @lawyersforcleanwater.com  
3 1004A O'Reilly Avenue  
San Francisco, California 94129  
4 Telephone: (415) 440-6520  
5 Facsimile: (415) 440-4155

6 Attorneys for Plaintiff INLAND EMPIRE WATERKEEPER, a program  
7 of ORANGE COUNTY COASTKEEPER

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 INLAND EMPIRE WATERKEEPER, a  
program of ORANGE COUNTY  
12 COASTKEEPER, a non-profit corporation,

13 Plaintiff,

14 v.

15 AMERICAN METAL RECYCLING, INC.,  
16 a California corporation,

17 Defendant.  
18

Case No. CV 09- 06147 GAF (RZx)

**[Proposed]**  
**CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 et seq.)**

19 **WHEREAS**, Inland Empire Waterkeeper, a program of Orange County  
20 Coastkeeper, is a non-profit corporation dedicated to the protection and enhancement of  
21 the Upper Santa Ana River Watershed through programs of advocacy, education,  
22 research, restoration, and enforcement;

23 **WHEREAS**, Orange County Coastkeeper is a non-profit corporation dedicated to  
24 the preservation, protection and defense of the environment, the wildlife, and the natural  
25 resources of Orange County area waters, including the Santa Ana River Watershed and  
26 its receiving waters;  
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1           **WHEREAS**, Inland Empire Waterkeeper and Orange County Coastkeeper are  
2 collectively referred to herein as (“Waterkeeper” or “Plaintiff”);

3           **WHEREAS**, American Metal Recycling, Inc. (“American Metal” or  
4 “Defendant”) is an Owner and/or Operator of the American Metal scrap metal recycling  
5 facility located at 11150 Redwood Avenue, Fontana, California (hereinafter “Facility”);

6           **WHEREAS**, on 10 June 2009, Waterkeeper served American Metal, the United  
7 States Environmental Protection Agency (“EPA”), EPA Region IX, the State Water  
8 Resources Control Board (“State Board”) and the Regional Water Quality Control  
9 Board (“Regional Board”), with a notice of intent to file suit (“60-Day Notice”) for  
10 violations of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 *et seq.* (“Clean  
11 Water Act” or “CWA”). The notice alleged that the recipients had in the past and in  
12 fact continue to violate Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and  
13 1342, by discharging pollutants into Receiving Waters in violation of National Pollution  
14 Discharge Elimination System (“NPDES”) General Permit No. CAS0000001 [State  
15 Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ  
16 (“Industrial Permit”) and the CWA;

17           **WHEREAS**, on 24 August 2009, Waterkeeper filed a complaint against American  
18 Metal in the United States District Court, Central District of California, Eastern  
19 Division (Civil Case No. CV 09- 06147 GAF (RZx)) entitled *Inland Empire Waterkeeper et*  
20 *al., v. American Metal Recycling, Inc.* ("Complaint");

21           **WHEREAS**, Defendant denies all allegations set forth in the Complaint;

22           **WHEREAS**, Waterkeeper and American Metal (collectively referred to herein as  
23 the "Settling Parties" or “Parties”) have agreed that it is in the Parties' mutual interest to  
24 enter into a Consent Decree setting forth terms and conditions appropriate to resolving  
25 the allegations set forth in the Complaint without further proceedings; and  
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1 standard.” Effluent Limitation B(3) of the Industrial Permit requires that Best  
2 Management Practices (“BMPs”) be developed and implemented to achieve Best  
3 Available Technology (“BAT”) and the Best Conventional Pollutant Control Technology  
4 (“BCT”). American Metal is required to develop and implement BMPs necessary to  
5 comply with the Industrial Permit’s requirement to achieve compliance with BAT/BCT  
6 standards and with Water Quality Standards. BMPs must continue to be developed and  
7 implemented to prevent discharges or to reduce contamination in storm water discharged  
8 from the Facility sufficient to achieve the numeric limits detailed in Tables 1 and Table 2  
9 in section II.B below.

## 10 **II. COMMITMENTS OF THE PARTIES**

### 11 **A. Industrial Storm Water Pollution Control Measures**

12 7. The storm water pollution control measures and contaminant reduction  
13 provisions of this Consent Decree shall only apply to rainfall events up to and including  
14 the 5-year 24-hour return period rain event (“Qualifying Storm Event”), as defined by the  
15 National Oceanographic and Atmospheric Administration (“NOAA”) Atlas 14, Vol. I,  
16 Version 4 (2006) with an assumed dry antecedent condition and 3.9 total inches of  
17 rainfall over a 24-hour period. The Parties agree that any discharge of stormwater and/or  
18 non-stormwater pollutants from the Facility in connection with a rainfall event that  
19 exceeds a Qualifying Storm Event is not a violation of this consent decree.

20 8. American Metal is in the process of developing and implementing a storm  
21 water discharge treatment system involving the use of stormwater holding tanks and  
22 filters designed to harvest, capture, store, and treat stormwater prior to discharge from the  
23 southeast corner of the Facility. In accordance with the requirements of section II.C  
24 below, within thirty (30) days of the Effective Date of this Consent Decree, American  
25 Metal shall revise the Stormwater Pollution Prevention Plan (“SWPPP”) currently in  
26 effect at the Facility to fully describe the current features and treatment capacity of this  
27 stormwater treatment system. In addition, American Metal agrees to develop,  
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1 implement, and/or continue to maintain, as applicable, additional measures as necessary  
2 to reduce contamination in storm water discharged from the Facility to levels below the  
3 numeric limits set forth in Table 1 and Table 2 in section II.B below. These additional  
4 measures may include:

5 (a) Materials Storage and Industrial Activities. Placing sources of  
6 contamination in covered containers or under cover with such areas contained by  
7 berming or other containment sufficient to prevent the exposure of pollutants to storm  
8 water or rainwater and the runoff or discharge of pollutants;

9 (b) Coating. Coating structural sources of contamination (e.g. galvanized  
10 building roofs (other than the existing non-ferrous building which has been coated)), and  
11 siding);

12 (c) Sweeping. Employing high efficiency sweeping in order to prevent  
13 the discharge of pollutants;

14 (d) Harvesting and Storing Runoff. Constructing and maintaining on-site  
15 retention facilities (such as retention ponds or swales, infiltration basins, baker tanks,  
16 sumps, cisterns, or dry wells/ injection wells) designed to hold and store the runoff  
17 generated by a 5-year 24-hour return period storm event without any off-site discharge;

18 (e) Treating Runoff. Treating runoff discharging from the site.

19 (f) Sand Filters. Treating runoff discharging from the site with devices  
20 such as sand filters evaluated in the Caltrans Retrofit Study (“CRS”) or equivalent  
21 treatment devices at appropriate locations.

22 (g) Routing Discharge to the Publicly Owned Treatment Works. Routing  
23 discharge to the publicly owned treatment works (“POTW”)/ sanitary sewers, in  
24 combination with on-site retention such that flows are discharged off-peak in the POTW  
25 so as not to risk exacerbating wet weather Sanitary Sewer Overflow risks from the  
26 POTW.

27 (h) Vehicle and Equipment Maintenance and Fueling.

1 i. Conducting all vehicle and equipment maintenance and fueling  
2 at the Facility on asphalt or another impermeable surface;

3 ii. Conducting all vehicle and equipment maintenance and fueling  
4 at the Facility under cover;

5 iii. Berming of otherwise containing the surface of the area where  
6 vehicle maintenance and fueling occurs (hereinafter “Maintenance and Fueling Area”) in  
7 order to prevent the exposure of pollutants to storm water or rainwater and the runoff or  
8 discharge of pollutants;

9 iv. Cleaning the Maintenance and Fueling Area as necessary to  
10 control track-off of pollutants;

11 v. Dispensing all petroleum products within the Maintenance and  
12 Fueling Area(s);

13 vi. Installing tire washing facilities at exit points from the Facility  
14 to prevent off-site tracking from vehicles;

15 vii. Annually power washing the entire paved part of the Facility,  
16 including areas not reachable by mechanical sweepers, and dispose of the contaminated  
17 water consistent with all federal, state and local requirements, and not to area storm  
18 drains.

19 **B. Sampling, Monitoring, Inspecting, and Reporting**

20 9. Sampling Program. Within thirty (30) days of the Effective Date of this  
21 Consent Decree, Defendant shall revise its monitoring and reporting plan (“M&RP”) to  
22 comply with this section. All storm water discharge locations shall be sampled at the  
23 Facility. Storm water samples collected must represent the discharge at the point it  
24 leaves the Facility. For example, if storm water is discharging from both sides of a  
25 driveway, two separate storm water samples must be collected from each side of the  
26 driveway. Additionally, sampling of stored or contained storm water shall occur at the  
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1 time the stored or contained storm water is released. Finally, the M&RP shall be revised  
2 to include sampling at all new or additional discharge points created in the future.

3 10. Waterkeeper’s Review of Revised M&RP. Defendant agrees to submit the  
4 revised M&RP to Waterkeeper for review and comment as soon as it is completed but in  
5 any event no later than thirty (30) days from the Effective Date of this Consent Decree.  
6 Waterkeeper shall provide comments, if any, to the Defendant within thirty (30) days of  
7 receipt of the M&RP. Defendant shall incorporate Plaintiff’s comments into the M&RP,  
8 or shall justify in writing why any comment is not incorporated within thirty (30) days of  
9 receiving comments. Any disputes as to the adequacy of the M&RP shall be resolved  
10 pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV  
11 below.

12 11. Sample Analysis and Sample Frequency. Beginning with the 2010/2011 Wet  
13 Season (defined as October 1- May 31), and continuing through the 2011-2012 Wet  
14 Season, Defendant shall collect storm water samples from each discharge location from  
15 each storm event at the Facility up to five storm events per Wet Season. Defendant may  
16 discontinue analyzing storm water samples for a constituent specified in Tables 1 and 2 if  
17 five consecutive sampling results within a Wet Season for the constituent are reported as  
18 below the limits in Tables 1 and 2. Defendant may discontinue analyzing storm water  
19 samples for PCBs if five consecutive sampling results using the method referenced in  
20 paragraph 12 below show that PCBs were not detected.

21 12. Defendant shall analyze the samples for the constituents identified in Table 1  
22 and Table 2. A California State certified laboratory shall perform all sample chemical  
23 analyses. Defendant shall select laboratories and analytical limits such that, at a  
24 minimum, the method detection limits (“MDLs”) shall be below both the Table 1 and  
25 Table 2 Limits set forth herein, with the exception of PCBs. When testing for PCBs,  
26 Defendant shall analyze samples using gas chromatography, SW-486, method 8082. In  
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1 addition, Defendant shall perform sampling as required by the Industrial Permit for the  
2 Facility.

3 13. BAT/BCT and Technology Based Limits:<sup>1</sup> The BAT/BCT limits are as  
4 follows:

5 **Table 1**

6 <b>Contaminant</b> <b>(All metals are total recoverable)</b>	7 <b>Limit</b> <b>(All but pH expressed as Mg/L)</b>
8 Total suspended solids	100
9 Copper	0.064123
10 Lead	0.081669
11 Zinc	0.117
12 Oil and grease	15
13 Aluminum	0.750
14 Arsenic	0.16854
15 Cadmium	0.0159
16 Iron	1.00
17 Mercury	0.0024
18 Nickel	1.417
19 Silver	0.0318
20 Chemical oxygen demand	120
21 pH	6.0-9.0 units

22 14. Water Quality Standard (WQS) Based Limits: The WQS Based Limits are as  
23 follows:

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26 <sup>1</sup> The Best Available Technology (“BAT”) limits were derived from the International BMP  
27 Database assembled by EPA and others for contaminants measured at a variety of BMPs, accepted into  
28 the database, and subjected to statistical analysis. The proposed BAT limit is generally based on the  
maximum median pollutant discharge concentration among all reported BMP types, except  
hydrodynamic devices (which perform more poorly than land-based BMPs). In some cases the Caltrans  
Retrofit Pilot Study results for the same BMPs were also consulted to guide the selection. The BAT  
limit for oil and grease is equivalent to the widely accepted capability of a coalescing plate or equivalent  
oil/water separator. Other contaminants common in scrap yard discharges are not represented at all, or  
are not sufficiently represented, in the database to set BAT limits. In these cases the limits are the  
benchmarks in the EPA multi-sector industrial permit. Defendant shall analyze for hardness when  
collecting samples and Defendant may adjust limits based on hardness where applicable.

1 **Table 2**

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<b>Contaminant</b>	<b>Limit</b> (All but pH expressed as Mg/L)
Arsenic	.340
Cadmium	0.0043
Copper	0.013
Lead	0.065
Nickel	0.470
Silver	0.0034
Zinc	0.120
PCBs	Goal of 0.000014
Chemical oxygen demand	30
pH	6.5-8.5 units

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10 15. Action Plan for Table 1 or Table 2 Exceedances. American Metal shall submit  
11 an action plan if any sampling demonstrates discharges of storm water containing  
12 concentration of pollutants exceeding a Table 1 or 2 limit that complies with the  
13 requirements below. Disputes regarding the action plan shall be subject to the dispute  
14 resolution procedures in Section IV below. The Parties agree to comply with the dispute  
15 resolution procedures set forth in Section IV below if there are any disagreements or  
16 disputes regarding any of the action plan(s) discussed below.

17 a. Benchmark Levels Action Plan. Defendant shall provide Waterkeeper  
18 with a Benchmark Action Plan within thirty (30) days of American Metal's receipt of  
19 storm water sampling data demonstrating an exceedance of a Benchmark Level at the  
20 Facility. The Action Plan shall include at a minimum: (1) the identification of the  
21 pollutant(s) discharged in excess of the Benchmark Levels, (2) an assessment of the  
22 source of each pollutant exceedance, (3) the identification of additional BMPs that will be  
23 implemented to achieve compliance with the Benchmark Levels set forth in Table 1, and  
24 (4) time schedules for implementation of the proposed BMPs. Waterkeeper shall have  
25 thirty (30) days upon receipt of Defendant's Benchmark Action Plan to provide  
26 Defendant with comments. Defendant shall have sixty (60) days from the date  
27 Waterkeeper comments on Defendant's Benchmark Action Plan to implement any  
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1 additional non-structural or structural BMPs recommended by Waterkeeper. Within this  
2 sixty (60) day period American Metal shall provide a written explanation if American  
3 Metal does not develop and/or implement any of Waterkeeper's recommended additional  
4 BMPs. If any structural BMPs require any agency approval, then Defendant shall contact  
5 Waterkeeper to request an extension of the deadline to implement the structural BMPs  
6 requiring agency approval. Waterkeeper's consent to Defendant's requested extension  
7 shall not be unreasonably withheld. Defendant shall notify Waterkeeper in writing when  
8 the Action Plan has been implemented.

9           b. WQS Action Plan. Defendant shall provide Waterkeeper with a WQS  
10 Action Plan by July 1 following the 2010-2011 Wet Season if storm water sampling data  
11 demonstrates an exceedance of a WQS Level at the Facility. The WQS Action Plan  
12 shall set forth additional BMPs designed to achieve compliance with Table 2 limits. The  
13 WQS Action Plan shall include at a minimum: (1) the identification of the pollutant(s)  
14 discharged in excess of the WQS; (2) an assessment of the source of the pollutant; (3) the  
15 identification of additional BMPs that will be implemented to achieve compliance with  
16 the applicable WQS; and (4) time schedules for implementation of the proposed  
17 structural and non-structural BMPs. Waterkeeper shall have thirty (30) days upon receipt  
18 of Defendant's WQS Action Plan to provide Defendant with comments. Defendant shall  
19 have sixty (60) days from the date Waterkeeper comments on Defendant's Action Plan to  
20 implement any additional non-structural or structural BMPs. Within this sixty (60) day  
21 period American Metal shall provide a written explanation if American Metal does not  
22 develop and/or implement any of Waterkeeper's recommended additional BMPs. If any  
23 structural BMPs require any agency approval, then Defendant shall contact Waterkeeper  
24 to request an extension of the deadline to implement the structural BMPs requiring  
25 agency approval. Waterkeeper's consent to Defendant's requested extension shall not be  
26 unreasonably withheld. Defendant shall notify Waterkeeper in writing when the Action  
27 Plan has been implemented.

1 c. Action Plan for Year 2 Wet Season. If at the end of the 2011-2012 Wet  
2 Season, storm water sample results demonstrate that Defendant continues to discharge  
3 storm water and/or non-stormwater containing pollutants exceeding the limits set forth in  
4 Tables 1 and/or 2, the Parties shall meet and confer by July 1, 2012 to discuss the sample  
5 results, current BMPs, and to develop an action plan designed to achieve the limits in  
6 Tables 1 and 2 (“Year 2 Action Plan”). Within thirty (30) days of the meet and confer,  
7 Defendant shall develop and submit the Year 2 Action Plan to Waterkeeper.  
8 Waterkeeper shall provide comments on the Year 2 Action Plan within thirty (30) days of  
9 receipt of the Action Plan. Within fourteen (14) days of receiving Waterkeeper’s  
10 comments, American Metal shall revise the Year 2 Action Plan to include Waterkeeper’s  
11 comments, unless American Metal demonstrates that the amended Year 2 Action Plan is  
12 infeasible, or that the costs to implement the Benchmarks Action Plan, WQS Action Plan  
13 and the revised Year 2 Action Plan would exceed the combined sum of Three-Hundred  
14 and Fifty Thousand (\$350,000.00) Dollars. American Metal shall implement the Year 2  
15 Action Plan within Ninety (90) days of revising the Year 2 Action Plan to include  
16 Waterkeeper’s comments, unless dispute resolution is invoked. American Metal shall  
17 notify Waterkeeper in writing when the Year 2 Action Plan has been implemented.  
18 Disputes relating to the Year 2 Action Plan shall be subject to the dispute resolution  
19 provisions in Section IV below.

20 16. Development of categorical discharge permit for scrap metal industry.  
21 Waterkeeper and certain members of the scrap metal recycling industry are currently  
22 involved in a process to develop a proposed categorical storm water permit for the scrap  
23 metal recycling industry. In the event that these negotiations result in execution by  
24 Waterkeeper of an agreement with American Metal and other scrap metal recyclers  
25 establishing a proposed categorical storm water permit that includes BMPs and numeric  
26 limits for the contaminants set forth in Table 1 or Table 2 above (“Agreement”), then the  
27 applicable terms of the proposed categorical storm water permit shall be substituted for  
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1 the Commitments of the Parties in Section II of this Consent Decree, except for the  
2 commitments in Paragraphs 11, 12, 19, 20, 21, 22, 23, 24, and 25, which shall remain  
3 enforceable. Upon execution of the Agreement by Waterkeeper and American Metal,  
4 any storm water discharge sampling at the Facility revealing an exceedance of the limits  
5 set forth in the proposed categorical storm water permit developed by the parties and  
6 agreed to by Waterkeeper and American Metal shall constitute a violation of this Consent  
7 Decree.

8 **C. Storm Water Pollution Prevention Plan**

9 17. SWPPP Revisions. Within thirty (30) days of the Effective Date of this  
10 Consent Decree, Defendant agrees to revise the SWPPP currently in effect at the  
11 Facility to incorporate all storm water pollution prevention measures and other  
12 applicable requirements set forth in this Consent Decree and/or the Industrial Permit.  
13 Specifically, the SWPPP shall include a description of all industrial activities and  
14 corresponding potential pollution sources and, for each potential pollutant source, a  
15 description of the potential pollutants from the sources. The SWPPP shall also identify  
16 BMPs (and their implementation dates) designed to achieve compliance with the  
17 provisions of this Consent Decree, including, but not limited to, a thorough description  
18 of the current features and treatment capacity of the stormwater treatment system  
19 discharging to the outfall located at the southeast corner of the Facility. American  
20 Metal shall revise the SWPPP as necessary to incorporate additional BMPs developed  
21 pursuant to this Consent Decree.

22 18. Waterkeeper's Review of Revised SWPPP. Defendant agrees to submit the  
23 revised SWPPP to Waterkeeper for review and comment as soon as it is completed but in  
24 any event no later than thirty (30) days from the Effective Date of this Consent Decree.  
25 Within thirty (30) days of Waterkeeper's receipt of the revised SWPPP, Waterkeeper  
26 shall provide Defendant with comments and suggestions, if any, concerning the revisions  
27 to the SWPPP. Within thirty (30) days of Defendant's receipt of Waterkeeper's  
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1 comments on the revised SWPPP, Defendant shall incorporate Waterkeeper's comments  
2 and re-issue the SWPPP. Any disputes as to the adequacy of the SWPPP shall be  
3 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at  
4 Section IV below.

5 **D. Monitoring and Reporting**

6 19. Site Inspections. For the term of this Consent Decree, Waterkeeper,  
7 Waterkeeper's Water Quality Engineer, accompanied by Waterkeeper's attorney or other  
8 representative, may conduct up to three yearly Site Inspections at the Facility. Site  
9 inspections shall occur during normal business hours and Waterkeeper shall provide  
10 Defendant with as much notice as possible, but at least twenty-four (24) hours notice  
11 during the Wet Weather season and forty-eight (48) hours notice during the dry season  
12 prior to each inspection. Notice will be provided by phone and electronic mail. During  
13 the Site Inspections, Waterkeeper and/or its representatives shall be allowed access to the  
14 Facility's SWPPP and related monitoring records and to all storm water monitoring  
15 reports and related data for the Facility. During the Site Inspections, Waterkeeper and/or  
16 its representatives may collect samples of storm water discharges at the Facility. A  
17 certified California laboratory shall analyze storm water samples collected by  
18 Waterkeeper. During the life of this Consent Decree, Waterkeeper shall provide  
19 American Metal with all laboratory analyses related to the Facility within ten (10) days  
20 of Waterkeeper's receipt of such information.

21 20. Compliance Monitoring and Oversight. American Metal agrees to help  
22 defray Waterkeeper's reasonable costs incurred in conducting Site Inspections and  
23 compliance monitoring by reimbursing Waterkeeper Ten Thousand Dollars (\$10,000) for  
24 these costs within thirty (30) days of the Effective Date of this Consent Decree.  
25 American Metal agrees to make compliance monitoring and oversight funds payable to  
26 "Lawyers for Clean Water Attorney Client Trust Account" and delivered by certified  
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1 mail or overnight delivery to Lawyers for Clean Water, Inc., 1004A O'Reilly Avenue,  
2 San Francisco, California 94129 attention Layne Friedrich.

3 21. Reporting. During the life of this Consent Decree, on a monthly basis,  
4 American Metal shall provide Waterkeeper with a copy of all compliance and monitoring  
5 data, including inspection reports, related to storm water at the Facility. During the life  
6 of this Consent Decree, American Metal shall provide Waterkeeper with all laboratory  
7 analyses related to storm water at the Facility within seven days of American Metal's  
8 receipt of such information.

9 22. Document Provision. During the life of this Consent Decree, American  
10 Metal shall copy Waterkeeper on all documents related to water quality at the Facility  
11 that are submitted to the Regional Board, the State Board, and/or any State or local  
12 agency or municipality. Such reports and documents shall be provided to Waterkeeper  
13 concurrently as they are sent to the agencies and/or municipalities. Any correspondence  
14 received by American Metal from any regulatory agency during the life of this Consent  
15 Decree shall be provided to Waterkeeper within three (3) business days of receipt by  
16 American Metal.

17 **E. Environmental Projects and Fees and Costs**

18 23. Environmental Mitigation Project. American Metal agrees to pay Twenty  
19 Thousand Dollars (\$20,000.00) to the Public Interest Green Fund for use in a  
20 supplemental environmental project to eliminate or mitigate the impacts of storm water  
21 pollution to the Declez Channel and/or to the Santa Ana River watersheds receiving  
22 discharges from the Facility. American Metal shall make the mitigation payment within  
23 thirty (30) days of the Effective Date of this Consent Decree and mail via certified mail  
24 or overnight delivery to the Public Interest Green Fund at the Orange County Community  
25 Foundation, 30 Corporate Park, Suite 410, Irvine, California 92606. American Metal  
26 shall provide Waterkeeper with a copy of such payment.

1           24. Waterkeeper’s Fees and Costs. American Metal agrees to reimburse  
2 Waterkeeper for Waterkeeper’s investigation fees and costs, expert fees and costs,  
3 reasonable attorneys’ fees, and other costs incurred as a result of investigating and  
4 preparing the lawsuit, and negotiating a resolution of this matter, totaling One Hundred  
5 Ten Thousand One Hundred Twelve (\$110,112.00) Dollars. Payment of 110,112.00  
6 Dollars shall be made within thirty (30) days of the Effective Date, payable to “Lawyers  
7 for Clean Water Attorney Client Trust Account” and delivered by certified mail or  
8 overnight delivery to: Lawyers for Clean Water, Inc., 1004A O’Reilly Avenue, San  
9 Francisco, California 94129 attention Layne Friedrich.

10           25. Stipulated Payment. American Metal shall make a remediation payment of  
11 One Thousand Dollars (\$1,000) for each missed deadline included in or contemplated by  
12 this Consent Decree, unless the missed deadline results from a Force Majeure Event.  
13 Payments for missed deadlines shall be made to the Public Interest Green Fund for the  
14 restoration and/or improvement of the watersheds receiving discharges from the Facility.  
15 American Metal agrees to make the stipulated payment within thirty (30) days of a  
16 missed deadline and mail via certified mail or overnight delivery to the Public Interest  
17 Green Fund at the Orange County Community Foundation, 30 Corporate Park, Suite 410,  
18 Irvine, California 92606. American Metal shall provide Waterkeeper with a copy of each  
19 such payment.

20           **F. Commitments of Plaintiff**

21           26. Within three days of the final signature of this Consent Decree by the  
22 Parties, Waterkeeper shall file a Notice of Tentative Settlement and Notice of 45-Day  
23 Review Period in the United States District Court for the Central District of California  
24 (“District Court”).

25           27. Review by Federal Agencies. Plaintiff shall submit this Consent Decree to  
26 EPA and the U.S. Department of Justice (“DOJ”) within three days of the final signature  
27 of the Parties for review consistent with 40 C.F.R. § 135.5. The agency review period  
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1 expires forty-five (45) days after receipt by both agencies, as evidenced by the certified  
2 return receipts, copies of which shall be provided to Defendant if requested. In the event  
3 that EPA or DOJ object to entry of this Consent Decree, the Parties agree to meet and  
4 confer to attempt to resolve the issue(s) raised by EPA or DOJ.

5 28. Plaintiff shall file this Consent Decree with the District Court within three  
6 (3) days of the Effective Date. Waterkeeper is responsible for notifying Defendant of the  
7 District Court's entry of the Order dismissing these claims with prejudice. Such  
8 notification can be satisfied by the Central District of California's Case Management/  
9 Electronic Case Filing ("CM/ECF") notification to the Parties that the Order was  
10 executed and entered by the District Court.

11 **III. EFFECTIVE DATE AND TERMINATION DATE**

12 29. The term "Effective Date," as used in this Consent Decree, shall mean the last  
13 date for the United States Department of Justice and the United States Environmental  
14 Protection Agency ("Federal Agencies") to comment on the Consent Decree, i.e., the  
15 45th day following the United States Department of Justice and United States  
16 Environmental Protection Agency's receipt of the Consent Decree or, the date on which  
17 the Federal Agencies provides notice that it requires no further review and the Court  
18 enters the final Consent Decree, whichever occurs earlier.

19 30. This Consent Decree will terminate after demonstration by American Metal  
20 that it has completed implementation of all required Action Plan(s) provided for under  
21 paragraph 15 above. If the proposed categorical storm water permit agreed to under  
22 paragraph 16 provides for preparation of an action plan(s) in the event that sampling data  
23 reveal an exceedance of any limit for any constituent(s) under the proposed categorical  
24 permit, then the Consent Decree will terminate after American Metal has completed  
25 implementation of all action plan(s) provided for under the terms of the proposed  
26 categorical storm water permit, if agreed to by Waterkeeper and American Metal. To  
27 make the demonstration under paragraph 15, or under the action plan(s) required by the  
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1 terms of the categorical storm water permit, American Metal shall provide Waterkeeper  
2 with a written report showing that all structural and/or non-structural BMPs required by  
3 the Action Plan(s) have been implemented and are functioning at the Facility. At its  
4 discretion, Waterkeeper, Waterkeeper's Water Quality Engineer, accompanied by  
5 Waterkeeper's attorney or other representative, shall have thirty (30) days from receipt of  
6 the written report required to make the demonstration that the action plan(s) have been  
7 implemented and are functioning at the Facility to conduct a site inspection prior to  
8 termination of this Consent Decree.

9 **IV. DISPUTE RESOLUTION**

10 31. This Court shall retain jurisdiction over this matter for the purposes of  
11 implementing and enforcing the terms and conditions of this Consent Decree, and  
12 adjudicating all disputes among the parties that may arise under the provisions of this  
13 Consent Decree. The Court shall have the power to enforce this Consent Decree with all  
14 available legal and equitable remedies.

15 32. Meet and Confer. A party to this Consent Decree shall invoke the dispute  
16 resolution procedures of this Section by notifying all other Parties in writing of the  
17 matter(s) in dispute and of the party's intention to resolve the dispute under this Section.  
18 The Parties shall then meet and confer in an attempt to resolve the dispute informally  
19 over a period of fourteen (14) calendar days from the date of the notice.

20 33. If the Parties cannot resolve a dispute by the end of meet and confer  
21 informal negotiations, the party invoking the dispute resolution provision shall provide  
22 notice to the other party that it intends to invoke formal dispute resolution by filing a  
23 motion before the United States District Court for the Central District of California. The  
24 Parties shall jointly apply to the Court for an expedited hearing schedule on the motion.

25 34. If Waterkeeper initiates a motion or proceeding before the Court relating to  
26 enforcement of the terms and conditions of this Consent Decree, Waterkeeper shall be  
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1 entitled to recover fees incurred to enforce the terms of this Consent Decree consistent  
2 with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §1365 and § 1319.

3 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

4 35. In consideration of the above, upon the Effective Date of this Consent  
5 Decree, the Parties hereby fully release, except for claims for American Metal's failure to  
6 comply with this Consent Decree and as expressly provided below, each other and their  
7 respective successors, assigns, officers, agents, employees, and all persons, firms and  
8 corporations having an interest in them, from any and all alleged CWA violations  
9 claimed in the Complaint, up to and including the Effective Date of this Consent Decree  
10 and until its termination.

11 36. Nothing in this Consent Decree limits or otherwise affects Waterkeeper's  
12 right to address or take any position that it deems necessary or appropriate in any formal  
13 or informal proceeding before the Regional Board, EPA, or any other judicial or  
14 administrative body on any other matter relating to American Metal.

15 **VI. MISCELLANEOUS PROVISIONS**

16 37. Neither the Consent Decree nor any payment pursuant to the Consent Decree  
17 shall constitute or be construed as a finding, adjudication, or acknowledgement of any  
18 fact, law or liability, nor shall it be construed as an admission of violation of any law,  
19 rule, or regulation. Defendant maintains and reserves all defenses it may have to any  
20 alleged violations that may be raised in the future.

21 38. Force Majeure. Defendant shall notify Waterkeeper pursuant to the terms of  
22 this paragraph, when implementation of the requirements set forth in this Consent  
23 Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite  
24 the timely good-faith efforts of Defendant, due to circumstances beyond the reasonable  
25 control of Defendant or its agents, and which could not have been reasonably foreseen  
26 and prevented by the exercise of due diligence by Defendant. Any delays due to  
27 Defendant's failure to make timely and bona fide applications and to exercise diligent  
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1 efforts to obtain any necessary permits, or due to normal inclement weather, shall not, in  
2 any event, be considered to be circumstances beyond American Metal's control. Force  
3 majeure shall not include economic hardship or inability to pay.

4 a. If Defendant claims impossibility, it shall notify Waterkeeper in writing  
5 within twenty-one (21) days of the date that American Metal first knew of the event or  
6 circumstance that caused or would cause a violation of this Consent Decree or the date  
7 American Metal should have known of the event or circumstance by the exercise of due  
8 diligence. The notice shall describe the reason for the nonperformance and specifically  
9 refer to this Section. It shall describe the anticipated length of time the delay may persist,  
10 the cause or causes of the delay, the measures taken or to be taken by American Metal to  
11 prevent or minimize the delay, the schedule by which the measures will be implemented,  
12 and the anticipated date of compliance. American Metal shall adopt all reasonable  
13 measures to avoid and minimize such delays.

14 b. The Parties shall meet and confer in good-faith concerning the non-  
15 performance and, where the Parties concur that performance was or is impossible, despite  
16 the timely good faith efforts of American Metal, due to circumstances beyond the control  
17 of American Metal that could not have been reasonably foreseen and prevented by the  
18 exercise of due diligence by American Metal, new deadlines shall be established.  
19 If Waterkeeper disagrees with American Metal's notice, or in the event that the Parties  
20 cannot timely agree on the terms of new performance deadlines or requirements, either  
21 party shall have the right to invoke the Dispute Resolution Procedure pursuant to Section  
22 IV above. In such proceeding, American Metal shall bear the burden of proving that any  
23 delay in performance of any requirement of this Consent Decree was caused or will be  
24 caused by force majeure and the extent of any delay attributable to such circumstances.

25 39. Construction. The language in all parts of this Consent Decree shall be  
26 construed according to its plain and ordinary meaning, except as to those terms defined in  
27 the Industrial Permit, the Clean Water Act, or specifically herein.

1           40.   Choice of Law. The laws of the United States shall govern this Consent  
2 Decree.

3           41.   Severability. In the event that any provision, paragraph, section, or sentence  
4 of this Consent Decree is held by a court to be unenforceable, the validity of the  
5 enforceable provisions shall not be adversely affected.

6           42.   Correspondence. All notices required herein or any other correspondence  
7 pertaining to this Consent Decree shall be sent by regular, certified, electronic mail, or  
8 overnight mail as follows:

9           If to Plaintiff:

10           Daniel G. Cooper, Esq.  
11           Lawyers for Clean Water, Inc.  
12           1004 O'Reilly Ave.  
13           San Francisco, CA 94129  
14           Daniel@lawyersforcleanwater.com

15           With copies to:

16           Garry Brown  
17           Orange County Coastkeeper  
18           3151 Airway Avenue, Suite F-110  
19           Costa Mesa, CA 92626  
20           garry@coastkeeper.org

21           If to Defendant:

22           Jennifer Friend, Esq.  
23           Selman Brietman LLP  
24           600 W. Santa Ana Blvd., Suite 501  
25           Santa Ana, CA 92701-4551  
26           jfriend@selmanbreitman.com

27           With copies to:

28           Todd Rubin  
            American Metal Recycling, Inc.

1 11150 Redwood Avenue  
2 Fontana, CA 92337

3 Notifications of communications shall be deemed submitted three days after the  
4 date that they are postmarked and sent by first-class mail or deposited with an overnight  
5 mail/delivery service. Any change of address or addresses shall be communicated in the  
6 manner described above for giving notices. In addition, the Parties may agree to transmit  
7 documents electronically or by facsimile.

8 43. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent  
9 Decree, warrant or aver in any manner that the Defendant's compliance with this Consent  
10 Decree will constitute or result in compliance with any federal or state law or regulation.  
11 Nothing in this Consent Decree shall be construed to affect or limit in any way the  
12 obligation of the Defendant to comply with all federal, state, and local laws and  
13 regulations governing any activity required by this Consent Decree.

14 44. Counterparts. This Consent Decree may be executed in any number of  
15 counterparts, all of which together shall constitute one original document. Telecopy  
16 and/or facsimile copies of original signature shall be deemed to be originally executed  
17 counterparts of this Consent Decree.

18 45. Modification of the Consent Decree. This Consent Decree, and any  
19 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
20 written instrument, signed by the Parties.

21 46. Full Settlement. This Consent Decree constitutes a full and final settlement  
22 of this matter.

23 47. Integration Clause. This is an integrated Consent Decree. This Consent  
24 Decree is intended to be a full and complete statement of the terms of the agreement  
25 between the parties and expressly supersedes any and all prior oral or written agreements  
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1 covenants, representations, and warranties (express or implied) concerning the subject  
2 matter of this Consent Decree.

3 48. Authority. The undersigned representatives for Plaintiff and Defendant each  
4 certify that he/she is fully authorized by the party whom he/she represents to enter into  
5 the terms and conditions of this Consent Decree.

6 49. The provisions of this Consent Decree apply to and bind the Parties,  
7 including any successors or assigns. Unless expressly provided herein, the obligations  
8 arising under this Consent Decree take effect as of execution of this Consent Decree. The  
9 Parties certify that their undersigned representatives are fully authorized to enter into this  
10 Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its  
11 terms.

12 50. The Parties agree to be bound by this Consent Decree and not to contest its  
13 validity in any subsequent proceeding to implement or enforce its terms. By entering into  
14 this Consent Decree, Defendant does not admit liability for any purpose as to any  
15 allegation or matter arising out of this Action.

16 The undersigned representatives for Waterkeeper and Defendant each certifies that  
17 he/she is fully authorized by the party whom he/she represents to enter into the terms and  
18 conditions of this Consent Decree and that this Consent Decree binds that party.

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1 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as  
2 of the date first set forth below.

3 LAWYERS FOR CLEAN WATER, INC.

4  
5 Dated: 3 ~~May~~ <sup>June</sup> 2010

6   
Daniel Cooper  
7 Lawyers for Clean Water, Inc.  
8 Attorneys for Plaintiff  
9 Inland Empire Waterkeeper/  
Orange County Coastkeeper

10 INLAND EMPIRE WATERKEEPER

11  
12 Dated: 3 ~~May~~ <sup>June</sup> 2010

13 by:   
14 Garry Brown  
15 Inland Empire Waterkeeper/  
16 Orange County Coastkeeper

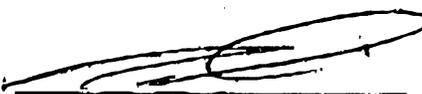
17 SELMAN BREITMAN, LLP

18  
19 Dated: 31 May 2010

20   
Jennifer Friend  
21 Attorney for Defendant  
22 American Metal Recycling, Inc.

23 AMERICAN METAL RECYCLING, INC

24  
25 Dated: 28 May 2010

26 by:   
27 Todd Rubin  
28 American Metal Recycling, Inc.

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AMERICAN METAL RECYCLING, INC.

Dated: 28 May 2010

by:   
George Adams  
American Metal Recycling, Inc.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Gary A. Fees  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS**

This Settlement Agreement and Mutual Release of Claims (“AGREEMENT”) is entered into between Northern California River Watch (“NCRW”) and the City of Arcata (“City”) (collectively, the “PARTIES”) with respect to the following facts and objectives:

**RECITALS**

**WHEREAS**, NCRW is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the rivers, creeks, and tributaries of Northern California;

**WHEREAS**, the City is a municipality organized under the laws of the State of California, which owns and operates a collection system for the purpose of collecting and conveying for wastewater from residential, commercial, and industrial sources to its publicly owned treatment works;

**WHEREAS**, on or about August 3, 2009, NCRW provided the City with a Notice of Violation and Intent to File Suit under the Clean Water Act (“Clean Water Act” or “CWA”), 33 U.S.C. §1365, (hereinafter “CWA Notice Letter”);

**WHEREAS**, the City denies any and all of NCRW’s allegations and claims in the CWA Notice Letter;

**WHEREAS**, NCRW and the City, through their authorized representatives and without either adjudication of NCRW’s claims or admission by the City of any alleged violation or other wrongdoing, have chosen to resolve in full NCRW’s allegations in the CWA Notice Letter through settlement and avoid the cost and uncertainties of litigation; and

**WHEREAS**, NCRW and the City have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving NCRW’s allegations set forth in the CWA Notice Letter.

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

**EFFECTIVE DATE**

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

## AGREEMENT

### 2. Closed Circuit Televising of Gravity Lines.

Within five (5) years of the Effective Date of this AGREEMENT, City agrees to closed circuit televise (“CCTV”) all gravity collection system lines that have not been CCTV’d within the five (5) years prior to the Effective Date of the AGREEMENT, except for those lines which have been replaced or repaired within ten (10) years prior to the Effective Date. The City shall provide written confirmation of the completion of this task herein to NCRW, with a copy to Jerry Bernhaut, no later than the TERMINATION DATE of the AGREEMENT.

### 3. GIS Mapping.

Within one (1) year from the Effective Date of this AGREEMENT, the City agrees to add to its Geographic Information System (GIS) maps the following information:

- (1) Proximity of collection system components to year round streams, drainage channels, and bay waters;
- (2) Class of streams in proximity to collection system components;
- (3) Soil types, as reported by the United States Geological Survey (“USGS”), in the collection system area and adjacent to potentially affected streams, drainage channels, and bay waters proximate to the City’s collection system; and
- (3) Land uses in the collection system area and adjacent to potentially affected streams, drainage channels, and bay waters proximate to the City’s collection system.

### 4. Re-Prioritization of the City’s Capital Improvement Projects

Within two (2) years from the Effective Date of this AGREEMENT, City agrees to use the information added to City’s GIS maps, discussed in paragraph 3. above, to re-prioritize City’s capital improvement projects as follows:

- (a) Wherever the added GIS information shows a gravity sewer pipeline within one hundred and fifty (150) feet of a stream, drainage channel or stream/channel crossing or two hundred and fifty (250) feet of bay waters, that segment of pipeline shall be assigned the highest priority for repair in the City’s Capital Improvement Program (“CIP”) if CCTV records show structural defects that are severe or require immediate attention;

- (b) If any segment of the City's gravity sewer pipes within two hundred and fifty (250) feet of a stream, drainage channel or bay waters has not been inspected by CCTV within five (5) years prior to the Effective Date of this AGREEMENT, to the extent feasible and consistent with orderly CCTV activities, that segment of pipeline will be assigned the highest priority in the City's five (5) year CCTV program discussed in paragraph 2 above; and
- (c) The City will develop a system for rating structural defects in gravity sewer pipelines to determine which segments of pipeline within one hundred and fifty (150) feet of a stream, drainage channel, or stream or channel crossing or two hundred and fifty (250) feet of bay waters will qualify to be assigned the highest priority in City's CIP. At this time, the City plans to employ a sewer inspection rating system, tailored to the City's site-specific system, which will be in conformance with an industry acceptable standard. The final City rating system will be subject to approval by NCRW, within thirty (30) days of submittal, and approval will not be unreasonably withheld by NCRW. The City's rating system will be deemed approved if NCRW does not affirmatively approve, or otherwise provide comment within thirty (30) days of submittal by City.

5. **Spill Reporting and Response**

Within one (1) year from the Effective Date of this AGREEMENT, the City agrees to add to the City's notification process for Sanitary Sewer Overflows ("SSO") the following categories of information, which should be included in the record of every SSO whenever possible:

- (a) The City staff person receiving a call reporting an alleged SSO incident shall record the name, address, and phone number of the person reporting the incident (the "caller"), if provided by the caller. The City staff person must ask the caller about the estimated duration of the observed problem, and the caller response shall be written down and preserved in the record of the SSO incident.
- (b) City service crews responding to an SSO incident shall record the following additional information:
  - (1) the information relied upon to estimate the start-time of the spill, including information provided by the person reporting the incident, if available and relevant;

- (2) the method used to estimate the volume of the spill;
- (3) a narrative description of the terrain surrounding the point of discharge/overflow, including the general direction of flow and the location of any streams or drainage channels in the area; and
- (4) measures taken to halt or remediate the overflow, including any efforts to repair the system, if related to a structural defect or blockage.

6. **Private Sewer Lateral Inspection and Repair**

- (a) Within one (1) year from the Effective Date of this AGREEMENT, the City agrees to develop a program for the mandatory inspection, repair, and/or replacement of private sewer laterals, at the private property owner's expense. The program shall use one or more of the following events (or additional events as identified by City) as a basis or "trigger" for inspection, repair and/or replacement:
  - (1) At the time of property sale or transfer; or
  - (2) Prior to approval of a "significant remodel" or "addition" as will be defined by the City's Public Works Director.
- (b) This program may be included through authorization by City ordinance. The City shall, as part of the ordinance adoption process related to private sewer laterals, conduct at least one public workshop in the City regarding the proposed sewer lateral inspection and repair program in order to receive public input and comment.
- (c) The proposal or draft ordinance and any public workshop materials shall be provided to River Watch for review and comment. River Watch shall return any comments it may have in writing within twenty-one (21) days of submittal by the City.
- (d) After receiving public input and comment, the City staff shall present a final proposal to the City's Council for its consideration and adoption.

7. **Website Linkage**

Within one (1) year from the Effective Date of the AGREEMENT, the City shall create a link from the City's web site to the State Water Resources Control Board's (SWRCB) CIWQS SSO Public Reports. The City shall also provide notification to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

8. **Task Confirmation, and Fees, Costs, and Expenses.**

a) The City shall provide written confirmation of the completion of each task described in Paragraphs 3 through 7 above to NCRW, with a copy to Jerry Bernhaut, within thirty (30) days of the completion of each task.

b) Within fifteen (15) calendar days after the EFFECTIVE DATE of this AGREEMENT, City shall pay NCRW the sum of thirty thousand dollars (\$30,000.00) as reimbursement for NCRW's investigative, and attorneys' fees and costs. Payment shall be made by the City to NCRW in the form of a single check payable to "Northern California River Watch," and shall constitute full payment for all costs of litigation and attorneys' fees incurred by NCRW that have or could have been claimed in connection with NCRW's allegations in its CWA Notice Letter up to and including the Effective Date of this AGREEMENT, and for NCRW's attorneys' fees and costs spent monitoring and enforcing City's compliance with ongoing obligations under this AGREEMENT, with the exception of any action taken to enforce the Agreement in accordance with the dispute resolution procedures set forth in paragraphs 14 and 15 below.

**TERMINATION DATE**

9. This AGREEMENT shall terminate when one of the following conditions occurs, whichever is earlier:

- (a) Five years from the Effective Date of the AGREEMENT; or
- (b) At such time that the City completes the collection system activities set forth in Paragraphs 2 - 7 above, and payment pursuant to Paragraph 8.b) has been made.

## **NO ADMISSION OR FINDING**

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

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

11. In consideration of the above, and except as otherwise provided by this AGREEMENT, the PARTIES hereby forever and fully release each other and their respective successors, assigns, directors, officers, agents, board members, representatives, and employees, and all persons, firms and corporations having an interest in them, from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, whether known or unknown, which the PARTIES have or may have against each other arising from or related to NCRW's allegations as set forth in the CWA Notice Letter up to and including the Effective Date of this AGREEMENT.

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

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

The PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the CWA Notice Letter up to and including the Effective Date of this AGREEMENT.

13. For the period beginning on the Effective Date and ending five (5) years after the Effective Date of this AGREEMENT, NCRW agrees that neither NCRW, its officers, executive staff, members of its governing board nor any organization under the control of NCRW, its officers, executive staff, or members of its governing board, will serve any 60-day Notice Letter or file any lawsuit against the City seeking relief for alleged violations of the Clean Water Act or the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, or similar state statutes and/or regulations, including the California Porter-Cologne Water Quality Control Act, nor will NCRW initiate or support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

However, NCRW maintains the right to sue the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, or the Regional Water Quality Control Board for the North Coast Region related to any jurisdictional determination made regarding the status of the Arcata marsh as a “waters of the United States.” NCRW also maintains the right to file a declaratory relief action against the City regarding the jurisdictional status of the treatment marshes, but the City reserves all available defenses. Both Parties reserve the right to seek attorney’s fees as the prevailing party.

#### **DISPUTE RESOLUTION PROCEDURE**

14. Any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The PARTIES covenant and agree that, if either party determines the other is in violation of one or more terms of the AGREEMENT, the party shall provide notice to the other in writing of what actions or inactions they deem to be in violation of this AGREEMENT. Within thirty (30) days of receipt of such notice, the party receiving the notice shall respond to the notice in writing. If the PARTIES still dispute compliance with this AGREEMENT, within an additional thirty (30) days, the PARTIES will meet and confer in a good faith attempt to resolve their dispute. If the PARTIES cannot informally resolve the dispute, either party may seek relief through a claim filed and heard by the presiding judge of the Humboldt County Superior Court. To the extent there are multiple claims each with a different prevailing party, the judge may take those facts into account in terms of an award for fees and costs, and can order each party to bear their own costs.

15. If NCRW asserts that City is in violation of this AGREEMENT, and City corrects the action or inaction within sixty (60) days of written notice from NCRW describing the asserted violations, no further enforcement action under the terms of the AGREEMENT shall be taken by either party. To the extent an alleged violation cannot be reasonably cured within the sixty (60) day period, and the City undertakes all reasonable efforts to commence the cure of such asserted violation within that period, similarly, no further enforcement action under the terms of this AGREEMENT shall be taken by either party if City ultimately cures the alleged violation.

#### **FORCE MAJEURE**

16. Separate from, and in addition to any other limitations on the City’s obligations under this AGREEMENT, the City’s obligations to comply with any provisions of this AGREEMENT shall be excused or deferred if compliance, or a delay to compliance, is caused by an event or circumstance beyond the reasonable control of the City or any entity controlled by City, including its contractors, and which event or circumstance could not have been reasonably foreseen and prevented by the exercise of due diligence by the City. Where implementation of the actions set forth in this AGREEMENT, within the deadlines prescribed, becomes

unachievable, despite the timely good faith efforts of the City, the City shall notify NCRW in writing within thirty (30) days of the date that the City knew of the event or circumstance precluding compliance, and shall describe the reason for the non-performance. The PARTIES agree to meet and confer in good faith concerning the non-performance and, where the PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the PARTIES, compliance shall be excused or new performance deadlines shall be established by agreement of the parties. In the event that the PARTIES cannot timely agree, either party shall have the right to invoke the dispute resolution procedure described herein.

### **GENERAL PROVISIONS**

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

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

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

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

If to NCRW:

Northern California River Watch  
500 North Main Street, Suite 110  
Sebastopol, CA 95472  
Telephone: 707-824-4370  
us@ncriverwatch.org AS

And to:

Jerry Bernhaut  
c/o Northern California River Watch  
Law Office of Jack Silver  
PO Box 5469  
Santa Rosa, CA 95402-5469  
Telephone: (707) 528-8175  
Facsimile: (707) 528-8675  
~~jbernhaut@comcast.net~~  
j2bernhaut@yahoo.com BS

If to City:

Mark Andre, Director  
Environmental Services Department  
736 F Street  
Arcata, CA 95521  
Telephone: (707) 822-5951  
Facsimile: (707) 822-8018  
[mandre@cityofarcata.org](mailto:mandre@cityofarcata.org)

Nancy Diamond  
Arcata City Attorney  
822 G Street, Suite 3  
Arcata, California 95521  
Telephone: (707) 826-8540  
Facsimile: (707) 826-8541  
[ndiamond@humboldt1.com](mailto:ndiamond@humboldt1.com)

And to:

Melissa A. Thorme  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
Telephone: (916) 444-1000  
Facsimile: (916) 444-2100  
[mthorme@downeybrand.com](mailto:mthorme@downeybrand.com)

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

20. **Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, electronic, and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

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

22. **Modification of the AGREEMENT:** Except as set forth herein, this AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the PARTIES.

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

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

25. **Negotiated Agreement.** The PARTIES have negotiated this AGREEMENT, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this AGREEMENT and any uncertainty and ambiguity shall not be interpreted against any one party.

26. **Authority.** The undersigned representatives for NCRW and the City each certify that he or she is fully authorized by the party whom he represents to enter into the terms and conditions of this AGREEMENT.

The PARTIES hereby enter into this AGREEMENT.

Date: 1-29, 2010

NORTHERN CALIFORNIA RIVER WATCH

By: Margaret B. Bagalupis  
Name: Margaret Bagalupis  
Title: NCRW Board Pres.

Date: 2/9, 2010

CITY OF ARCATA

By: Alexandra Stillman  
Name: Alexandra Stillman  
Title: Mayor

**APPROVED AS TO FORM:**

For NCRW:

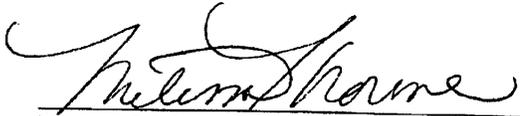
Date: 1/27, 2010 \_\_\_\_\_ LAW OFFICE OF JACK SILVER

  
By: Jerry Bernhaut, Esq.

For the City of Arcata:

Date: Jan. 22, 2010 \_\_\_\_\_

DOWNEY BRAND LLP

  
By: Melissa A. Thorme, Esq.

1 ANDREW L. PACKARD (Bar No. 168690)  
2 ERIK M. ROPER (State Bar No. 259756)  
3 Law Offices of Andrew L. Packard  
4 100 Petaluma Blvd. N., Suite 301  
5 Petaluma, CA 94952  
6 Tel: (707) 763-7227  
7 Fax: (707) 763-9227  
8 E-mail: Andrew@packardlawoffices.com

9 ROBERT J. TUERCK (Bar No. 255741)  
10 Jackson & Tuerck  
11 P. O. Box 148  
12 429 W. Main Street, Suite C  
13 Quincy, CA 95971  
14 Tel: (530) 283-0406  
15 E-mail: bob@jacksontuerck.com

16 Attorneys for Plaintiff  
17 CALIFORNIA SPORTFISHING  
18 PROTECTION ALLIANCE

19 UNITED STATES DISTRICT COURT  
20 EASTERN DISTRICT OF CALIFORNIA

21 CALIFORNIA SPORTFISHING  
22 PROTECTION ALLIANCE, a non-profit  
23 corporation,

24 Plaintiff,

25 vs.

26 BALDWIN CONTRACTING COMPANY,  
27 INC., a California corporation, BCJ SAND  
28 AND ROCK, INC., a California corporation,  
J. BRAD SLENDER, an individual, TED  
HALE, an individual, MASON  
RICHARDSON, an individual, and RENE  
VERCRUYSSSEN, an individual,

Defendants.

Case No. 2:10-cv-00879-GEB-DAD

**(PROPOSED) CONSENT AGREEMENT**

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

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

WHEREAS, Defendant BALDWIN CONTRACTING COMPANY, INC. (hereinafter

1 “BCCI”) owns an approximately 60-acre construction sand and gravel facility located at  
2 4970 Wheelock Road, in Oroville, California (the “Facility”), Defendant René Vercruyssen is the  
3 General Manager/VP of BCCI, Defendant BCJ Sand and Rock, Inc. (“BCJ”) leases the Facility from  
4 BCCI, Defendant J. Brad Slender is the Operator of the Facility for BCJ, and Defendant Ted Hale is  
5 the Plant Manager of the Facility;

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

7 **WHEREAS**, the Facility collects and discharges storm water to Sawmill Ravine Creek, which  
8 flows to Dry Creek and ultimately into the Sacramento River, and the Sacramento-San Joaquin Delta  
9 (a map of the Facility is attached hereto as Exhibit A and incorporated herein by reference);

10 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
11 to the National Pollutant Discharge Elimination System (“NPDES”), General Permit No. CAS000001  
12 [State Water Resources Control Board], Water Quality Order No. 91-13-DWQ (as amended by Water  
13 Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act,  
14 33 U.S.C. § 1342 (hereinafter “General Permit”);

15 **WHEREAS**, on or about February 12, 2010, and again on or about April 26, 2010, Plaintiff  
16 provided notice of Defendants’ violations of the Act, and of its intention to file suit against  
17 Defendants, to the Administrator of the United States Environmental Protection Agency (“EPA”); the  
18 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board  
19 (“State Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
20 Region (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A)  
21 (true and correct copies of CSPA’s notice letters are attached as Exhibit B and incorporated herein by  
22 reference);

23 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and  
24 maintains that they have complied at all times with the provisions of the General Permit and California  
25 Health & Safety Code sections 25249.5 *et seq.*;

26 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States  
27 District Court, Eastern District of California, on April 13, 2010 and filed a First Amended Complaint  
28

1 on June 28, 2010;

2 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is proper  
3 in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this  
4 Consent Agreement;

5 **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of  
6 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall thereafter be  
7 submitted for approval by the Court, the date of which approval shall be referred to herein as the  
8 “Court Approval Date”;

9 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States  
10 District Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall  
11 stipulate and request that the Court retain jurisdiction for the enforcement of this Agreement as  
12 provided herein;

13 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter  
14 without further litigation.

15 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**  
16 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

17 **I. COMMITMENT OF DEFENDANTS**

18 **1. Compliance With General Permit & Clean Water Act.** Beginning immediately, and  
19 throughout the term of this Consent Agreement, Defendants shall commence all measures needed to  
20 operate the Facility in full compliance with the requirements of the General Permit and the Clean  
21 Water Act, subject to any defenses available under the law.

22 **2. Defendants’ Implementation of Specific Storm Water Best Management Practices**  
23 **On Or Before October 1, 2010.** On or before October 1, 2010, Defendants shall complete the  
24 implementations of the following storm water control measures/best management practices (“BMPs”):

25 (a) Defendants shall conform all BMPs to handbooks for Caltrans or California  
26 Stormwater Quality Association (“CASQA”; see complete listings for industrial Storm water  
27 at: <http://www.cabmphandbooks.com/Industrial.asp>);

28

1 (b) Defendants shall not mine within the active streambed, nor cross the active  
2 streambed, unless applicable permits are timely obtained from the relevant governmental  
3 agencies, and timely courtesy copied to Plaintiff pursuant to the Notice provisions set forth  
4 herein below;

5 (c) Defendants shall limit its mining activities to no more than three active mining  
6 areas during the Wet Season, except to the extent that Defendants are engaging in reclamation  
7 in one area while mining in another;

8 (d) Defendants agree to construct and maintain a continuous berm, at least three  
9 feet in height and constructed out of on-site native materials, along the entire boundary  
10 between the Facility and the active stream channel;

11 (e) Defendants agree to install a silt fence running along this entire boundary  
12 between the Facility and the berm and directly adjacent to the berm, as set forth on Exhibit A  
13 hereto;

14 (f) Defendants shall construct and maintain BMPs at the active process ponds that  
15 are sized to control a 25 year/24-hour storm event, as set forth on Exhibit A hereto;

16 (g) Defendants shall undertake BMPs to eliminate surface runoff from the  
17 freshwater pond to the active stream bed, including but not limited to increasing the freeboard  
18 to not less than three feet high and sloping the freeboard to ensure stormwater flows toward the  
19 ponds and away from the active stream channel;

20 (h) Defendants shall ensure that all storage containers are properly labeled and,  
21 where appropriate, Defendants shall utilize secondary containment BMPs;

22 (i) Defendants shall maintain the Facility so as to protect against fluid leakage  
23 (e.g., from equipment, stored lubricants, etc.), increase the number of spill kits readily  
24 available to at least three (3), and, when necessary, employ reasonable steps to clean up any  
25 spills;

26 (j) Defendants shall develop and implement an Erosion & Sediment Control Plan  
27 for the entire Facility and incorporate same as part of the SWPPP.  
28

1           **3. SWPPP Amendments/Additional BMPs.** Within thirty (30) days of mutual execution  
2 of this Consent Agreement, Defendants shall formally amend the SWPPP for the Facility to  
3 incorporate all of the relevant requirements of this Consent Agreement, as well as the revised Facility  
4 map attached hereto as Exhibit A, and the Erosion & Sediment Control Plan described above, and  
5 provide a courtesy copy of the amended SWPPP to Plaintiff pursuant to the Notice provisions set forth  
6 herein below.

7           **4. Sampling Frequency.** Defendants shall collect and analyze samples from four (4)  
8 storm events, as qualified in the General Permit<sup>1</sup> for sampling purposes, in each of the two Wet  
9 Seasons occurring during the term of this Consent Agreement (2010-2011 and 2011-2012). The storm  
10 water sample results shall be compared with the values set forth in Exhibit C, attached hereto, and  
11 incorporated herein by reference. If the results of any such samples exceed the parameter values set  
12 forth in Exhibit C, Defendants shall comply with the “Action Memorandum” requirements set forth  
13 below.

14           **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents  
15 listed in Exhibit C by a laboratory accredited by the State of California. All samples collected from  
16 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold time” is  
17 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual  
18 constituents at or below the values specified on Exhibit C. Sampling results shall be provided to  
19 CSPA within seven (7) days of Defendants’ receipt of the laboratory report from each sampling event  
20 pursuant to the Notice provisions below.

21           **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”;**  
22 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4  
23 above exceeds the evaluation levels set forth in Exhibit C, Defendants shall prepare a written  
24 statement discussing the exceedance(s), the possible cause and/or source of the exceedance(s), and  
25

26 \_\_\_\_\_  
27 <sup>1</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are are  
28 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 additional measures that will be taken to address and eliminate the problem and future exceedances  
2 (“Action Memorandum”). The Action Memorandum shall be provided to CSPA upon completion and  
3 in any case no later than thirty (30) days after Defendants’ receipt of the sample results at issue.  
4 Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such  
5 additional measures may include, but are not limited to, taking samples, further material improvements  
6 to the storm water collection and discharge system, changing the frequency of Facility sweeping,  
7 changing the type and extent of storm water filtration media or modifying other industrial activities or  
8 management practices at the Facility. Such additional measures, to the extent feasible, shall be  
9 implemented immediately and in no event later than sixty (60) days after the due date of the Action  
10 Memorandum. Within seven (7) days of implementation, the Facility SWPPP shall be amended to  
11 include all additional BMP measures designated in the Action Memorandum. CSPA may review and  
12 comment on an Action Memorandum and suggest any additional pollution prevention measures it  
13 believes are appropriate; however, CSPA’s failure to do so shall not be deemed to constitute  
14 agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA,  
15 Defendants agree to meet and confer in good faith regarding the contents and sufficiency of the Action  
16 Memorandum.

17 **7. Inspections During The Term Of This Agreement.** In addition to any site  
18 inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as  
19 set forth above, Defendants shall permit representatives of CSPA to perform up to three (3) physical  
20 inspections of the Facility during the term of this Consent Agreement. These inspections shall be  
21 performed by CSPA’s counsel and consultants and may include sampling, photographing, and/or  
22 videotaping and CSPA shall provide Defendants with a copy of all sampling reports, photographs  
23 and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical  
24 inspection, except that Defendants shall have the right to deny access if circumstances would make the  
25 inspection unduly burdensome and pose significant interference with business operations, the  
26 schedules of parties and their representatives, or the safety of any individuals. In such case,  
27 Defendants shall specify at least three (3) dates within the two (2) weeks thereafter upon which a  
28

1 physical inspection by CSPA may proceed. Defendants shall not make any alterations to Facility  
2 conditions during the period between receiving CSPA's notice and the start of CSPA's inspection that  
3 Defendants would not otherwise have made but for receiving notice of CSPA's request to conduct a  
4 physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws  
5 or regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement  
6 any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

7 **8. Defendants' Communications with Regional and State Boards.** During the term of  
8 this Consent Agreement, Defendants shall provide CSPA with copies of all documents submitted to  
9 the Regional Board or the State Board concerning storm water discharges from the Facility, including,  
10 but not limited to, all documents and reports submitted to the Regional Board and/or State Board as  
11 required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to  
12 the Notice provisions herein and contemporaneously with Defendants' submission to such agencies.

13 **9. SWPPP Amendments.** Defendants shall provide CSPA with a copy of any  
14 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen  
15 (14) days of such amendment.

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

17 **10. Mitigation.** As mitigation of the Clean Water Act violations alleged in CSPA  
18 Complaint, Defendants agree to pay CSPA the sum of \$30,000 which CSPA shall remit to the Rose  
19 Foundation for Communities and the Environment for projects relating to the reduction, prevention or  
20 mitigation of, or research on, the effects of discharges of pollutants in storm water to the Sacramento  
21 River and the Sacramento-San Joaquin River Delta.

22 **11. Reimbursement of Fees & Costs.** Defendants agree to reimburse CSPA in the amount  
23 of \$32,500 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs,  
24 and all other costs incurred as a result of investigating the activities at the Facility, bringing the Action  
25 and negotiating a resolution in the public interest.

26 **12. Payment Schedule.** Pursuant to Paragraphs 10 and 11 herein, Defendants are jointly  
27 and severally liable for a total payment of \$62,500, all of which shall be made payable to the "Law  
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1 Offices of Andrew L. Packard Attorney-Client Trust Account” and delivered to Plaintiff’s counsel’s  
2 address pursuant to the Notice provisions herein upon the following schedule: (a) an initial payment in  
3 the amount of \$22,500 shall be due within twenty-one (21) days of the mutual execution of this  
4 Consent Agreement; (b) a second payment in the amount of \$20,000 shall be due within forty-five  
5 (45) days of the Court Approval Date; and (c) a third payment in the amount of \$20,000 shall be due  
6 within one hundred thirty-five (135) days of the Court Approval Date.

7 **13. Compliance Monitoring Funding.** To defray CSPA’s reasonable investigative,  
8 expert, consultant and attorneys’ fees and costs associated with monitoring Defendants’ compliance  
9 with this Consent Agreement, Defendants agree to contribute \$5,000 for each of the two (2) years  
10 covered by this Consent Agreement, to a compliance monitoring fund maintained by CSPA.  
11 Compliance monitoring activities may include but shall not be limited to, site inspections, review of  
12 water quality sampling reports, review of annual reports, discussions with representatives of  
13 Defendants concerning the Action Memoranda referenced above, and potential changes to compliance  
14 requirements herein, preparation for and participation in meet-and-confer sessions, water quality  
15 sampling and analysis, and compliance-related activities. The first such payment in the amount of  
16 \$5,000 shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust  
17 Account within forty-five (45) days of the Court Approval Date, with the second installment due on  
18 June 1, 2011.

19 **14. Late Payments.** In the event that any payment owed by Defendants under this Consent  
20 Agreement is not remitted or post-marked on or before its due date, Defendants shall be deemed to be  
21 in default of their obligations under this Consent Agreement. Plaintiff shall provide written notice to  
22 Defendants of any default; if Defendants fail to remedy the default within five (5) business days of  
23 such notice, then all future payments due hereunder shall become immediately due and payable, with  
24 the prevailing federal funds rate applying to all interest accruing on unpaid balances due hereunder,  
25 beginning on the due date of the funds in default.

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

27 **15.** With the exception of the timelines set forth above for addressing exceedances of  
28

1 values specified on Exhibit C and the Action Memorandum, if a dispute under this Consent Agreement  
2 arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet  
3 and confer within seven (7) days of receiving written notification from the other Party of a request for  
4 a meeting to determine whether a violation has occurred and to develop a mutually agreed upon plan,  
5 including implementation dates, to resolve the dispute. If the Parties fail to meet and confer or the  
6 meet-and-confer does not resolve the issue, after at least seven days have passed after the meet-and-  
7 confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under  
8 the law, including filing a motion with the District Court of California, Eastern District, which shall  
9 retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent  
10 Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such  
11 fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean  
12 Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

13 **16. CSPA Waiver and Release.** Upon Court approval and entry of this Consent  
14 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
15 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their  
16 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their  
17 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other  
18 representatives (each a "Released Defendant Party") from, and waives all claims which arise from or  
19 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,  
20 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or  
21 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged  
22 failure of Defendants to comply with the Clean Water Act at the Facility, up to the Effective Date of  
23 this Consent Decree. In addition, for the period beginning on the Effective Date and ending on  
24 September 30, 2012, CSPA agrees that neither CSPA, its officers, executive staff, members of its  
25 governing board nor any organization under the control of CSPA, its officers, executive staff, or  
26 members of its governing board, will file any lawsuit against Defendants seeking relief for the alleged  
27 violations of the Clean Water Act or violations of the General Permit. CSPA further agrees that,  
28

1 beginning on the Effective Date and ending on September 30, 2012, CSPA will not support other  
2 lawsuits, by providing financial assistance, personnel time or other affirmative actions, against  
3 Defendants that may be proposed by other groups or individuals who would rely upon the citizen suit  
4 provision of the Clean Water Act to challenge Defendants' compliance with the Clean Water Act or  
5 the General Permit.

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

13       **18.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and  
14 Order that shall provide that:

15           a. the Complaint and all claims therein shall be dismissed with prejudice pursuant  
16 to Federal Rule of Civil Procedure 41(a)(2); and

17           b. the Court shall retain and have jurisdiction over the Parties with respect to  
18 disputes arising under this Agreement. Nothing in this Consent Agreement shall be construed  
19 as a waiver of any party's right to appeal from an order that arises from an action to enforce the  
20 terms of this Consent Agreement.

21 **IV. MISCELLANEOUS PROVISIONS**

22       **19.** The Parties enter into this Consent Agreement for the purpose of avoiding prolonged  
23 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants  
24 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,  
25 nor shall compliance with this Consent Agreement constitute or be construed as an admission by  
26 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph  
27 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under  
28

1 this Consent Agreement.

2 20. The Consent Agreement shall terminate on September 30, 2012.

3 21. The Consent Agreement may be executed in one or more counterparts which, taken  
4 together, shall be deemed to constitute one and the same document. An executed copy of this Consent  
5 Agreement shall be valid as an original.

6 22. In the event that any of the provisions of this Consent Agreement is held by a court to  
7 be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

8 23. The language in all parts of this Consent Agreement, unless otherwise stated, shall be  
9 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed  
10 pursuant to California law, without regarding to conflict of law principles.

11 24. The undersigned are authorized to execute this Consent Agreement on behalf of their  
12 respective parties and have read, understood and agreed to be bound by all of the terms and conditions  
13 of this Consent Agreement.

14 25. All agreements, covenants, representations and warranties, express or implied, oral or  
15 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.  
16 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other  
17 person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment,  
18 unless otherwise expressly provided for therein.

19 26. **Notices.** Any notices or documents required or provided for by this Consent  
20 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement  
21 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
22 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

23 Bill Jennings, Executive Director  
24 California Sportfishing Protection Alliance  
25 3536 Rainier Avenue  
26 Stockton, CA 95204  
27 E-mail: DeltaKeep@aol.com

28 With copies sent to:

1 Andrew L. Packard  
2 Law Offices of Andrew L. Packard  
3 100 Petaluma Boulevard North, Suite 301  
4 Petaluma, CA 94952  
5 Tel: (707) 763-7227  
6 E-mail: Andrew@packardlawoffices.com

7 And to:

8 Michael R. Lozeau  
9 Lozeau Drury LLP  
10 1516 Oak Street, Suite 216  
11 Alameda, CA 94501  
12 Tel: (510) 749-9102  
13 E-mail: Michael@LozeauDrury.com

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

18 Brad Slender  
19 BCJ Unlimited  
20 3388 Regional Parkway, Suite A  
21 Santa Rosa, CA 95403  
22 Tel: (707) 544-0303

23 And to:

24 René Vercruyssen  
25 Baldwin Contracting Company, Inc.  
26 1764 Skyway  
27 Chico, CA 95928  
28 Tel: (530) 891-6555

With copies sent to:

Michael E. Vinding  
Scharff, Brady & Vinding  
400 Capitol Mall, Ste. 2640  
Sacramento, CA 94814  
Tel: (916) 446-3400  
E-mail: mvinding@scharff.us

Each party shall promptly notify the other of any change in the above-listed contact information.

27. Signatures of the Parties transmitted by facsimile shall be deemed binding.

28. No Party shall be considered to be in default in the performance of any of its

1 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any  
2 circumstances beyond the Party's control, including, without limitation, any act of God, war, fire,  
3 earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not  
4 include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm  
5 event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of  
6 establishing that it could not reasonably have been expected to avoid, and which by exercise of due  
7 diligence has been unable to overcome, the Force Majeure.

8 29. If for any reason the Court should decline to approve this Consent Agreement in the  
9 form presented, the Parties shall use their best efforts to work together to modify the Consent  
10 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to  
11 modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall  
12 become null and void.

13 30. This Consent Agreement shall be deemed to have been drafted equally by the Parties,  
14 and shall not be interpreted for or against any Settling Party on the ground that any such party drafted  
15 it.

16 31. This Consent Agreement and the attachments contain all of the terms and conditions  
17 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede  
18 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and  
19 communications of the Parties, whether oral or written, respecting the matters covered by this Consent  
20 Agreement. This Consent Agreement may be amended or modified only by a writing signed by the  
21 Parties or their authorized representatives, and then by order of the Court.

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

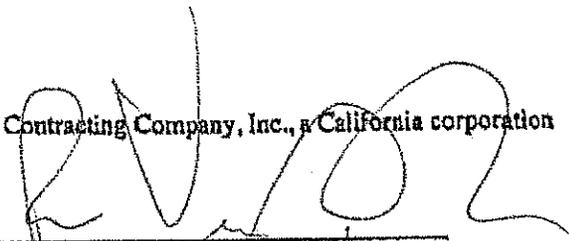
24  
25 Dated: 22 August 2010 California Sportfishing Protection Alliance

26  
27 By: Bill Jennings  
28 Bill Jennings, Executive Director

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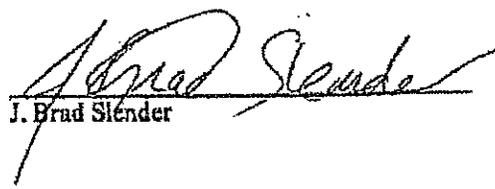
Dated: 8/20/10

Baldwin Contracting Company, Inc., a California corporation

By:   
René Verduyssen *GM/VP*

Dated: 8-20-10

BCJ Sand and Rock, Inc., a California corporation

By:   
J. Brad Slender

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ted Hale

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Dated: \_\_\_\_\_ Baldwin Contracting Company, Inc., a California corporation

By: \_\_\_\_\_  
René Verduyssen

Dated: 8-20-10 BCI Sand and Rock, Inc., a California corporation

By: J. Brad Slender  
J. Brad Slender

Dated: 8-20-2010

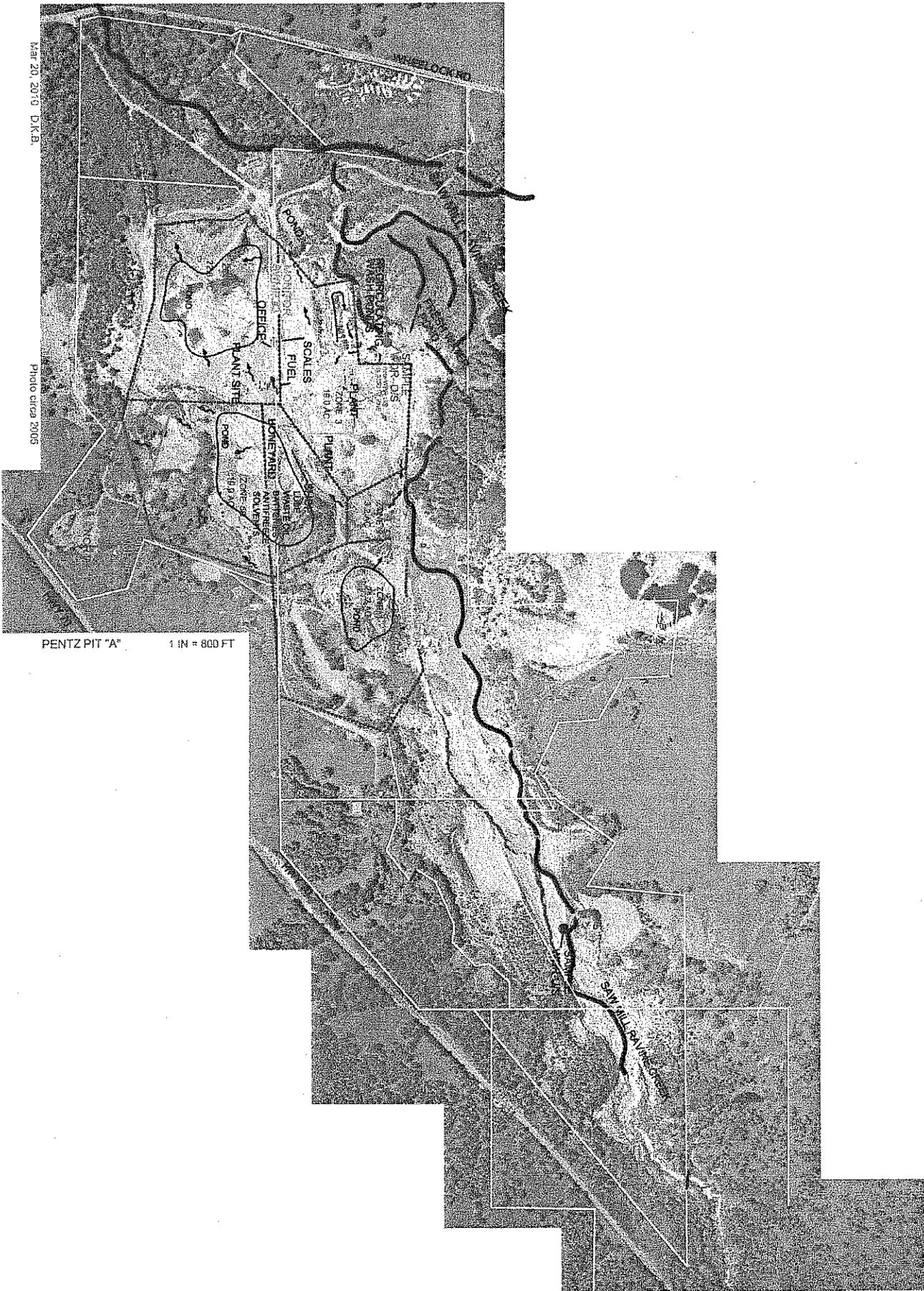
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Ted Hale

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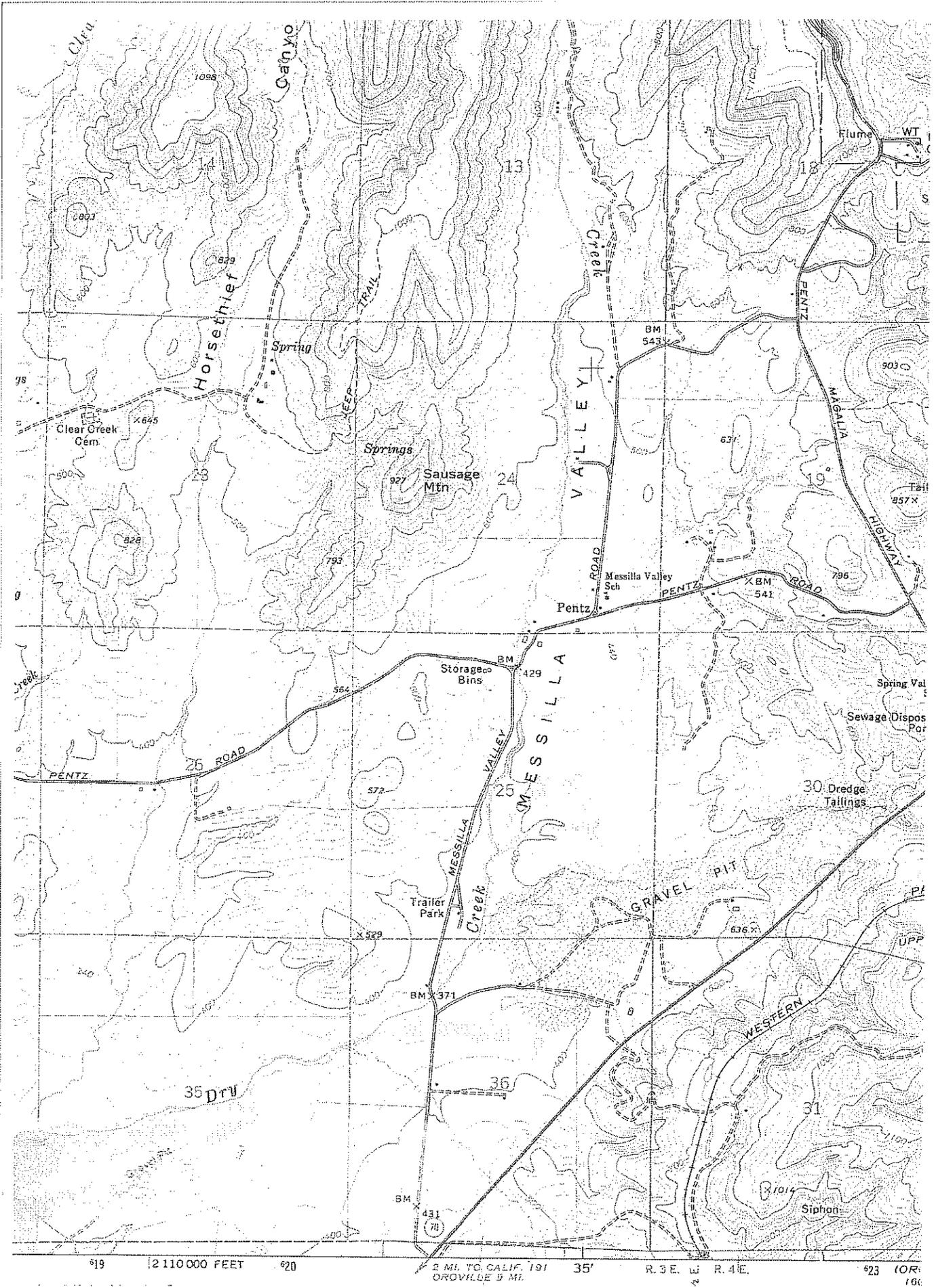
**EXHIBIT A – Facility Site Map**

Mar 20, 2019 D.K.A.

Photo circa 2005



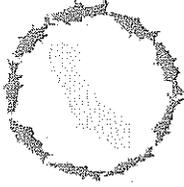
PENTZ PIT "A" 1 IN = 800 FT





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**EXHIBIT B – Notices of Violation**



**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltukeep@aol.com

February 12, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Baldwin Contracting Co., Inc.  
c/o C T Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

Mr. Ted Hale  
Plant Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Bryan Morgan  
Operations Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Mason Richardson  
Facility Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Rene Vercruyssen  
Facility Operator  
Baldwin Contracting Co., Inc.  
1764 Skyway  
Chico, CA 95928

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

Dear Messrs. Hale, Morgan, Richardson and Vercruyssen:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the Baldwin Contracting Co., Inc. ("BCCI") construction sand and gravel facility located at 4970 Wheelock Road in Oroville, California ("the Facility"). The WDID identification number for the Facility is 5R04I011757. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Sawmill Ravine Creek, Dry Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owners, officers and/or operators of the Facility.

This letter addresses BCCI's unlawful discharges of pollutants from the Facility

to Sawmill Ravine Creek and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit").

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

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, BCCI is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against BCCI under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

BCCI owns and operates a sand and gravel mining and processing facility about 11 miles north of Oroville, California. The Facility is primarily used to mine and process construction sand and gravel; other current activities at the Facility include mining, washing and screening of sand, gravel, crushed rock and asphaltic concrete, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility.

On May 16, 1997, BCCI submitted its notice of intent ("1997 NOI") to comply with the terms of the General Industrial Storm Water Permit. The Facility is primarily classified as a construction sand and gravel mining and processing operation under Standard Industrial Classification code 1442 ("Construction Sand & Gravel"). The Facility collects and discharges storm water from its approximately 60-acre industrial site to Sawmill Ravine Creek ("SRC") and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board ("Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative

toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL

2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants CSPA believes are being discharged by BCCI: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; and, nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board has also issued a proposed benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes may be discharged from the Facility are: copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

BCCI has violated and continues to violate the terms and conditions of the General 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 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.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

Publicly available documents indicate that on May 17, 2007 (“May 17, 2007, Regional Board Record Of Communication”), the Regional Board’s Carole Crowe met with Bryan Morgan of BCCI to discuss, among other things, the Facility’s failure to adequately limit and/or prevent stormwater discharges to Sawmill Ravine Creek (“We discussed the fact that Sawmill Ravine Creek has been greatly disturbed through the years. Apparently, Fish and Game and the USACOE never issued permits for any of the

mining activities. I explained that they should minimize all impacts to Sawmill Ravine Creek (avoid any work in the stream channel) and protect storm water outfalls to the Creek.”). The May 17, 2007, Regional Board Record Of Communication indicates that during this meeting, Ms. Crowe reminded BCCI of its commitment to submit to the Board a revised SWPPP “in the next several weeks” implementing certain amendments recommended by Ms. Crowe. SWPPP amendments recommended by Ms. Crowe during the meeting included:

- Identify all potential storm water outfalls to SRC;
- Reduce all sediment and other pollutants to SRC;
- Prepare map(s) that provide all information required by the General Permit;
- Ensure that all employees understand that “NO” water from wash ponds may discharge to surface waters. And, generally, make sure employees get trained on how to comply with the General Permit;
- Describe existing BMPs for cliff mining (retention ponds, trench, etc.);
- Sample any storm water discharge locations;
- When rain exceeds 1”, sample above and below SRC. The existing WDRs require that samples be collected in SRC above the working area of the mine and also below the bridge at the plant entrance. Ms told Morgan that the downstream Receiving Water sample should be collected on SRC, located at the “concrete apron” immediately above Dry Creek. “The WDR reference to the “bridge” appears to be incorrect.”

Based on its review of available public documents, CSPA is informed and believes that BCCI failed to comply with the Board’s recommendations as expressed in its May 17, 2007 Record Of Communication. For example, Ms. Crowe ordered BCCI to update its SWPPP in order to, among other things, reduce all sediment and other pollutants going into Sawmill Ravine Creek. However, its 2008-2009 Annual Report reveals BCCI has failed to comply to the extent it reported discharging a level of total suspended solids well in excess of the EPA benchmark for TSS. CSPA is informed and believes that BCCI has continued to operate in violation of the General Permit despite the Regional Board’s inspection and subsequent follow up requests described above. BCCI’s ongoing violations are discussed further below.

**A. BCCI Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

BCCI has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (“TSS”) and other pollutants in violation of the General Industrial Storm Water Permit. High TSS levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. BCCI’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. 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 violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
2/17/2009	1	TSS	6200 mg/L	100 mg/L

CSPA’s investigation, including its review of BCCI’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values, indicates that BCCI has not implemented BAT and BCT at the Facility for its discharges of TSS and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. BCCI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, BCCI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that BCCI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 12, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since February 12, 2005, 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 CSPA alleges that BCCI has discharged storm water containing impermissible levels of TSS and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

**B. BCCI Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as BCCI, designated under SIC 1442 are also required to sample for nitrates + nitrites (N+N). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that BCCI has failed to develop and implement an adequate Monitoring & Reporting Plan. First, BCCI has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, BCCI has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005. These violations are set forth in greater detail below.

**1. BCCI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that BCCI has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that during the 2004-2005, 2005-2006, 2006-2007 and 2007-2008 wet seasons, BCCI failed to collect any storm water samples from any discharge point. (*See, e.g.*, BCCI, 2005-2006 Annual Report, at p. 3). CSPA anticipates BCCI will assert that its failure to sample from any discharge point during those wet seasons was excused because all water was contained on site. However, given the Facility’s topography and the above-discussed comments of the Board’s Ms. Crowe found in the May 17, 2007, Regional Board Record Of Communication, such an assertion strains credulity. Further, contrary to its affirmative response to item D.1. in Annual Reports filed for the 2004-2005, 2005-2006 and 2006-2007 wet seasons, BCCI was *not*

exempt from collecting and analyzing samples from two storm events in accordance with sections B.12 or B.15 of the General Permit. Notwithstanding BCCI's assertion, found in the 2005-2007 Annual Reports, that "sampling is not required [because] all water is contained on site," as amply demonstrated by the exempt categories presented by Annual Report item D.2(i)-(v), BCCI was not exempt from the sampling and analysis required under the General Permit. Moreover, this conclusion is compelled by BCCI's failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v). 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).

With respect to the Annual Report filed by BCCI for the 2008-2009 wet season, CSPA is informed and believes that February 17, 2009 was not the first qualifying storm event for the 2008-2009 wet season. As with its ongoing failure to collect two samples from all discharge points during each of the past five years, BCCI's ongoing failure to sample the first qualifying storm event constitutes additional and separate violations of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by BCCI. Each of these failures to adequately identify and monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act as well.

**2. BCCI Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that BCCI has failed to monitor for at least eleven other pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, lead, manganese, mercury, nickel, nitrate+nitrite and zinc. BCCI's failure to monitor these pollutants extends back at least until February 12, 2005. BCCI's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. BCCI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 12, 2005.**

CSPA is informed and believes that available documents demonstrate BCCI's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. As recently as December 15, 2009, the Board informed BCCI that in order "to reduce or eliminate the discharge of pollutants" from the Facility in compliance with the General Permit, BCCI "must modify [its] existing...Monitoring Plan...." Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its Monitoring Plan as requested by the Board and required by the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

**C. BCCI Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that BCCI has not implemented BAT and BCT at the Facility for its discharges of TSS and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, BCCI must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the current internal structure and operations of the Facility, CSPA believes that at a minimum BCCI must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether, through infiltration and evaporation measures. BCCI has failed to implement such measures adequately.

BCCI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, BCCI has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that BCCI fails to implement BAT and BCT. BCCI is subject to penalties for violations of the General Permit and the Act occurring since February 12, 2005.

**D. BCCI Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit

require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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 also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to 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)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that BCCI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. BCCI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. As recently as December 15, 2009, the Board informed BCCI that in order "to reduce or eliminate the discharge of pollutants" from the Facility in compliance with the General Permit, BCCI

“must modify [its] existing Storm Water Pollution Prevention Plan (SWPPP)...” Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its SWPPP or Monitoring Plan as requested by the Board and required by the General Permit. BCCI has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that BCCI fails to develop and implement an effective SWPPP. BCCI is subject to penalties for violations of the Order and the Act occurring since February 512 2005.

**E. BCCI Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60 days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, BCCI is discharging elevated levels of total suspended solids and likely other pollutants, causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, BCCI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60 days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. It has not done so.

Based on CSPA's review of available documents, BCCI was aware of high levels of these pollutants prior to February 12, 2005. Likewise, BCCI has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). BCCI has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since February 12, 2005, and will continue to be in violation every day that BCCI fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include appropriate BMPs. BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

**F. BCCI Has Failed to File Timely, True and Correct Reports.**

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

CSPA's investigation indicates that BCCI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, based on its review of publicly available documents, CSPA is informed and believes that BCCI submitted an incomplete Annual Report for the 2008-2009 wet season. To wit, on December 15, 2009, the Board sent BCCI a Notice of Violation indicating BCCI is "in violation of the General Permit (Section B-16), the California Water Code, and the federal Clean Water Act, for failure to submit a complete 2008-2009 annual report."

As discussed further above, BCCI's pattern and practice of submitting incomplete reports is further evidenced by its repeated and ongoing failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v).

As indicated above, BCCI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, BCCI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time BCCI submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. BCCI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. BCCI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

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

CSPA hereby puts BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercreyssen 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, CSPA puts BCCI on notice that it intends to include those persons in this enforcement action.

**IV. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

**V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard, Esq.  
Erik M. Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck, Esq.  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (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 BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen for

Notice of Violation and Intent To File Suit  
February 12, 2010  
Page 14 of 14

the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

## ATTACHMENT A

### Notice of Intent to File Suit, BCCI (Oroville, CA) Significant Rain Events,\* February 12, 2005-February 12, 2010

Feb. 13 2005	Jan. 01 2006	Dec. 26 2006	Feb. 23 2008
Feb. 16 2005	Jan. 03 2006	Feb. 07 2007	Feb. 24 2008
Feb. 18 2005	Jan. 07 2006	Feb. 08 2007	Mar. 15 2008
Feb. 19 2005	Jan. 14 2006	Feb. 09 2007	Mar. 19 2008
Feb. 20 2005	Jan. 17 2006	Feb. 10 2007	April 03 2008
Feb. 21 2005	Jan. 18 2006	Feb. 12 2007	Oct. 30 2008
Feb. 27 2005	Jan. 30 2006	Feb. 22 2007	Oct. 31 2008
March 01 2005	Feb. 01 2006	Feb. 24 2007	Nov. 01 2008
March 19 2005	Feb. 26 2006	Feb. 27 2007	Nov. 03 2008
March 20 2005	Feb. 27 2006	Mar. 26 2007	Dec. 14 2008
March 21 2005	Feb. 28 2006	April 11 2007	Dec. 21 2008
March 27 2005	Mar. 01 2006	April 14 2007	Dec. 24 2008
April 03 2005	Mar. 03 2006	April 21 2007	Dec. 25 2008
April 07 2005	Mar. 05 2006	May 01 2007	Jan. 22 2009
April 08 2005	Mar. 06 2006	May 03 2007	Jan. 23 2009
April 24 2005	Mar. 12 2006	May 24 2007	Jan. 24 2009
April 27 2005	Mar. 13 2006	Oct. 09 2007	Feb. 05 2009
May 04 2005	Mar. 16 2006	Oct. 10 2007	Feb. 10 2009
May 05 2005	Mar. 20 2006	Oct. 16 2007	Feb. 11 2009
May 08 2005	Mar. 24 2006	Nov. 10 2007	Feb. 13 2009
May 09 2005	Mar. 25 2006	Nov. 11 2007	Feb. 15 2009
May 17 2005	Mar. 27 2006	Dec. 03 2007	Feb. 16 2009
May 18 2005	Mar. 28 2006	Dec. 04 2007	Feb. 17 2009
Oct. 08 2005	Mar. 29 2006	Dec. 06 2007	Feb. 22 2009
Oct. 11 2005	Mar. 31 2006	Dec. 07 2007	Feb. 23 2009
Oct. 15 2005	April 02 2006	Dec. 18 2007	Mar. 01 2009
Oct. 26 2005	April 03 2006	Dec. 19 2007	Mar. 02 2009
Oct. 28 2005	April 04 2006	Dec. 20 2007	Mar. 03 2009
Nov. 07 2005	April 10 2006	Dec. 28 2007	April 10 2009
Nov. 08 2005	April 11 2006	Dec. 29 2007	April 13 2009
Nov. 25 2005	April 12 2006	Jan. 03 2008	May 01 2009
Nov. 28 2005	April 16 2006	Jan. 04 2008	May 02 2009
Nov. 29 2005	April 22 2006	Jan. 05 2008	Oct. 13 2009
Nov. 30 2005	May 19 2006	Jan. 08 2008	Oct. 19 2009
Dec. 17 2005	May 21 2006	Jan. 12 2008	Nov. 17 2009
Dec. 18 2005	Oct. 05 2006	Jan. 21 2008	Nov. 20 2009
Dec. 19 2005	Oct. 26 2006	Jan. 24 2008	Nov. 27 2009
Dec. 20 2005	Nov. 02 2006	Jan. 25 2008	Dec. 11 2009
Dec. 21 2005	Nov. 11 2006	Jan. 26 2008	Dec. 12 2009
Dec. 22 2005	Nov. 13 2006	Jan. 27 2008	Dec. 13 2009
Dec. 25 2005	Nov. 26 2006	Jan. 29 2008	Dec. 15 2009
Dec. 26 2005	Dec. 08 2006	Jan. 31 2008	Dec. 16 2009
Dec. 27 2005	Dec. 09 2006	Feb. 02 2008	Dec. 20 2009
Dec. 28 2005	Dec. 10 2006	Feb. 19 2008	Dec. 21 2009
Dec. 29 2005	Dec. 11 2006	Feb. 20 2008	Dec. 27 2009
Dec. 30 2005	Dec. 12 2006	Feb. 21 2008	Dec. 29 2009
Dec. 31 2005	Dec. 21 2006	Feb. 22 2008	Dec. 30 2009

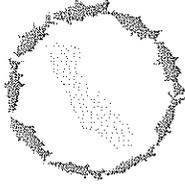
\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**

**Notice of Intent to File Suit, BCCI (Oroville, CA)  
Significant Rain Events,\* February 12, 2005-February 12, 2010**

Jan.	12	2010	Jan.	19	2010	Jan.	25	2010	Feb.	06	2010
Jan.	13	2010	Jan.	20	2010	Jan.	26	2010	Feb.	09	2010
Jan.	17	2010	Jan.	21	2010	Jan.	30	2010			
Jan.	18	2010	Jan.	24	2010	Feb.	04	2010			

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

April 26, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

J. Brad Slender, Facility Manager  
BCJ Sand And Rock, Inc.  
4970 Wheelock Rd.  
Oroville, CA 95969

BCJ Sand And Rock, Inc.  
c/o J. Brad Slender, Agent For Service Of Process  
3388 Regional Pkwy., Ste. A  
Santa Rosa, CA 95403

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

Dear Mr. Slender:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the BCJ Sand And Rock, Inc. ("BCJ") construction sand and gravel facility located at 4970 Wheelock Road in Oroville, California ("the Facility"). The WDID identification number for the Facility is 5R04I011757.<sup>1</sup> CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Sawmill Ravine Creek, Dry Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible officer and/or operators of the Facility.

This letter addresses BCJ's unlawful discharges of pollutants from the Facility to Sawmill Ravine Creek and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act

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<sup>1</sup> The WDID identification number for the Facility was generated by the Regional Board on or about May 16, 1997, when the putative former operator of the Facility, Baldwin Contracting Company, Inc., filed a Notice of Intent ("1997 NOI") to comply with the terms of the General Industrial Storm Water Permit.

and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit").

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

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, BCJ and J. Brad Slender are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against BCJ and J. Brad Slender under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

BCJ operates a sand and gravel mining and processing facility about 11 miles north of Oroville, California. The Facility is primarily used to mine and process construction sand and gravel; other current activities at the Facility include mining, washing and screening of sand, gravel, crushed rock and asphaltic concrete, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility.

Based on its review of available documents, CSPA is informed and believes that BCJ has never submitted a notice of intent ("NOI") to comply with the terms of the General Industrial Storm Water Permit despite being a facility that is covered under the auspices of the Permit. On May 16, 1997, Baldwin Contracting Company, Inc. ("BCCI") submitted its notice of intent ("1997 NOI") to comply with the terms of the General Industrial Storm Water Permit. Based on its investigation, CSPA is informed and believes that BCCI no longer operates the Facility, but rather, that BCJ is the current operator of the Facility. However, BCJ has never filed with the Regional Board a NOI for the Facility.

The Facility is primarily classified as a construction sand and gravel mining and processing operation under Standard Industrial Classification code 1442 ("Construction Sand & Gravel"). The Facility collects and discharges storm water from its approximately 60-acre industrial site to Sawmill Ravine Creek ("SRC") and Dry Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta, the Sacramento River, and the creeks that receive

storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants CSPA believes are being discharged by BCJ: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; and, nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board has also issued a proposed benchmark level for specific conductance of 200 µmhos/cm. Additional parameters for pollutants that CSPA believes may be discharged from the Facility are: copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

## **II. Failure to Obtain Coverage Under the General Industrial Storm Water Permit.**

BCJ has violated the Clean Water Act<sup>2</sup> by discharging pollutants to waters of the United States from the Facility without a National Pollutant Discharge Elimination System (“NPDES”) permit as required by the Act. The Clean Water Act provides that, absent a permit and subject to certain limitations, “the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. §1311(a). A review of available public records indicates that you have failed to file a Notice of Intent to Comply with the General Permit (“NOI”). BCJ was required to file an NOI by no later than March 30, 1992. Therefore, BCJ has been in continuous, daily violation of the General Permit and the Act since at least March 30, 1992 and is subject to penalties for these violations occurring since April 26, 2005.

## **III. Pollutant Discharges in Violation of the NPDES Permit.**

BCJ has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with

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<sup>2</sup> Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

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 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.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

Publicly available documents indicate that on May 17, 2007 (“May 17, 2007, Regional Board Record Of Communication”), the Regional Board’s Carole Crowe met with Bryan Morgan of BCJ to discuss, among other things, the Facility’s failure to adequately limit and/or prevent stormwater discharges to Sawmill Ravine Creek (“We discussed the fact that Sawmill Ravine Creek has been greatly disturbed through the years. Apparently, Fish and Game and the USACOE never issued permits for any of the mining activities. I explained that they should minimize all impacts to Sawmill Ravine Creek (avoid any work in the stream channel) and protect storm water outfalls to the Creek.”). The May 17, 2007, Regional Board Record Of Communication indicates that during this meeting, Ms. Crowe reminded BCJ of its commitment to submit to the Board a revised SWPPP “in the next several weeks” implementing certain amendments recommended by Ms. Crowe. SWPPP amendments recommended by Ms. Crowe during the meeting included:

- Identify all potential storm water outfalls to SRC;
- Reduce all sediment and other pollutants to SRC;
- Prepare map(s) that provide all information required by the General Permit;
- Ensure that all employees understand that “NO” water from wash ponds may discharge to surface waters. And, generally, make sure employees get trained on how to comply with the General Permit;
- Describe existing BMPs for cliff mining (retention ponds, trench, etc.);
- Sample any storm water discharge locations;
- When rain exceeds 1”, sample above and below SRC. The existing WDRs require that samples be collected in SRC above the working area of the mine and also below the bridge at the plant entrance. Ms told Morgan that the downstream Receiving Water sample should be collected on SRC, located at the “concrete

apron” immediately above Dry Creek. “The WDR reference to the “bridge” appears to be incorrect.”

Based on its review of available public documents, CSPA is informed and believes that BCJ failed to comply with the Board’s recommendations as expressed in its May 17, 2007 Record Of Communication. For example, Ms. Crowe ordered BCJ to update its SWPPP in order to, among other things, reduce all sediment and other pollutants going into Sawmill Ravine Creek. However, the 2008-2009 Annual Report for the Facility filed at the Regional Board reveals that BCJ has failed to comply to the extent the 2008-2009 Annual Report evidences that the Facility is discharging a level of total suspended solids well in excess of the EPA benchmark for TSS. CSPA is informed and believes that BCJ has continued to operate in violation of the General Permit despite the Regional Board’s inspection and subsequent follow up requests described above. BCJ’s ongoing violations are discussed further below.

**A. BCJ Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

BCJ has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (“TSS”) and other pollutants in violation of the General Industrial Storm Water Permit. High TSS levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. The Facility’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. 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, 1492 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
2/17/2009	1	TSS	6200 mg/L	100 mg/L

CSPA’s investigation, including its review of the analytical results in the Facility’s Annual Reports documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values, indicates that BCJ has not implemented BAT and BCT at the Facility for its discharges of TSS and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. BCJ was required to have

implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, BCJ is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that BCJ has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 26, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since April 26, 2005, 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 CSPA alleges that BCJ has discharged storm water containing impermissible levels of TSS and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCJ is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

**B. BCJ Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as BCJ, designated under SIC Code 1442 are also required to sample for nitrates + nitrites (N+N). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities."

Based on its investigation, CSPA is informed and believes that BCJ has failed to develop and implement an adequate Monitoring & Reporting Plan. First, BCJ has failed to collect storm water samples from each discharge point during at least two qualifying

storm events (as defined by the General Permit) during each of the past five years. Second, BCJ has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Act, BCJ is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005. These violations are set forth in greater detail below.

**1. BCJ Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that BCJ has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. CSPA anticipates BCJ will assert that its failure to sample from any discharge point during those wet seasons was excused because all water was contained on site. However, given the Facility's topography and the above-discussed comments of the Board's Ms. Crowe found in the May 17, 2007, Regional Board Record Of Communication, such an assertion strains credulity. As with its ongoing failure to collect two samples from all discharge points during each of the past five years, BCJ's ongoing failure to sample the first qualifying storm event constitutes additional and separate violations of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by BCJ. Each of these failures to adequately identify and monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act as well.

**2. BCJ Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that BCJ has failed to monitor for at least eleven other pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, lead, manganese, mercury, nickel, nitrate+nitrite and zinc. BCJ's failure to monitor these pollutants extends back at least until April 26, 2005. BCJ's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. BCJ Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 26, 2005.**

CSPA is informed and believes that available documents demonstrate BCJ's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Based on its review of publicly available documents, CSPA is informed and believes BCJ has failed to implement an adequate Monitoring Plan as required by the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCJ is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

**C. BCJ Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that BCJ has not implemented BAT and BCT at the Facility for its discharges of TSS and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, BCJ must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the current internal structure and operations of the Facility, CSPA believes that at a minimum BCJ must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether, through infiltration and evaporation measures. BCJ has failed to implement such measures adequately.

BCJ was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, BCJ has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that BCJ fails to implement BAT and BCT. BCJ is subject to penalties for violations of the General Permit and the Act occurring since April 26, 2005.

**D. BCJ Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop,

implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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 also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to 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)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that BCJ has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. BCJ has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Based on its review of publicly available documents, CSPA is informed and believes BCJ has failed to update its SWPPP or Monitoring Plan as required by the General Permit. BCJ has been in continuous violation of Section A(1) and Provision E(2) of the General

Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that BCJ fails to develop and implement an effective SWPPP. BCJ is subject to penalties for violations of the Order and the Act occurring since April 26, 2005.

**E. BCJ Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60 days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, BCJ is discharging elevated levels of total suspended solids and likely other pollutants, causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, BCJ was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60 days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. It has not done so.

Based on CSPA's review of available documents, BCJ was aware of high levels of these pollutants prior to April 26, 2005. Likewise, BCJ has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). BCJ has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since April 26, 2005, and will continue to be in violation every day that BCJ fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include appropriate BMPs. BCJ is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

**F. BCJ Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the

relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that BCJ has never filed an Annual Report with the Regional Board in violation of the General Industrial Storm Water Permit. BCJ's failure to file Annual Reports are continuous and ongoing violations. BCJ is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

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

CSPA hereby puts BCJ and J. Brad Slender 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, CSPA puts BCJ and J. Brad Slender on notice that it intends to include those persons in this enforcement action.

### **IV. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

### **V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard, Esq.  
Erik M. Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck, Esq.  
Jackson & Tuerck  
P.O. Box 148

Notice of Violation and Intent To File Suit  
April 26, 2010  
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429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

## **VI. Penalties.**

Pursuant to Section 309(d) of the Act (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 BCJ and J. Brad Slender to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against BCJ and J. Brad Slender for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

**ATTACHMENT A**

**Notice of Intent to File Suit, BCJ (Oroville, CA)  
Significant Rain Events, \* April 26, 2005-April 26, 2010**

April 27 2005	Mar. 13 2006	Oct. 09 2007	Feb. 05 2009
May 04 2005	Mar. 16 2006	Oct. 10 2007	Feb. 10 2009
May 05 2005	Mar. 20 2006	Oct. 16 2007	Feb. 11 2009
May 08 2005	Mar. 24 2006	Nov. 10 2007	Feb. 13 2009
May 09 2005	Mar. 25 2006	Nov. 11 2007	Feb. 15 2009
May 17 2005	Mar. 27 2006	Dec. 03 2007	Feb. 16 2009
May 18 2005	Mar. 28 2006	Dec. 04 2007	Feb. 17 2009
Oct. 08 2005	Mar. 29 2006	Dec. 06 2007	Feb. 22 2009
Oct. 11 2005	Mar. 31 2006	Dec. 07 2007	Feb. 23 2009
Oct. 15 2005	April 02 2006	Dec. 18 2007	Mar. 01 2009
Oct. 26 2005	April 03 2006	Dec. 19 2007	Mar. 02 2009
Oct. 28 2005	April 04 2006	Dec. 20 2007	Mar. 03 2009
Nov. 07 2005	April 10 2006	Dec. 28 2007	April 10 2009
Nov. 08 2005	April 11 2006	Dec. 29 2007	April 13 2009
Nov. 25 2005	April 12 2006	Jan. 03 2008	May 01 2009
Nov. 28 2005	April 16 2006	Jan. 04 2008	May 02 2009
Nov. 29 2005	April 22 2006	Jan. 05 2008	Oct. 13 2009
Nov. 30 2005	May 19 2006	Jan. 08 2008	Oct. 19 2009
Dec. 17 2005	May 21 2006	Jan. 12 2008	Nov. 17 2009
Dec. 18 2005	Oct. 05 2006	Jan. 21 2008	Nov. 20 2009
Dec. 19 2005	Oct. 26 2006	Jan. 24 2008	Nov. 27 2009
Dec. 20 2005	Nov. 02 2006	Jan. 25 2008	Dec. 11 2009
Dec. 21 2005	Nov. 11 2006	Jan. 26 2008	Dec. 12 2009
Dec. 22 2005	Nov. 13 2006	Jan. 27 2008	Dec. 13 2009
Dec. 25 2005	Nov. 26 2006	Jan. 29 2008	Dec. 15 2009
Dec. 26 2005	Dec. 08 2006	Jan. 31 2008	Dec. 16 2009
Dec. 27 2005	Dec. 09 2006	Feb. 02 2008	Dec. 20 2009
Dec. 28 2005	Dec. 10 2006	Feb. 19 2008	Dec. 21 2009
Dec. 29 2005	Dec. 11 2006	Feb. 20 2008	Dec. 27 2009
Dec. 30 2005	Dec. 12 2006	Feb. 21 2008	Dec. 29 2009
Dec. 31 2005	Dec. 21 2006	Feb. 22 2008	Dec. 30 2009
Jan. 01 2006	Dec. 26 2006	Feb. 23 2008	Jan. 12 2010
Jan. 03 2006	Feb. 07 2007	Feb. 24 2008	Jan. 13 2010
Jan. 07 2006	Feb. 08 2007	Mar. 15 2008	Jan. 17 2010
Jan. 14 2006	Feb. 09 2007	Mar. 19 2008	Jan. 18 2010
Jan. 17 2006	Feb. 10 2007	April 03 2008	Jan. 19 2010
Jan. 18 2006	Feb. 12 2007	Oct. 30 2008	Jan. 20 2010
Jan. 30 2006	Feb. 22 2007	Oct. 31 2008	Jan. 21 2010
Feb. 01 2006	Feb. 24 2007	Nov. 01 2008	Jan. 24 2010
Feb. 26 2006	Feb. 27 2007	Nov. 03 2008	Jan. 25 2010
Feb. 27 2006	Mar. 26 2007	Dec. 14 2008	Jan. 26 2010
Feb. 28 2006	April 11 2007	Dec. 21 2008	Jan. 30 2010
Mar. 01 2006	April 14 2007	Dec. 24 2008	Feb. 04 2010
Mar. 03 2006	April 21 2007	Dec. 25 2008	Feb. 06 2010
Mar. 05 2006	May 01 2007	Jan. 22 2009	Feb. 09 2010
Mar. 06 2006	May 03 2007	Jan. 23 2009	Feb. 23 2010
Mar. 12 2006	May 24 2007	Jan. 24 2009	Feb. 24 2010

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**

**Notice of Intent to File Suit, BCJ (Oroville, CA)  
Significant Rain Events, \* April 26, 2005-April 26, 2010**

Feb.	26	2010	Mar.	12	2010
Mar.	03	2010	April	20	2010

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**EXHIBIT C**

<b>Parameter</b>	<b>Value</b>
pH	6.0 – 9.0
Specific Conductivity	200 $\mu$ mho/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Total Nitrates/Nitrites	0.677 mg/l

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## SETTLEMENT AGREEMENT

WHEREAS, Baykeeper is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other area waters;

WHEREAS, CEMEX, Inc., RMC Pacific Materials, Inc., and CEMEX Construction Materials Pacific, LLP (“CEMEX”) operates a cement bulk wholesale distribution facility (“Redwood City Cement Terminal”) located at 876 Seaport Boulevard, Redwood City, California and a concrete and asphalt recycling business with a sand and gravel resale distribution facility (“Harbor Sand & Gravel”) located at 775 Seaport Boulevard, Redwood City, California (collectively, the “Redwood City Facilities”) and a ready mix concrete facility located at 500 Amador Street, San Francisco, California, (the “San Francisco Facility”) (collectively the “Facilities” or “each Facility”);

WHEREAS, the discharge of pollutants into waters of the United States is regulated by the Federal Water Pollution Control Act, also known as the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251, *et seq.* and is unlawful except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) Permit issued pursuant to section 402 of the Federal Water Pollution Control Act, 33 U.S.C. §1342;

WHEREAS, on June 19, 2009, Baykeeper served CEMEX, the United States Environmental Protection Agency, the State Water Resources Control Board, the San Francisco Regional Water Quality Control Board, the United States Attorney General and other individuals and entities with a notice of intent to file suit (“60-Day Notice”) under CWA sections 505(a)(1)

and (f) of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(a)(1) and (f), alleging CWA violations at the Facilities;

WHEREAS, Baykeeper filed a complaint ("Complaint") against CEMEX in the United States District Court, Northern District Court of California on October 13, 2009;

WHEREAS, Baykeeper contends in its 60-Day Notice and Complaint that CEMEX has repeatedly discharged polluted storm water in violation of the CWA and discharged pollutants without NPDES permit authorization, and CEMEX denies all allegations set forth in the 60-Day Notice and Complaint and contends that Baykeeper's Complaint should be dismissed;

WHEREAS, Baykeeper and CEMEX (the "Parties"), through their authorized representatives and without either adjudication of Baykeeper's claims or admission by CEMEX of any alleged violation or other wrongdoing, choose to resolve in full Baykeeper's allegations in the 60-Day Notice and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, Baykeeper and CEMEX agree that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolve this matter without further litigation;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**I. COMMITMENT OF CEMEX**

1. In order to reduce or prevent pollutants in storm water associated with industrial activity and to eliminate alleged unauthorized non-storm water discharges from each Facility into the waters of the United States, CEMEX shall implement appropriate structural and non-structural Best Management Practices ("BMPs") as described more fully below.

## II. FACILITY COMPLIANCE MEASURES

2. **Site Maps:** Within sixty (60) days of the date upon which the District Court enters the Order dismissing Baykeeper's Complaint with prejudice and retaining jurisdiction to enforce the terms of this Agreement ("Effective Date"), to the extent not already implemented, CEMEX shall survey each of its Facilities and complete a topographic contour map ("Site Map") that comprehensively depicts the flow of storm water at the Facilities. The Site Maps shall clearly denote the contour intervals, which for the Redwood City Facilities shall be at least one half foot or less referenced to the vertical control datum (NAVD 88) and for the San Francisco Facility shall be based on site design maps, and the direction of storm water flow. The Site Maps for the Redwood City Facilities shall also reference the Mean High Water level and the Mean Sea Level as calculated from NAVD. The Site Maps shall clearly identify the property boundaries, known or suspected drop inlets, ground type (pervious or impervious), berms, dikes, walls and all other structures controlling the flow of surface water or tidally influenced water and the elevation and materials they are comprised of, any permanent structures and features, and all other physical structures or items relevant under this Agreement. Baykeeper shall have fourteen (14) days from receipt of the Site Maps to propose any changes or clarifications to be added to the Site Maps. CEMEX shall make all requested changes to the Facility Site Maps within sixty (60) days of receiving Baykeeper's comments unless the Parties agree otherwise or CEMEX timely invokes Dispute Resolution and prevails in Dispute Resolution. If CEMEX should alter the Site Maps during the term of this Agreement, CEMEX shall provide Baykeeper a copy of the Site Map(s) by no later than June 15<sup>th</sup> each year (*e.g.*, by June 15, 2011 for Site Map changes prior to that date, and June 15, 2012 for changes thereafter). Baykeeper shall have fourteen (14)

days from receipt of any revised Site Maps to propose any changes or clarifications to be added to the Site Maps. CEMEX shall make all requested changes to the Facility Site Maps within sixty (60) days of receiving Baykeeper's comments unless the Parties agree otherwise or CEMEX timely invokes Dispute Resolution and prevails in Dispute Resolution.

3. **Designated Discharge Points:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall identify on the Site Map for each Facility every location at which storm water and non-storm water is known to be discharged or which may potentially be discharged ("Designated Discharge Point"). For the Redwood City Facilities, CEMEX will mark the area and extent of each Facility that has historically been inundated with water during tidal events. To the extent not already implemented, each Designated Discharge Point or Discharge Area shall be numbered and clearly labeled on each of the respective Site Maps. CEMEX shall investigate and determine the location of suspected drop inlets and their outfalls at part of this survey.

4. **Discharges Associated with Tidal Flow:** Within sixty (60) days of the Effective Date, CEMEX will prepare and submit to Baykeeper a Tidal Flow Plan for the Redwood City Facilities. The Tidal Flow Plan shall reference the Facilities' Site Map and describe, by location, the areas of the Redwood City Facilities prone to inundation by tidal flows, and all site activities, including structural improvements, that CEMEX or the Port of Redwood City is planning to perform or has performed to avoid inundation during high tides. For structural improvements, CEMEX shall provide calculations or other technical information to support that the improvement, alone or in combination with other improvements, will avoid inundation during high tides. The Tidal Flow Plan shall also require CEMEX to, during the 2010-2011 Wet

Season, inspect monthly the condition of all new and existing berms, dikes, walls, or any other visible structures controlling the flow of tidal water at the Redwood City Facilities. Baykeeper shall have fourteen (14) days from receipt of the Tidal Flow Plan to propose any changes or clarifications to be added to the Plan. CEMEX shall make all requested changes to the Tidal Flow Plan within thirty (30) days of receiving Baykeeper's comments unless the Parties agree otherwise or CEMEX timely invokes Dispute Resolution and prevails in Dispute Resolution.

5. **Designation of Industrial Activity Areas:** The portion of the Facilities where industrial activities occur, including but not limited to: (a) process areas such as manufacturing ready mix concrete; (b) preparation of trucks for loading with aggregates, concrete ready mix, recycled asphalt and concrete, fly ash, or other materials; (c) loading of trucks with aggregates, concrete ready mix, recycled asphalt and concrete, fly ash, or other materials; (d) loading and transport of cement or aggregates from bulk carrier to conveyor belt or conveyor belt to trucks; (e) loading and transport of cement or aggregates from rail cars to conveyor belt or trucks; (f) crushing and sorting of recycled asphalt or concrete, and (g) loading and transport of recycled concrete and asphalt for resale distribution will hereinafter be referred to, and within sixty (60) days of the Effective Date be designated on the Facilities' Site Map, as the "Industrial Activity Areas." CEMEX shall operate the Facilities such that industrial activity areas that generate dust, fine particulate matter, or other materials that can be tracked or entrained in storm water discharging from the Facilities are principally conducted within the Industrial Activity Areas. Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP for each Facility to fully describe all industrial activities that occur in the Industrial Activity Areas and where within the Industrial Activity Areas these activities occur.

6. **Designation of Storage Areas:** The outdoor storage areas at the Facilities where sand, gravel, base rock, or concrete and asphalt materials awaiting recycling are stored for later use or after they have been crushed and sorted will hereinafter be referred to as the “Material Storage Areas,” and within sixty (60) days of the Effective Date shall be designated on the Facilities’ Site Map as such.

7. **Dust Generating Activities:** Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP and Site Maps for each Facility to fully describe all industrial activities that generate dust or particulates that may be deposited within the Facility's boundaries and identify their discharge locations; the characteristics of dust and particulate pollutants; the approximate quantity of dust and particulate pollutants that may be deposited within the facility boundaries; and a description of the primary areas of the facility where dust and particulate pollutants would settle. CEMEX shall denote all actions taken to control the deposition of dust and particulate matter at the Facilities including a full description of its paved road dust suppression program at the Redwood City Facilities.

8. **Designation of All Sampling Locations:** Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP for each Facility to fully describe the protocol for taking storm water samples. The description shall set forth where and when the samples are to be collected and shall further explain why the sample points are representative of off-site discharge. For instance, if the discharge point is a driveway, CEMEX shall specify which side of the driveway the sample is collected and determine if additional collection points need to be added on the driveway to ensure that the sampling program characterizes all the constituents in the Facility’s storm water run off.

9. **Storm Drain Inlet/Catch Basin Inspection and Best Management Practices:**

a. Prior to October 1 of each year or within seven (7) days of the first forecasted storm event with a probability of 40% or greater in each Wet Season (*i.e.*, from October 1 to May 31 of each year that this Agreement is in effect), CEMEX shall inspect each storm drain inlet or catch basin at each of the Facilities. During this inspection, CEMEX shall clean as needed each drain inlet or catch basin using a vacuum or other suitable method in order to remove dust and solids that have entered the storm drain inlet or catch basin.

b. During each Wet Season (*i.e.*, from October 1 to May 31 of each year that this Agreement is in effect), CEMEX shall inspect each storm drain inlet or catch basin weekly at the Redwood City Facilities and bi-weekly (every two weeks) at the San Francisco Facility, and clean out any sediments deposited into these storm drain inlets or catch basins. CEMEX shall properly dispose of any dust, sediment, or other pollutants removed from storm drain inlets or catch basins.

c. During the Dry Season (*i.e.*, from June 1 to September 30 of each year that this Agreement is in effect), CEMEX shall cover each storm drain inlet or catch basin at each of the Facilities with a metal plate or some other solid material that will prevent dust and solids from collecting in the storm drain inlets or catch basins.

d. CEMEX shall prepare and maintain a log of the storm drain inlet/catch basin inspections and maintenance at each Facility (“Inspection Log”). The Inspection Log shall indicate the staff who completed the inspection and maintenance activity and when it was completed. The Inspection Log shall be made available for

inspection by Baykeeper at the site inspection authorized herein or otherwise within five (5) business days advance request by Baykeeper.

10. **Other Facility Monitoring:** Within sixty (60) days of the Effective Date, during the Wet Season, CEMEX shall conduct weekly inspections of those portions of the Redwood City Facilities from which storm water discharges and bi-weekly (every two weeks) inspections of those portions of the San Francisco Facility from which storm water discharges. Such inspections shall include driveways, outdoor equipment storage areas, Storage Areas, hazardous material areas, and all Industrial Activity Areas. All Designated Discharge Locations shall also be inspected for accumulation of dust, sediment, sand, grit, oily substances, oily sheens upon any standing water, and other materials associated with operations at the Facilities.

11. **Site Sweeping and Cleaning Best Management Practices:** Within sixty (60) days of the Effective Date, CEMEX shall amend the SWPPP for each Facility to incorporate a Site Sweeping and Cleaning Plan in accordance with this section.

a. **Site Sweeping and Cleaning Plans:** The Site Sweeping and Cleaning Plans shall provide for sweeping and cleaning actions that, in conjunction with other appropriate BMPs, shall be sufficient to prevent contaminants from being unintentionally moved around the Facilities, to reduce the entrainment of pollutants into storm water flows, to prevent pollutants from being blown off the Facilities, to keep all paved areas of the Facilities clean, and to prevent pollutants from being tracked off the Facilities onto surface streets. The Plans shall specifically include at least the following measures: (a) identification of areas where mechanical sweeping is feasible, areas where manual sweeping only, as needed, is feasible, and areas where

sweeping is not feasible (such as unpaved areas, or under piles of materials that are not reasonably movable), (b) Wet Season and Dry Season schedules for mechanical and manual sweeping of areas identified as appropriate for such sweeping of at least daily for the Redwood City Facilities and twice weekly for the San Francisco Facility, except during periods of rain, (c) triggers for more frequent ad hoc sweeping or cleaning such as visual accumulation of dust or debris, (d) identification of the type of equipment that will be employed for sweeping and a provision that regenerative sweepers or vacuum systems will be employed where “mechanical sweepers” are shown not to be adequate, (e) a thorough inspection of each Facility at least annually and, to the extent warranted by this inspection, perform additional comprehensive site cleaning as needed, (f) specification that CEMEX will not discharge any waste fluids or solid wastes generated in site cleaning to storm drain inlets or waterways, (g) sweeping of the public streets for approximately two hundred (200) feet within each of the entrances and exits of the Facilities at least twice weekly at the Redwood City Facilities, including Hinman Road and Seaport Boulevard, and twice weekly at the San Francisco Facility on Amador Street (this frequency assumes the Port of Redwood City sweeps Hinman Road and Seaport Boulevard on the alternate days, and that neighboring business Hanson sweeps Amador Street on the alternate days, resulting in daily public street sweeping), and (h) specification that CEMEX will collect and dispose of all wastes generated during Facility cleaning and sweeping in a manner that complies with all local, state, and federal laws.

b. **Site Sweeping and Cleaning Log:** CEMEX shall keep a log or checklist, as appropriate, of the sweeping and any other site cleaning activity performed at each Facility which identifies the staff who conducted the sweeping or cleaning, the location of the sweeping or cleaning, and the date of the sweeping or cleaning activities. The form for this log or checklist shall be adopted by CEMEX as part of the Site Sweeping and Cleaning Plans referred to in the preceding paragraph. CEMEX shall direct employees and/or contractors to accurately complete this form for those sweeping and cleaning actions specified in such log in accordance with the Site Sweeping and Cleaning Plan. CEMEX shall make the sweeping and cleaning log or checklist available for inspection by Baykeeper at the site inspection authorized herein or otherwise with five (5) business days advance request by Baykeeper.

12. **Traffic Flow:** Within sixty (60) days of the Effective Date, CEMEX shall update the SWPPP for each Facility to fully describe the type, direction, and volume of vehicle traffic at the Facilities.

13. **Tracking:** By October 1, 2010, CEMEX shall implement the following BMPs to reduce or prevent visible tracking of pollutants from each Facility by vehicle traffic:

a. At the San Francisco Facility, CEMEX shall maintain the existing pavement in good condition, and shall modify and improve the existing wheel wash system to effectively control any track-out as depicted on Exhibit 2 attached hereto and incorporated herein by reference as though fully set forth;

b. At the Harbor Sand & Gravel Facility, CEMEX shall install additional pavement and rumble grates at the entrance and/or exit from the facility as depicted

on Exhibit 3 attached hereto and incorporated herein by reference as though fully set forth; and

c. Cleaning and maintenance of these paved areas and the rumble grates will be address in the Site Sweeping and Cleaning Plans.

**14. Harbor Sand & Gravel Facility Seaport Boulevard Terminus Projects:**

CEMEX shall install a drive-over concrete berm at the Harbor Sand & Gravel between the rail car line and the terminus of Seaport Boulevard. CEMEX shall also perform a one-time removal of existing aggregate and solids on the ground at the terminus of Seaport Boulevard.

Certification of completion of both projects described in this paragraph shall be provided in the End of Season Summary described in Paragraph 34 of this Agreement, as well as an evaluation of whether the berm is effective at containing aggregate and other solids from being deposited at the terminus of Seaport Boulevard. If the berm is ineffective, CEMEX shall propose an alternative plan for controlling aggregate and other solids from being deposited at the terminus of Seaport Boulevard. This area shall be included in the facility monitoring described in Paragraph 10 and additional removal of aggregate and solids on the ground at the terminus of Seaport Boulevard shall occur, as necessary, to keep the area free of debris.

**15. Pavement Inspection and Repair:** Within sixty (60) days of the Effective Date, CEMEX shall repair or replace cracking pavement and concrete berms at Facility entrances, Industrial Activity Areas, and Operation Areas, and around the perimeter at each Facility, if any exists, to the extent that the cracks are interfering with the function of the pavement or berm. CEMEX shall routinely inspect paved areas and implement additional repairs or replacement of pavement on an as needed basis.

16. **Hazardous Waste Materials Segregation and Handling:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall implement a system: (1) for identifying any toxic and hazardous materials handled at the Facilities and (2) for segregating such identified materials from other materials at each Facility and storing all such materials under cover and on an impermeable surface, out of potential contact with storm water or site flooding, with the exception of satellite accumulation stations, which may be located on a permeable surface so long as they are not located near a storm drain inlet or catch basin. The requirement that hazardous waste materials be stored "under cover" may be satisfied by storage in a covered drum or sealed or covered container. CEMEX shall update the SWPPPs for each of the Facilities to reference any Hazardous Materials Management Plans to account for all the ready-mix additives handled, used, or stored at the Facilities.

17. **Inutile Equipment and Parts Removal:** By October 1, 2010, CEMEX shall conduct an inspection of its Facilities, including the Facilities' respective boneyards, if any, and shall identify and remove from each Facility all abandoned or broken equipment, scrap metals, or other equipment no longer considered for future use that have the potential to serve as the source for pollutant loading.

18. **Vehicle and Equipment Management:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall implement BMPs to reduce or minimize pollutant release from mobile equipment such as forklifts, hydraulic lifts, and other heavy equipment that are parked or stored in areas of the Facilities from which storm water discharges. Such BMPs shall include placing drip pans under stored or parked equipment, including overnight parking and storage, as necessary as an interim measure to control any

leaking equipment prior to the equipment repair, inspections during the Wet Season for evidence of leaks from such equipment (weekly for Redwood City Facilities and bi-weekly (every two weeks) for the San Francisco Facility), and promptly (as soon as reasonably possible and in no case later than in advance of forecasted rainfall events) cleaning up of spills, drips, or leaks from such equipment. Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

19. **Vehicle and Equipment Maintenance:** Within sixty (60) days of the Effective Date, to the extent not already implemented, CEMEX shall conduct routine or major vehicle or movable equipment maintenance or repair activities in the covered areas designated for such maintenance at the San Francisco Facility and on paved, bermed surfaces at the Redwood City Facilities. Whenever CEMEX conducts non-routine or emergency vehicle or movable equipment maintenance or repair activities in non-covered or unpaved areas from which storm water discharges from each Facility, CEMEX shall clean-up any waste products, including pollutant containing fluids, deposited or spilled on the ground as a result of the maintenance or repair. Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

20. **Fueling Activities:** By October 1, 2010, to the extent not already implemented and except in unusual and unexpected circumstances where equipment located on a pervious surface has run out of fuel and requires refueling to be operational, CEMEX shall conduct fueling activities only on an impervious surface, and CEMEX shall also require that its fuel supplier or employees immediately clean-up, remove and dispose of any fuel spills in accordance with all applicable local, state, and federal laws and regulations.

21. **Training:** Within sixty (60) days of the Effective Date, and annually thereafter, and within thirty (30) days of hiring of new employees, CEMEX shall conduct training for all appropriate employees to explain the requirements of the Facilities' SWPPPs to the extent applicable to such employee. Training shall focus on the employee's role in implementing various storm water control measures including, for example, implementation of BMPs, sweeping, or facility inspections. Training shall be conducted bilingually (*i.e.*, Spanish/English or other pertinent language) to the extent that such employee is not reasonably able to comprehend training in English. Within sixty (60) days of the Effective Date, CEMEX shall update each Facilities' SWPPP to include the training requirements set forth herein, to the extent such training is not already performed, and to identify all personnel responsible for carrying out storm water management, monitoring, sampling, and SWPPP implementation at each Facility.

22. **Maintenance of BMP Structural Controls:** After the Effective Date, CEMEX shall maintain structural BMPs at each Facility in good operating condition during the Wet Season and shall promptly repair any damaged or degraded structural BMPs.

23. **Amendment of SWPPP:** Unless otherwise specified, within sixty (60) days of the Effective Date, CEMEX shall amend each Facility's SWPPP to incorporate the facility compliance measures set forth in paragraphs 5 through 22 of this Agreement.

### **III. SAMPLING, MONITORING, INSPECTION & REPORTING**

24. **Sampling Program:** After the Effective Date, subject to the limitations set forth below, CEMEX shall collect and analyze storm water samples from each Designated Discharge Point at the Facilities according to the following sampling schedule:

a. During the Wet Seasons for 2010-2011 (“First Year”) and 2011-2012 (“Second Year”), CEMEX shall collect four storm water samples per year from each Designated Discharge Point unless a Designated Discharge Point does not discharge four times during each Wet Season, in which case, CEMEX shall collect as many storm water samples as possible, provided that all samples are at least 48 hours apart. If the sampling results for the First Year are significantly improved from the sample results obtained in the Wet Season for 2009-2010, CEMEX shall be required to collect three storm water samples during the Second Year from each Designated Discharge Point.

b. CEMEX shall analyze each storm water sample collected for the presence of each of the parameters listed on the Sampling Chart attached hereto as Exhibit 1. If CEMEX obtains two consecutive samples from each of the Designated Discharge Points at a Facility which are below the Benchmark Levels in Exhibit 1 for a given constituent, CEMEX need not have its storm water from that Facility analyzed for that particular constituent for the remainder of this Agreement. Should operations materially change at any of the Facilities, CEMEX shall conduct sampling for any additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in CEMEX’s storm water discharges in quantities that will cause or contribute to exceedance of receiving water quality standards as a result of the changed operations.

c. Where CEMEX discharges storm water into a storm drain inlet or catch basin, CEMEX may collect a sample below any insert or treatment system.

25. **Certified Lab:** CEMEX shall have all storm water samples collected pursuant to this Agreement delivered to a California state certified environmental laboratory for analysis within the time needed for analysis within laboratory method allowable hold times. The laboratory shall conduct analysis sufficient to detect individual constituents at or below the levels set forth in the attached Exhibit 1.

26. **Sample Result Reporting:** CEMEX shall provide complete results from CEMEX's sampling and analysis to Baykeeper within fifteen (15) days of receipt of the laboratory report from each sampling event.

27. **Action Plan Trigger Levels:** CEMEX will compare analytical results of its storm water samples with the Target and Benchmark levels in Exhibit 1 to evaluate the effectiveness of BMPs. If the level of pollutants in CEMEX's storm water discharges exceeds the Target or Benchmark levels in Exhibit 1 during each Wet Season, CEMEX shall comply with the assessment and Action Plan requirements specified below. Regardless of whether an Action Plan is required, CEMEX shall ensure that all BMPs at the Facilities are maintained in proper working condition.

28. **Action Plan, Additional Management/Treatment of Storm Water:** By June 15, 2011 and June 15, 2012, CEMEX shall prepare and send to Baykeeper an Action Plan for a Facility if storm water sample results for that Facility exceed Target Levels and Benchmark levels set forth in Exhibit 1 ("Action Plan").

29. **Contents of Action Plans:** An Action Plan shall set forth: (1) the constituent concentrations from Designated Discharge Point samples collected at each Facility exceeding the Target or Benchmark Levels in Exhibit 1 ("Exceedances"), (2) the possible sources of such

Exceedances, (3) to the extent not already evaluated by CEMEX (*e.g.*, in prior Action Plan), BMPs that CEMEX will evaluate to attempt to reduce the level of pollutants associated with the Exceedances in future storm water discharges to the Target or Benchmark levels (considering, if appropriate, specific subsequent storm water testing within the Facility to attempt to identify areas within the Facility that may generate material levels of storm water pollutants), (4) any completed evaluations of additional BMPs (to the extent that such evaluations are then complete), (5) recommended BMPs (if any) resulting from such evaluation, (6) BMPs to be implemented; and (7) a schedule to implement any new BMPs by the earliest practicable time (in all cases, CEMEX shall propose an BMP implementation schedule that provides for BMP implementation as expeditiously as feasible, and before the next Wet Season, if possible). The Action Plan may include, for Target Levels, any technical or regulatory information relevant to calculating compliance with relevant Target Levels. The following BMPs should generally be evaluated in order to attain Benchmark levels or Target Levels:

- a. Hydraulic Controls: in appropriate paved portions of the Facilities, installation of berms or equivalent structural controls (if necessary to reduce or prevent storm water from flowing into or, other than through the engineered storm water conveyance system, out of one or more areas within the Facilities that serve as potential sources of contaminated storm water runoff to the extent that such storm water would discharge from the Facilities).
- b. Detention: Additional on-site retention or detention of storm water to minimize storm water discharges (overall or from specific areas) or to detain storm water runoff for sufficient detention time so as to reduce pollutants in the discharge.

c. Sweeping Technology: The use or increased use of regenerative sweepers (a regenerative sweeper is a mechanized sweeper that uses a blast of air in front of the brushes to raise tiny particles and improve sweeping performance) and high efficiency vacuum assisted dry sweepers, as well as alternate sweeping-vacuum as CEMEX deems appropriate, to substantially reach and clean all material areas where mechanized sweepers cannot effectively reach. Sweeping frequency shall also be evaluated, and increased if the assumptions regarding public street sweeping referenced in paragraph 11.a. of this Agreement change.

d. Visual “Track Off” To Public Streets: additional BMPs necessary to reduce or prevent visual “track off” of material from the facility onto public streets.

e. Paving Additional Unpaved Areas: to the extent not already implemented, paving appropriate portions of unpaved portions of the Process, Storage, or Operating Areas where significant vehicle traffic occurs and from which storm water discharges from the Facility.

f. Treatment Systems: installing alternative treatment systems that would provide more effective treatment of storm water prior to discharge than currently installed systems, such as a fixed bed (media-sand) filter system or other improved filter system.

g. Operations Under Cover: Identifying and segregating pollutant generating materials from areas which discharge storm water from the Facilities to areas where they can be covered and isolated from rainfall and storm water flow and/or to areas where storm water can be effectively filtered and/or otherwise treated on-site prior to

discharge from the Facility, and/or to areas from which storm water does not discharge from the Facility.

h. Evaluation of BMPs: CEMEX shall consider replacing, rehabilitating, or eliminating existing BMPs, by taking into account the age of the BMPs involved or employed, the engineering aspect of the application of various BMPs, the cost of the BMPs, and any adverse environmental impact of the BMPs.

i. Such other additional BMPs as CEMEX deems appropriate for evaluation.

30. Baykeeper shall have thirty (30) days from receipt of an Action Plan to comment on and/or propose revisions to the Action Plan and explain in writing the basis for each such revision. Within forty-five (45) days of receiving Baykeeper's comments and/or proposed revisions, CEMEX shall adopt Baykeeper's requested revisions to the Action Plan unless the Parties otherwise agree or CEMEX timely invokes and prevails in Dispute Resolution.

31. CEMEX shall implement the Action Plan(s) adopted pursuant to this Agreement as an obligation of this Agreement.

32. Within thirty (30) days after an Action Plan is adopted pursuant to this Agreement, CEMEX shall amend its SWPPP to include all BMPs set forth in the Action Plan not otherwise implemented and included in the SWPPP. Within thirty (30) days thereafter pursuant to this paragraph, CEMEX shall provide Baykeeper with a copy of such revised SWPPP.

33. During each Wet Season, CEMEX is under an ongoing obligation to evaluate the BMPs implemented at each Facility and discussed in current or previous Action Plans and continue to attempt to reduce the level of pollutants for the remainder of the Wet Season.

CEMEX shall use the results from subsequent storm water samples as they become available to assist with its ongoing evaluation of the effectiveness of BMPs.

34. **End of Season Summary:** By September 30, 2010, CEMEX shall provide Baykeeper an end of season summary report that includes a summary chart with all the sample results from the 2009-2010 Wet Season. In the event that no Action Plan is required either by July 1, 2011 and/or July 1, 2012, CEMEX shall provide Baykeeper an end of season summary report for each Facility that includes (1) a summary chart with all the sample results from the previous Wet Season, (2) an explanation of whether CEMEX has implemented or will implement new BMPs not already discussed in a prior summary report or Action Plan, and (3) an evaluation of the effectiveness of any new BMPs implemented in the prior year.

35. **Stipulated Payments:** CEMEX shall pay the following stipulated payments during the term of this Agreement:

a. In the event CEMEX fails to submit to Baykeeper any document, report or other communication required under paragraphs 2, 4, 9.d., 11.b., 26, 28, 34, and 39-41 of this Agreement, for any report more than five (5) business days (Monday through Friday, excluding state and federal holidays) late, CEMEX shall pay a per day payment of Three Hundred and Fifty Dollars (\$350) commencing on the sixth (6<sup>th</sup>) business day after the report due date;

b. CEMEX shall pay One Thousand Five Hundred Dollars (\$1500) per Facility for any sample results during each Wet Season (First and Second Years) for which there was an Exceedance of the Benchmark Levels for Total Suspended Solids, Oil & Grease, or Iron; and

c. For every business day (Monday through Friday, excluding state and federal holidays) past the date that Baykeeper provided written notice to CEMEX that a document, report or other communication referenced in paragraph 35.a. or measure of specific performance required by this Agreement does not comply with the Agreement, and CEMEX has failed to correct the non-performance or invoke Dispute Resolution, CEMEX shall pay a per day payment of Three Hundred and Fifty Dollars (\$350), unless CEMEX's position prevails in Dispute Resolution;

d. CEMEX shall incur a Three Hundred and Fifty Dollar (\$350) per day payment for every business day (Monday through Friday, excluding state and federal holidays) five (5) days past the due date that CEMEX fails to submit to any payments required under paragraphs 39-41 of this Agreement.

e. All payments of stipulated payments described above shall be paid annually by CEMEX no later than September 1st of each year, via overnight mail to: Rose Foundation, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little, with a copy of payment sent concurrently to Baykeeper. Stipulated payment funds will be used by the Rose Foundation to fund projects that benefit water quality in the San Francisco Bay watershed south of the San Francisco Bay Bridge. The Rose Foundation and Baykeeper shall provide in writing to CEMEX a description of how funds were used on a specific water quality project(s) that benefited waters south of the San Francisco Bay Bridge. In no case shall any of the funds be used for any projects carried out by Baykeeper.

36. **Reduction in Stipulated Payments:** CEMEX shall be allowed a fifty percent (50%) reduction of any stipulated payment due in any given year pursuant to the preceding paragraph if CEMEX provides Baykeeper with a certification signed under penalty of perjury stating that CEMEX will, within one year, spend or be under contract to spend the balance of the sum that would otherwise be due as a stipulated payment on alternative environmental enhancements. CEMEX's proposal(s) for alternative environmental enhancements shall be submitted for review and approval by Baykeeper prior to CEMEX's submittal of a certification pursuant to this paragraph. After Cemex and Baykeeper have reached written agreement on an alternative environmental enhancement measure, CEMEX shall implement the measure as an obligation of this Agreement. Permissible alternative environmental enhancements shall include: (a) completing indoor or covered facilities including the construction of canopies over processing, operation, maintenance, or material storage areas; (b) the acquisition of an improved storm water filtration system designed for ready mix and aggregate processing and recycling facilities approved by Baykeeper (including any storm water retention capacity integrated with the filtration system), (c) construction and operation of the appurtenances needed to discharge storm water runoff from the Redwood City or San Francisco Facilities to a publicly owned treatment works sanitary sewer system provided that CEMEX includes as part of this sewer connection project the construction and operation of storm water retention devices (such as retention ponds, basins, or tanks) to allow storage of storm water for disposal after peak rainfall-related sewer collection system flows have subsided, or (d) purchase of a regenerative sweeper. CEMEX must further submit within thirty (30) days of completing the foregoing alternative environmental enhancement project a subsequent notice to Baykeeper explaining how CEMEX

expended the funds and how this expenditure met the required terms. If CEMEX fails to meet all conditions of this paragraph, then it must pay the balance of the stipulated payment sum not yet paid within thirteen (13) months from the date the payment was originally due.

37. **Site Access:** During the term of this Agreement, CEMEX shall permit representatives of Baykeeper to perform one (1) physical inspection per year of each Facility during operating hours, which may include sampling, and agreed-upon photographing and/or videotaping compliant with applicable Federal Rules of Civil Procedure. Baykeeper shall provide CEMEX notice at least five (5) business days in advance of such physical inspection, and CEMEX shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations. In such case, CEMEX shall specify at least three (3) days within the next four (4) weeks upon which a Baykeeper inspection may proceed, with twenty-four (24) hours notice, during normal business hours. CEMEX shall not use the period of Baykeeper advance notice pursuant to this paragraph to make any alterations to Facility conditions that CEMEX would not otherwise have made but for receiving advance notice of Baykeeper's requested site access such that Baykeeper will be allowed to inspect and sample normally representative Facility conditions and storm water discharge.

38. **Reports:** During the term of this Agreement, CEMEX shall provide Baykeeper with a copy of all documents submitted to the Regional Water Quality Control Board, San Francisco Region ("the Regional Board") or the State Water Resources Control Board ("State Board") concerning storm water or non-storm water discharges from the Facilities. Such documents and reports shall be transmitted to Baykeeper via electronic mail, if feasible, or by

U.S. Mail when electronic transmission is not feasible, at the time the documents are due to be submitted to the Regional Board or State Board.

#### **IV. MITIGATION, FEES, AND COSTS**

39. **Environmental Mitigation Funding:** As mitigation of the violations alleged in Baykeeper's 60-Day Notice and Complaint, within thirty (30) days of the Effective Date, CEMEX shall pay the sum of forty-five thousand (\$45,000) to the Rose Foundation for the Environment to fund projects that will benefit water quality in the San Francisco Bay watershed south of the San Francisco Bay Bridge. Payment shall be made to the Rose Foundation for the Environment, 6008 College Avenue, Oakland, California 94618, Attn: Tim Little, with a copy of payment sent concurrently to Baykeeper. The Rose Foundation and Baykeeper shall providing in writing to CEMEX a description of how funds were used on a specific water quality project(s) that benefited waters south of the San Francisco Bay Bridge. In no case shall any of the funds be used for any projects carried out by Baykeeper.

40. **Reimbursement of Fees and Costs:** CEMEX shall reimburse Baykeeper in the amount of seventy thousand dollars (\$70,000) to help defray Baykeeper's reasonable investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the Facilities related to this Agreement, bringing these matters to CEMEX's attention, and negotiating a resolution of this action in the public interest. CEMEX shall tender payment to Environmental Advocates Attorney-Client Trust Account within thirty (30) days of the Effective Date.

41. **Compliance Monitoring Funds:** CEMEX shall reimburse Baykeeper six thousand two hundred and fifty dollars (\$6,250) per year for each of the two years of the term of

this Agreement, in the total amount of twelve thousand five hundred dollars (\$12,500) for costs and fees associated with monitoring CEMEX's compliance with this Agreement. Monitoring activities include the authorized site inspection, review of water quality sampling reports, review of Action Plans and other documents submitted pursuant to this Agreement, discussion with representatives of CEMEX concerning potential changes to compliance requirements, water quality sampling, informal dispute resolution, and other actions necessary to monitor and ensure CEMEX's compliance with this Agreement. The total compliance monitoring fund payment of \$12,500 shall be made payable to Environmental Advocates Attorney-Client Trust Account within thirty (30) days of the Effective Date.

42. **Dispute Resolution:** If a dispute under this Agreement arises, or either Party believes that a breach of this Agreement has occurred, the Parties shall schedule a meet and confer within ten (10) business days of receiving written notification from the other Party of a request for a meeting to determine whether a violation has occurred and to develop a mutually agreed upon plan to resolve the dispute. If the Parties fail to meet and confer or the meet and confer does not resolve the issue, after at least seven (7) days have passed after the meet and confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under the law, including bringing a motion before the United States District Court for the purposes of enforcement of the terms of this Agreement. The parties shall be entitled to seek fees and costs incurred in any such action, and such fees and costs shall be awarded, pursuant to the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

**V. JURISDICTION AND STIPULATION TO DISMISS**

43. **Jurisdiction.** For the purposes of this Agreement, the Parties agree that the United States District Court of California, Northern District of California (“District Court”) has jurisdiction over the Parties and the subject matter of this Agreement. The Parties further agree that venue is appropriate in the Northern District of California and that CEMEX will not raise in the future as part of enforcement of this Agreement whether Baykeeper has standing to bring the Complaint.

44. **Submission of Settlement Agreement to DOJ.** Within three (3) business days of receiving all of the Parties’ signatures to this Agreement, Baykeeper shall submit this Agreement to the U.S. Department of Justice (“DOJ”) for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the DOJ, evidenced by the certified return receipt, a copy of which shall be provided to CEMEX upon receipt by Baykeeper. In the event DOJ comments negatively on the provisions of this Agreement, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by DOJ.

45. **Stipulation to Dismiss With Prejudice.** Within ten (10) calendar days of the expiration of the DOJ’s 45-day review period as provided in this Agreement, the Parties will submit this Agreement to the District Court along with a Stipulation and proposed Order which shall provide:

- a. For dismissal of the Complaint and all claims therein with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2);
- b. That the Court shall retain and have jurisdiction over the Parties with respect to resolving disputes arising under this Agreement; and

c. If any court of competent jurisdiction subsequently finds that the Court lacks jurisdiction to resolve any dispute that may arise under this Agreement and enforce this Agreement in accord with the Court's resolution of the dispute, the Parties stipulate that (1) they will jointly request the Court to set aside dismissal of the Complaint and to reinstate the Complaint for the sole purpose of providing the Court jurisdiction to resolve the dispute and enforce this Agreement accordingly and (2) should the Court decline to do so, this Agreement shall be deemed a binding contract enforceable as a contract by either the California Superior Court for the County of San Mateo or the California Superior Court for the County of San Francisco.

## **VI. WAIVER, RELEASES, AND COVENANT NOT TO SUE**

### **46. Baykeeper Waiver and Release of Noticed Parties and Covenant Not to Sue:**

Upon the Effective Date, Baykeeper, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates and each of their successors and assigns and its agents, attorneys, and other representatives covenants not to sue CEMEX or its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, attorneys and other representatives with respect to any discharges of storm water from the Facilities that arose before or may arise during, the term of this Agreement. Baykeeper, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates and each of their successors and assigns and its agents, attorneys, and other representatives, releases CEMEX or its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, attorneys and other

representatives from and waives all claims which arose from or pertain to the Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to the Complaint.

47. **CEMEX Waiver and Release of Baykeeper:** CEMEX, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, attorneys and other representatives, releases Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns and its agents, attorneys and other representatives from, and waives all claims which arise from or pertain to the 60-Day Notice or Complaint, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to the 60-Day Notice or Complaint.

48. **No Admission:** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be construed as, and CEMEX expressly does not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by CEMEX of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

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

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

The Parties hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice and/or the Complaint.

## **VII. MISCELLANEOUS PROVISIONS**

50. **Effective Date:** The Effective Date of this Agreement shall be the date upon which the District Court enters the Order dismissing Baykeeper's Complaint with prejudice and retaining jurisdiction to enforce the terms of this Agreement.

51. **Term of Agreement:** This Agreement shall terminate on September 30, 2012.

52. **Execution in Counterparts:** The Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

53. **Facsimile Signatures:** The Parties' signatures to this Agreement transmitted by facsimile or electronic mail transmission shall be deemed binding.

54. **Severability:** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

55. **Construction:** The language in all parts of this Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning.

56. **Authority to Sign:** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Agreement.

57. **Integrated Agreement:** All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Agreement are contained herein.

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

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

60. **Negotiated Agreement:** The Parties have negotiated this Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.

61. **Modification of the Agreement:** This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the Parties.

62. **Correspondence:** Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to Baykeeper pursuant to this Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed

below or, if electronic transmission is not feasible, via U.S. Mail or hand delivery to the following addresses:

Baykeeper:

Jason Flanders  
San Francisco Baykeeper  
785 Market Street, Suite 850  
San Francisco, CA 94103  
E-mail: [jason@baykeeper.org](mailto:jason@baykeeper.org)

With copies sent to:

Jodene Isaacs  
Environmental Advocates  
5135 Anza Street  
San Francisco, California 94121  
E-mail: [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com)

Unless requested otherwise by CEMEX, any notices or documents required or provided for by this Agreement or related thereto that are to be provided to CEMEX pursuant to this Agreement may be provided by electronic mail transmission to the e-mail addresses listed below, or alternatively may be sent by U.S. Mail to the addresses below:

CEMEX:

Louis Schipper  
Sr. Environmental Manager - Environmental Department  
CEMEX, Inc.  
5180 Golden Foothill Pkwy. Suite 200  
El Dorado Hills, California 95762-9608  
E-Mail: [louisb.schipper@cemex.com](mailto:louisb.schipper@cemex.com)

With copies sent to:

Keith Nicholson  
Counsel  
CEMEX, Inc.  
920 Memorial City Way  
Suite 100

Houston, Texas 77024  
Email: [keith.nicholson@cemex.com](mailto:keith.nicholson@cemex.com)

And

Nicole Granquist  
Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> Fl  
Sacramento, California 95814  
Email: [ngranquist@downeybrand.com](mailto:ngranquist@downeybrand.com)

63. **Impossibility of Performance:** No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when performance becomes impossible, despite the timely good faith efforts of the Party, due to circumstances beyond the Party's control, including without limitation any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. "Circumstances beyond the Party's control" shall not include normal inclement weather, economic hardship or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the impossibility of performance.

64. **Assignment:** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

65. If for any reason the District Court should decline to approve this Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Agreement within thirty (30) days of receiving notice by District Court so that it is acceptable to the District Court. If the Parties are unable to modify this Agreement in a mutually acceptable

manner that is also acceptable to the District Court, this Agreement shall immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408.

Date: March 22, 2010

Date: \_\_\_\_\_, 2010



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by: Deb Self  
Executive Director  
San Francisco Baykeeper

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by: Leslie S. White  
Executive VP & General Counsel  
CEMEX, Inc.

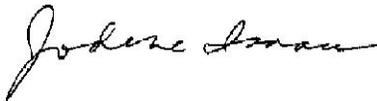
**Approved as to form:**

ENVIRONMENTAL ADVOCATES

DOWNEY BRAND, LLP

Date: March 22, 2010

Date: \_\_\_\_\_, 2010



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by: JODENE ISAACS  
CHRISTOPHER SPROUL  
Attorneys for Baykeeper

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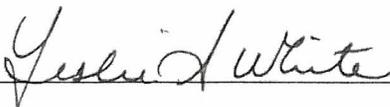
by: NICOLE E. GRANQUIST  
Attorneys for CEMEX

manner that is also acceptable to the District Court, this Agreement shall immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408.

Date: \_\_\_\_\_, 2010

Date: March 22, 2010

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\_\_\_\_\_

by: Deb Self  
Executive Director  
San Francisco Baykeeper

by: Leslie S. White  
Executive VP & General Counsel  
CEMEX, Inc.

**Approved as to form:**

ENVIRONMENTAL ADVOCATES

DOWNEY BRAND, LLP

Date: \_\_\_\_\_, 2010

Date: \_\_\_\_\_, 2010

\_\_\_\_\_  
by: JODENE ISAACS  
CHRISTOPHER SPROUL  
Attorneys for Baykeeper

\_\_\_\_\_  
by: NICOLE E. GRANQUIST  
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DOWNEY BRAND, LLP

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Date: March 22, 2010

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by: JODENE ISAACS  
CHRISTOPHER SPROUL  
Attorneys for Baykeeper

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by: NICOLE E. GRANQUIST  
Attorneys for CEMEX

# Exhibit 1

## EXHIBIT 1

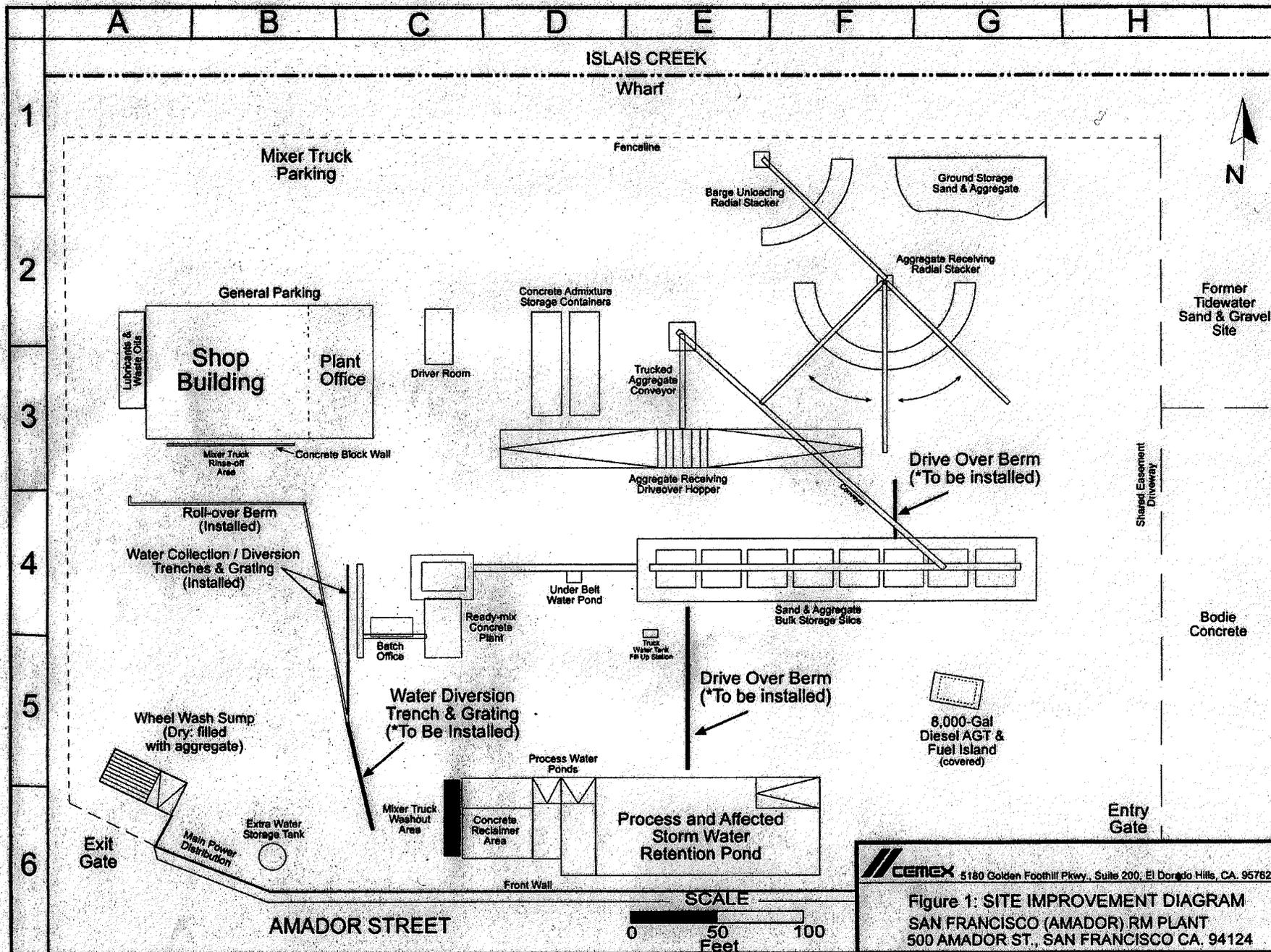
**Target Levels and Benchmark Levels for CEMEX's Redwood City and San Francisco Facilities**

<b>Constituent</b>	<b>Target Levels (Water Quality Standards)</b>	<b>Target Reference</b>	<b>EPA Benchmark Values</b>	<b>EPA Analysis Method or Minimum Detection Limit</b>
<b>Total Suspended Solids</b>	25 mg/L	<i>Proposed Best Available Technology (BAT) Limits for Scrap Yard Storm Water Discharges<sup>1</sup></i>	100 mg/L	Method 160.2
<b>Oil and Grease</b>	10 mg/L	<i>Proposed BAT Limits for Scrap Yard Storm Water Discharges</i>	15 mg/L	Method 418.1 or Method 1664
<b>Specific Conductivity</b>	200 umhos/cm	<i>EPA Storm Water Benchmark</i>	200 umhos/cm	Method 120.1
<b>pH</b>	6.5 to 8.5	<i>SF-RWQCB Basin Plan, all surface waters</i>	6.0-9.0	Method 9040b
<b>Aluminum</b>	0.750 mg/L	<i>EPA Storm Water Benchmark</i>	0.750 mg/L	0.05 mg/L
<b>Copper</b>	0.0031 mg/L	<i>CTR-Based Criteria: <u>Saltwater Aquatic Life protection CCC Chronic</u></i>	0.0636 mg/L	0.003 mg/L
<b>Iron</b>	1.0 mg/L	<i>EPA NAWQC- EPA Storm Water Benchmark</i>	1.0 mg/L	0.1 mg/L
<b>Lead</b>	0.0081 mg/L	<i>SF-RWQCB, Table 3.3, Basin Plan, Salt Water Chronic</i>	0.816 mg/L	0.001 mg/L
<b>Zinc</b>	0.081 mg/L	<i>SF-RWQCB, Table 3.3, Basin Plan, Salt Water</i>	0.117 mg/L	0.01 mg/L

<sup>1</sup> International Stormwater Best Management Practices (BMP) Database Project 1999-2005, Analysis of Treatment System Performance, February 2006. Available at <http://www.bmpdatabase.org/downloads.htm>.

## Exhibit 2

# EXHIBIT 2



**CEMTEX** 5180 Golden Foothill Pkwy., Suite 200, El Dorado Hills, CA. 95782  
**Figure 1: SITE IMPROVEMENT DIAGRAM**  
**SAN FRANCISCO (AMADOR) RM PLANT**  
**500 AMADOR ST., SAN FRANCISCO CA. 94124**

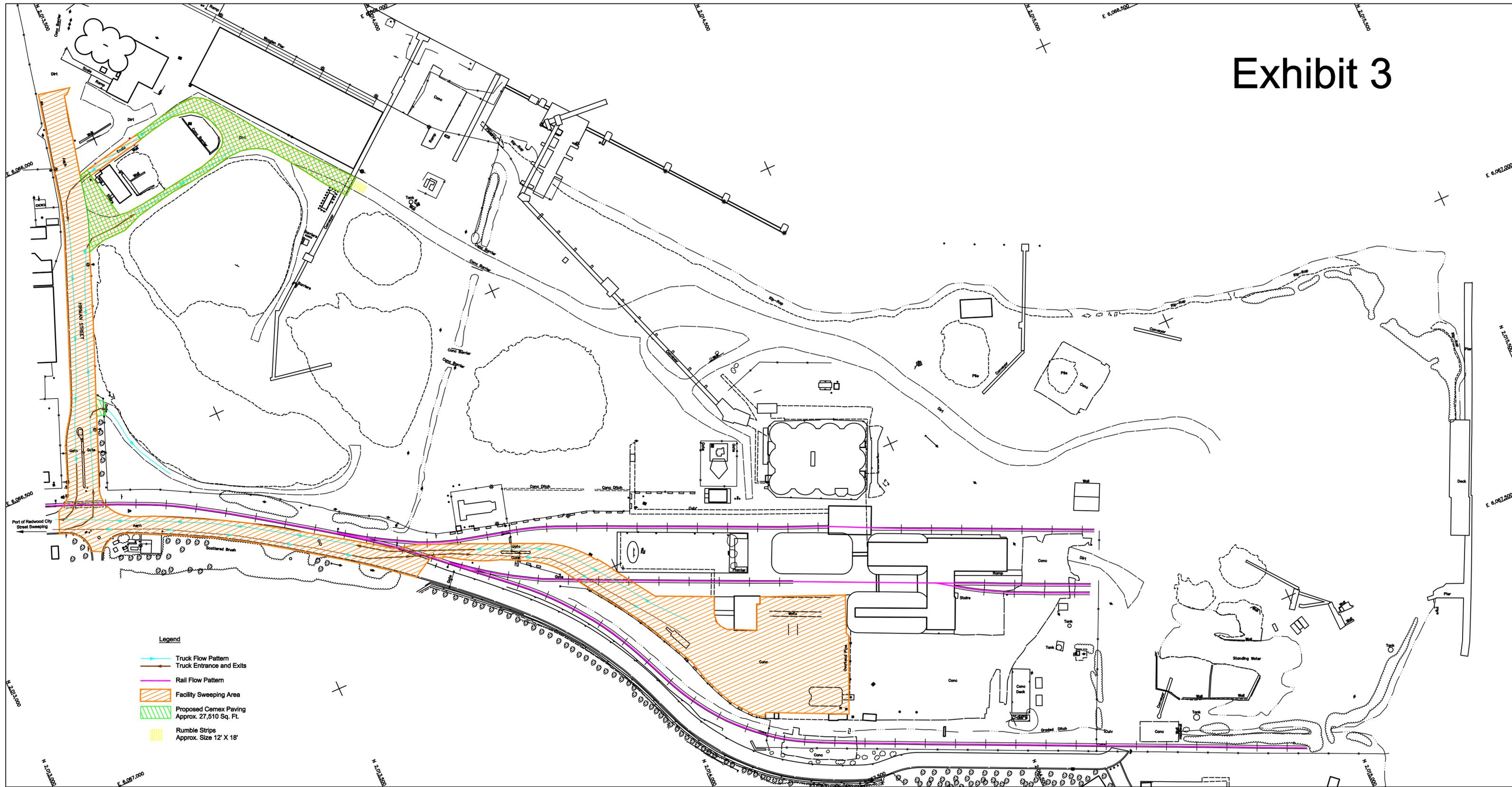
## Exhibit 2, Continued

### Description of San Francisco Facility Improvements Depicted on Site Map

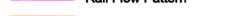
1. Existing wheel wash located near the exit gate at Amador Street has been dewatered and filled with loose aggregate (1 ½” crushed and washed from Clayton Quarry) to minimize track-out potential. The existing wheel wash and inserted loose aggregate will be inspected and maintained consistent with paragraphs 9.a., b., and d. of the Agreement to ensure continued intended use and efficacy. Loose aggregate will be replaced, as appropriate, to minimize track-out potential.
2. A drive-over berm (~100 feet long by 8 inches tall by 16 inches wide at base) has been installed at the mixer truck rinse-off area to divert water toward the new diversion trenches.
3. Water diversion trenches and surface grating (two sections; Each ~100 feet long by 10 inches wide by 5 inches deep) were installed to collect and route water toward the Facility’s process and affected storm water retention pond (water reused in industrial processes). These trenches and surface grating will be inspected and maintained consistent with paragraphs 9.a., b., and d. of the Agreement to ensure continued intended use and efficacy.
4. A drive-over berm (~ 50 feet by 8 inches tall by 12 inches wide at base) will be installed just east of the truck water tank fill station to divert process-affected water towards the Facility’s retention pond.
5. A drive-over berm (~ 25 feet by 8 inches tall by 12 inches wide at base) will be installed on the north side of the sand and aggregate silo to control and divert process-affected water towards the center of the Facility for retention and evaporation.

## Exhibit 3

# Exhibit 3



**Legend**

-  Truck Flow Pattern
-  Truck Entrance and Exits
-  Rail Flow Pattern
-  Facility Sweeping Area
-  Proposed Cemex Paving  
Approx. 27,510 Sq. Ft.
-  Rumble Strips  
Approx. Size 12' X 18'

**Map Accuracy:**  
This map was prepared using LIDAR data and photogrammetric computer aided drafting techniques.

In open, unobstructed areas, this map complies with National Accuracy Standards for 1" = 50' with a 1' contour interval. In areas of dense vegetation or where overhead structures obscure the ground from clear view in the aerial photography, contours may deviate from their correct elevation and planimetric features may not be included.

Supplemental contours are provided at a 1/2' interval.



Scale: 1" = 100'  
Contour Interval: 1'

Date of Photography: October 16, 2009  
Scale of Photography: 1:3000  
Horizontal Datum: California Coordinate System, Zone 5  
North American Datum of 1983 (NAD83, 2007.0)  
Vertical Datum: North American Vertical Datum of 1988 (NAVD88)  
Ground Control Survey by: Towill, Inc.

Sheet No. 1 of 1 Sheets    Towill File No. 13143-103-011

Topographic Map of  
**Harbor Sand & Gravel**  
for  
**CEMEX**



## **Exhibit 3, Continued**

### **Description of Harbor Sand & Gravel Improvements Depicted on Site Map**

1. The specifications for the rumble grates depicted on the Harbor Sand & Gravel Site Map are as follows:

Raised dividers (rails, pipes or grates), a minimum of three inches tall, six inches apart, and designed to allow for two tire rotations, to allow a vibration to be produced such that dust is shaken off the wheels of a vehicle as the entire circumference of each wheel of the vehicle passes over the rumble grate.

Typical steel specifications:

- Frame is made out of 3 I-Beams, 10 inch 30 lbs per foot
- Bars in middle are made out of 2 x 4 1/4 " wall tube
- End Caps 1/4 X 4 flat bar

2. The rumble grates will be inspected, maintained, and a log of inspections will be kept consistent with paragraphs 9.a., b., and d. of the Agreement to ensure continued intended use and efficacy. However, during the Wet Season, the rumble grates will be inspected daily, and cleaned once daily, or more frequently as necessary, to prevent mud, silt, sand, or other debris from affecting the effectiveness of the grates.

1 ANDREW L. PACKARD (State Bar No. 168690)  
2 ERIK M. ROPER (State Bar No. 259756)  
3 HALLIE B. ALBERT (State Bar No. 258737)  
4 Law Offices of Andrew L. Packard  
5 100 Petaluma Blvd. N., Suite 301  
6 Petaluma, CA 94952  
7 Tel: (707) 763-7227  
8 Fax: (707) 763-9227  
9 E-mail: Andrew@packardlawoffices.com  
10 Erik@packardlawoffices.com  
11 Hallie@packardlawoffices.com

12 ROBERT J. TUERCK (State Bar No. 255741)  
13 Jackson & Tuerck  
14 P. O. Box 148  
15 429 W. Main Street, Suite C  
16 Quincy, CA 95971  
17 Tel: (530) 283-0406  
18 E-mail: bob@jacksontuerck.com

19 Attorneys for Plaintiff  
20 CALIFORNIA SPORTFISHING  
21 PROTECTION ALLIANCE

22 [Additional Counsel listed on following page]

23 **UNITED STATES DISTRICT COURT**  
24 **EASTERN DISTRICT OF CALIFORNIA**

25 CALIFORNIA SPORTFISHING  
26 PROTECTION ALLIANCE, a non-profit  
27 corporation,

28 Plaintiff,

vs.

CITY OF CHICO,

Defendant.

Case No. 2:10-CV-01347-MCE-KJM

**[PROPOSED] CONSENT DECREE**

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

1 Gregory J. Newmark (SBN: 190488)  
gnewmark@meyersnave.com  
2 Sabrina Wolfson (SBN: 248444)  
swolfson@meyersnave.com  
3 MEYERS, NAVE, RIBACK, SILVER & WILSON  
333 South Grand Avenue, Suite 1670  
4 Los Angeles, California 90071  
Telephone: (213) 626-2906  
5 Facsimile: (213) 626-0215

6 Lori Barker (SBN: 131707)  
lbarker@ci.chico.ca.us  
7 City Attorney  
City of Chico  
8 411 Main Street  
Chico, CA 95928  
9 Telephone: (530) 896-7600  
10 Facsimile: (530) 895-4780

11 Attorneys for Defendant City of Chico

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1 The following Consent Decree is entered into by and between Plaintiff California  
2 Sportfishing Protection Alliance (“Plaintiff” or “CSPA”), and Defendant City of Chico, a  
3 municipal corporation (“the City”). The Plaintiff and Defendant are hereinafter collectively  
4 referred to as the Parties.

5 **RECITALS**

6 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “CSPA”)  
7 is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of  
8 California, dedicated to the preservation, protection, and defense of the environment, wildlife,  
9 and natural resources of California’s waters. Bill Jennings is the Chairperson of CSPA and a  
10 member of CSPA;

11 **WHEREAS**, the City is a municipal corporation organized under the laws of the State  
12 of California that owns and operates an approximately 1,079 acre air transportation facility (the  
13 “Facility” or “Airport”), with approximately 30 acres associated with industrial activity,  
14 located at 150 Airpark Boulevard in Chico, California. Discharges of storm water from areas  
15 associated with industrial activities on the Facility are regulated pursuant to State Water  
16 Resources Control Board Water Quality Order No. 91-13-DWQ as amended by Water Quality  
17 Order No. 92-12 DWQ and Water Quality Order No. 97-03 DWQ, National Pollutant  
18 Discharge Elimination System General Permit No. CAS000001, Waste Discharge  
19 Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding  
20 Construction Activities (hereinafter, the “General Permit”);

21 **WHEREAS**, storm water from the Facility flows to tributaries to Sycamore Creek,  
22 which ultimately flows into Big Chico Creek, the Sacramento River, and the Sacramento-San  
23 Joaquin Delta (a 1993 map of the Facility, which will be updated pursuant to this agreement, is  
24 attached hereto as Exhibit A and incorporated herein by reference);

25 **WHEREAS**, on or about April 2, 2010, Plaintiff provided notice of the City’s alleged  
26 violations of the Act, and of its intention to file suit against the City, to the Administrator of  
the United States Environmental Protection Agency (“EPA”); the Administrator of EPA  
28 Region IX; the Executive Director of the State Water Resources Control Board (“State

1 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
2 Region (“Regional Board”); and to the City, as required by the Act, 33 U.S.C. § 1365(b)(1)(A);

3 **WHEREAS**, CSPA filed a complaint (“Complaint”) against the City (*California*  
4 *Sportfishing Protection Alliance v. City of Chico, et al.*, Case No. 2:10-CV-01347-MCE-KJM)  
5 in the United States District Court, Eastern District of California, on June 1, 2010. A true and  
6 correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as  
7 Exhibit B and incorporated by reference;

8 **WHEREAS**, contemporaneously with the execution of this Consent Decree by the  
9 Parties, CSPA filed a request for dismissal with prejudice of all claims in the Complaint  
10 against Ruben Martinez, an individual and the only defendant in this action other than the City;

11 **WHEREAS**, the City denies the occurrence of any and all of CSPA's claims in its 60-  
12 Day Notice Letter and Complaint and maintains that it has complied at all times with the  
13 provisions of the General Permit;

14 **WHEREAS**, for purposes of this Consent Decree, the Parties stipulate that venue is  
15 proper in this Court, and that the City does not contest the exercise of jurisdiction by this Court  
16 to enter this Consent Decree;

17 **WHEREAS**, this Consent Decree shall be submitted by CSPA via certified mail (return  
18 receipt requested) and email to the United States Department of Justice and the United States  
19 Environmental Protection Agency for the 45-day statutory review period, pursuant to  
20 33 U.S.C. § 1365(c); and shall thereafter be submitted for approval by the Court, the date of  
21 which approval shall be referred to herein as the “Court Approval Date;”

22 **WHEREAS**, at the time the Consent Decree is submitted for approval to the United  
23 States District Court, CSPA shall request a dismissal of the Complaint with prejudice and the  
24 Parties shall stipulate and request that the Court retain jurisdiction for the enforcement of this  
25 Consent Decree as provided herein;

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

3       **WHEREAS**, the Parties wish to compromise, resolve, settle, and terminate any and all  
4 disputes or claims between them as to the allegations set forth in the 60-Day Notice Letter and  
5 Complaint and as a result consent to the entry of this Consent Decree without trial of any  
6 issues and stipulate that in order to settle the Claims, this Consent Decree should be entered.  
7 This Consent Decree constitutes a settlement of disputed claims. It is not an admission of  
8 jurisdiction over or liability for the allegations set forth in the 60-Day Notice Letter and  
9 Complaint or an admission of any fact. Should this proposed Consent Decree fail to be entered  
10 for any reason, this proposed Consent Decree, and any statement or other provision contained  
11 in this proposed Consent Decree shall have no legal effect and shall not be used for any  
12 purpose in any subsequent proceeding in this or any other litigation;

13       **AND WHEREAS**, the Parties agree, and this Court by entering this Consent Decree  
14 finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement  
15 of this matter will avoid prolonged and complicated litigation between the Parties, and that this  
16 Consent Decree is fair, reasonable, and in the public interest.

17       **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES,**  
18 **AND ORDERED, ADJUDGED AND DECREED BY THE COURT, AS FOLLOWS:**

19 **I.     COMMITMENT OF THE CITY**

20       **1.     Compliance With General Permit & Clean Water Act.** The City shall operate  
21 the Facility in full compliance with the requirements of the General Permit and the Clean  
22 Water Act, subject to any defenses available under the law.

23       **2.     The City's Implementation of Specific Storm Water Best Management**  
24 **Practices.** The City shall implement the following storm water control measures/best  
25 management practices ("BMPs") in the time frames provided below:

26           (a)     The City shall maintain in good working order all storm water collection  
27 and treatment systems currently installed or to be installed pursuant to this Consent  
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Decree, including but not limited to, existing housekeeping measures;

(b) Sweeping. Beginning ninety (90) days after the Court Approval Date, the City shall develop and implement a sweeping program for the following parking lots in the Facility: 1) the lot behind Aero Union off of Ryan Avenue; 2) the lot south of the cul-de-sac at the west end of Piper Avenue; 3) the terminal parking lot; and 4) the lot on the northwest corner of Boeing Avenue and Fortress Street (collectively, “Sweeping Areas”). The City shall sweep the Sweeping Areas with a regenerative sweeper prior to the commencement of each rainy season and on additional occasions during the rainy season as necessary in the judgment of the City. In the event that the sweeper operator observes ponded or free oil in the Sweeping Areas, the sweeper operator shall apply oil absorbent to the ponded or free oil prior to sweeping. All waste generated from sweeping activities will be managed in accordance with applicable regulations;

(c) Spill Kits. Within ninety (90) days of the Court Approval Date, the City shall deploy additional spill kits in the de-icing area and in the drum storage area of the Facility;

(d) Fire Retardant Mixing Tanks. The City shall implement the following BMPs with regard to the fire retardant mixing tanks at the Facility:

- (i) Within ninety (90) days of the Court Approval Date, the City shall develop and implement an inspection program to insure the integrity of the fire retardant mixing tanks.
- (ii) Within ninety (90) days of the Court Approval Date, the City shall develop and implement spill response procedures for the fire retardant mixing tanks.
- (iii) Within ninety (90) days of the Court Approval Date, the City shall formalize procedures to manage and/or dispose of material captured in the two 5,000 gallon holding tanks in the fire retardant mixing area.

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(iv) Prior to the 2011-2012 Wet Season, the City shall modify the removable dam and associated trench in the fire retardant mixing area to contain spilled material and prevent it from travelling further down the storm drain in dry weather. The City will also develop procedures prior to the 2011-2012 Wet Season to remove and properly dispose of captured spilled fire retardant material from the trench.

(e) De-Icing Chemicals. With the understanding between the Parties that nothing in this Consent Decree affects or modifies the carrier's FAA approved ground de-icing program, which governs the type, usage, quantity and method of application of de-icing chemicals, within ninety (90) days of the Court Approval Date, the City shall implement the following BMPs for use of de-icing chemicals:

- (i) Adequate spill response equipment and materials will be maintained in locations accessible to and near areas where spills of de-icing chemicals may occur.
- (ii) Containers of de-icing chemicals will be stored within secondary containment.
- (iii) De-icing material storage and handling activities will be restricted to trained personnel only.
- (iv) The de-icing chemicals will be applied in accordance with the manufacturer's chemical- and product-specific instructions and guidelines.
- (v) De-icing chemical application equipment and the surfaces of the de-icing area will be inspected following de-icing material application, and accumulated/pooled residual fluids observed during the inspection will be cleaned up using dry cleanup methods.

1 (vi) Procedures to manage and dispose of the cleanup materials will be  
2 developed and implemented.

3 **3. SWPPP Amendments/Additional BMPs.** Within 30 days of the Court  
4 Approval Date, the City shall formally amend the Storm Water Pollution Prevention Plan  
5 (“SWPPP”) for the Facility to reflect current Facility conditions and activities and to  
6 incorporate all of the relevant requirements of this Consent Decree.

7 (a) The amended SWPPP shall include all of the information required by the  
8 General Permit, including but not limited to, the following information: (i)  
9 responsible individuals, (ii) current tenants, (iii) Facility boundaries, including  
10 portions of the Facility where industrial activities occur, (iv) drainage patterns  
11 within the Facility, (v) identification of storm water discharge points, (vi)  
12 identification of BMPs and their locations throughout the Facility, and (vii)  
13 identification of potential Contaminants of Concern (“COCs”).

14 (b) The amended SWPPP shall include visual inspection checklists for the  
15 following areas of the Facility: “T” Hangars, Fueling Areas, De-icing Areas, and  
16 other areas where tenants conduct industrial activities that are exposed to storm  
17 water.

18 (c) The amended SWPPP shall state that intentional fire retardant drops onto  
19 the Facility from aircraft in flight are expressly prohibited.

20 (d) The amended SWPPP shall incorporate all changes, improvements,  
21 sample log forms, and BMPs set forth in or resulting from this Consent Decree.

22 (e) The City shall amend the maps in the SWPPP to include all of the  
23 information required by paragraph 4 of Section A of the General Permit,  
24 including but not limited to, the Facility boundaries, delineation of areas where  
25 industrial activities occur, the direction of storm water flow and runoff within  
26 each drainage area, the location of the storm water collection and conveyance  
27 system, the location of structural control measures that affect storm water  
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1 discharges, and the areas of soil erosion. These amended maps shall include an  
2 amended version of the 1993 map attached hereto as Exhibit A. The City shall  
3 ensure that all maps, tables, and text comply with the requirements of the  
4 General Permit.

5 (f) A copy of the amended SWPPP shall be provided to CSPA within thirty  
6 (30) calendar days of completion.

7 **4. Updated Notice Of Intent To Comply With The General Permit.** Within one  
8 hundred and twenty (120) calendar days after the Court Approval Date, the City shall file an  
9 updated Notice of Intent (“NOI”) to comply with the General Permit with the State Water  
10 Resources Control Board. The updated NOI shall reflect current Facility conditions and  
11 activities and shall include any additional Facility information obtained by the City during the  
12 process of updating the Facility’s SWPPP.

13 **5. Storm Water Monitoring and Sampling.** The City shall collect and analyze  
14 samples from four (4) Qualifying Storm Events (to the extent that such Qualifying Storm  
15 Events occur) consistent with the requirements and protocols set forth in the General Permit, in  
16 each of the two Wet Seasons occurring during the term of this Consent Decree (2010-2011 and  
17 2011-2012).<sup>1</sup> Further, the City shall continue to perform visual and analytical monitoring of  
18 the storm water discharge location near the southwest corner of the Facility (“Discharge  
19 Monitoring Location”).

20 **6. Sampling Parameters.** The storm water sample results shall be compared with  
21 the values set forth in the below table. If the results of any such samples exceed the parameter  
22 values set forth in this table, the City shall comply with the “Action Memorandum”  
23 requirements set forth below. All samples shall be analyzed for each of the constituents listed

24 \_\_\_\_\_  
25 <sup>1</sup> “Qualifying Storm Events” means those events in which (i) the samples taken are preceded by at least three  
26 (3) working days during which no storm water discharges from the Facility have occurred (the three (3)  
27 working days may be separated by non-working days such as weekends and holidays provided that no storm  
28 water discharges occur during the three (3) working days and the non-working days); and, (ii) the samples are  
collected within the first hour that flow is observed at the Discharge Point. Sample collection is only required  
of storm water discharges that occur during scheduled Facility operating hours and that are preceded by at least  
(3) three working days without storm water discharge.

1 in the below table by a laboratory accredited by the State of California or by measurement with  
2 properly calibrated field instruments. All samples collected from the Facility shall be delivered  
3 to the laboratory as soon as possible to ensure that sample “hold time” is not exceeded.  
4 Analytical methods used by the laboratory shall be adequate to detect the individual  
5 constituents at or below the values specified in the below table. Sampling results shall be  
6 provided to CSPA within thirty (30) days of the City’s receipt of the laboratory report from  
7 each sampling event pursuant to the Notice provisions below.

Parameter	Value
pH	6.0 – 9.0
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Ammonia	19 mg/L
Biological Oxygen Demand	30 mg/L
Chemical Oxygen Demand	120 mg/L

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17 **7. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”;**  
18 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Clause 5  
19 above exceeds the evaluation levels set forth in the above table, or if the City fails to collect  
20 and analyze samples from four (4) Qualifying Storm Events, the City shall prepare a written  
21 statement discussing the exceedance(s) and /or failure to collect and analyze samples from four  
22 (4) Qualifying Storm Events, the possible cause and/or source of the exceedance(s), and  
23 additional measures, if any, that will be taken to address and eliminate the problem and future  
24 exceedances (“Action Memorandum”). The Action Memorandum shall be provided to CSPA  
25 not later than July 15 following the conclusion of each Wet Season. Recognizing that a  
26 SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional  
27 measures may include, but are not limited to, taking confirmation samples, further material  
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1 improvements to the storm water collection and discharge system, changing the frequency of  
2 Facility sweeping, changing the type and extent of storm water filtration media or modifying  
3 other industrial activities or management practices at the Facility. Such additional measures, to  
4 the extent feasible, shall be implemented immediately and in no event later than 60 days after  
5 the due date of the Action Memorandum, except where 1) structural changes require longer  
6 than 60 calendar days to complete; 2) weather-related conditions render immediate  
7 implementation infeasible; or 3) the Parties agree in writing to defer implementation of  
8 specific measures in order to effectively meet and confer. Within thirty (30) calendar days of  
9 implementation of any such additional measures, the City's SWPPP shall be amended to  
10 include all additional BMP measures designated in the Action Memorandum.

11 **8.** CSPA may review and comment on an Action Memorandum and suggest any  
12 additional pollution prevention measures it believes are appropriate. CSPA will provide the  
13 City with any such comments and suggestions within sixty (60) days of its receipt of the Action  
14 Memorandum; however, CSPA's failure to do so shall not be deemed to constitute agreement  
15 with the proposals set forth in the Action Memorandum. Upon request by CSPA, the City  
16 agrees to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the  
17 contents and sufficiency of the Action Memorandum. If, after meeting and conferring on the  
18 Action Memorandum, the Parties fail to reach agreement on additional measures, either of the  
19 Parties may bring a motion before the Magistrate Judge consistent with the dispute resolution  
20 procedures described below within this Consent Decree.

21 **9. Specific Conductivity Monitoring Program.** Within thirty (30) days of the  
22 Court Approval Date, the City shall develop and implement a monitoring program designed to  
23 assess the source(s) that have been contributing to specific conductivity in excess of 200  
24  $\mu\text{mhos/cm}$  in the Facility's storm water discharge as evidenced in some of the prior storm  
25 water samples collected at the Facility's Discharge Monitoring Location.

26 (a) Conductivity Memorandum. During the 2010-2011 Wet Season, the City  
27 shall study the source of specific conductivity in the storm water at the Facility's  
28

1 Discharge Monitoring Location. Regardless of whether that 2010-2011 Wet Season  
2 study results in a tentative estimate/hypothesis or a fact-based conclusion as to the  
3 source of the specific conductivity exceedances, Defendants shall prepare a  
4 memorandum (“Conductivity Memorandum”), which will be e-mailed to CSPA no later  
5 than July 15, 2011. If sufficient data cannot be collected during the 2010-2011 rainy  
6 season to produce a fact-based conclusion as to the source of specific conductivity in  
7 excess of 200  $\mu\text{mhos/cm}$  at the Facility’s Discharge Monitoring Location, then the City  
8 shall continue to study the issue during the 2011-2012 Wet Season and thereafter  
9 prepare another Conductivity Memorandum which will be e-mailed to CSPA no later  
10 than July 15, 2012. The Conductivity Memoranda described above will include an  
11 explanation of the possible cause(s) and/or source(s) of any conductivity exceeding 200  
12  $\mu\text{mhos/cm}$  at the Discharge Monitoring Location and additional technically and  
13 economically feasible BMPs, if any, that will be taken to further reduce the possibility  
14 of future specific conductivity excursions above 200  $\mu\text{mhos/cm}$  from industrial areas of  
15 the Facility. Implementation of such additional BMPs, if any, in the Conductivity  
16 Memorandum shall be in accordance with the Action Memorandum provisions  
17 described above in Clause 7, and any dispute regarding the Conductivity Memorandum  
18 shall be governed by the dispute resolution provisions described above in Clause 8.

19 **10. Inspections During The Term Of This Consent Decree.** In addition to any site  
20 inspections conducted as part of the meet-and-confer process concerning an Action  
21 Memorandum as set forth above, the City shall permit representatives of CSPA to perform one  
22 (1) physical inspection of the Facility per year during normal daylight business hours during  
23 the term of this Consent Decree provided that CSPA provides the City with at least one week  
24 prior written notice via email and facsimile transmission. These inspections shall be  
25 performed by CSPA’s counsel and/or consultants and may include sampling, photographing,  
26 and/or videotaping and CSPA shall promptly provide the City with a copy of all sampling  
27 reports, photographs and/or video. The City shall have the right to deny access if  
28

1 circumstances would make the inspection unduly burdensome and pose significant interference  
2 with business operations or any party/attorney, or the safety of individuals. In such case, the  
3 City shall specify at least three (3) dates within the two (2) weeks thereafter upon which a  
4 physical inspection by CSPA may proceed. The City shall not make any alterations to Facility  
5 conditions during the period between receiving CSPA's initial one week advance notice and  
6 the start of CSPA's inspection that Defendants would not otherwise have made but for  
7 receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting  
8 any actions taken in compliance with any applicable laws or regulations. Nothing herein shall  
9 be construed to prevent the City from continuing to implement any BMPs identified in the  
10 SWPPP during the period prior to an inspection by CSPA or at any time.

11 **11. City's Communications with Regional and State Boards.** During the term of  
12 this Consent Decree, Defendants shall provide CSPA via email with copies of all documents  
13 submitted to the Regional Board or the State Board concerning storm water discharges from  
14 the Facility, including, but not limited to, all documents and reports submitted to the Regional  
15 Board and/or State Board as required by the General Permit. Such documents and reports shall  
16 be provided to CSPA pursuant to the Notice provisions herein at Clause 27 below and  
17 contemporaneously with Defendants' submission to such agencies.

18 **12. SWPPP Amendments.** The City shall provide CSPA with a copy of any  
19 amendments to the Facility SWPPP made during the term of the Consent Decree within thirty  
20 (30) days of such amendment.

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

22 **13. Mitigation Payment In Lieu Of Civil Penalties.** In recognition of the good-  
23 faith efforts by the City to comply with all aspects of the General Permit and the Clean Water  
24 Act, and as mitigation of the Clean Water Act violations alleged in CSPA's Complaint,  
25 Defendants agree to pay the sum of \$18,000 within thirty (30) days after the Court Approval  
26 Date to the Rose Foundation for Communities and the Environment for projects to improve  
27 water quality in Sycamore Creek, Big Chico Creek and/or the Sacramento River.

1           **14. Attorneys' Fees and Costs.** The City agrees to reimburse CSPA in the amount  
2 of \$25,000 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees  
3 and costs, and all other costs incurred as a result of investigating the activities at the Facility,  
4 bringing the Action and negotiating a resolution in the public interest. Such payment shall be  
5 made to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within thirty  
6 (30) days after the Court Approval Date. This payment represents a compromise by CSPA, but  
7 it shall constitute full payment for all costs of litigation, including investigative, expert and  
8 attorneys' fees and costs incurred by CSPA that have or could have been claimed in connection  
9 with CSPA's claims, up to and including the Court Approval Date of this Consent Decree.

10           **15. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
11 expert, consultant and attorneys' fees and costs associated with monitoring the City's  
12 compliance with this Consent Decree, the City agrees to contribute \$3,000 for each of the two  
13 years covered by this Consent Decree (\$6,000 total for the life of the Consent Decree), to a  
14 compliance monitoring fund maintained by counsel for CSPA as described below.  
15 Compliance monitoring activities may include, but shall not be limited to, site inspections,  
16 review of water quality sampling reports, review of annual reports, discussions with  
17 representatives of the City concerning the Action Memoranda referenced above, and potential  
18 changes to compliance requirements herein, preparation for and participation in meet-and-  
19 confer sessions, water quality sampling and analysis, and compliance-related activities. The  
20 City shall make such payment in the amount of \$6,000 made payable to the Law Offices of  
21 Andrew L. Packard Attorney-Client Trust Account within thirty (30) days of the Court  
22 Approval Date. This payment represents a compromise by CSPA, but it shall constitute full  
23 payment for all costs of monitoring the City's compliance with this Consent Decree, including  
24 investigative, expert and attorneys fees and costs incurred by CSPA that have or could have  
25 been claimed in connection with CSPA's monitoring of the City's compliance with this  
26 Consent Decree, up to and including the termination Date of this Consent Decree, with the  
27 exception of costs of litigation incurred in dispute resolution procedures under Clause 16  
28

1 below.

2 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

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

18 **17. CSPA Waiver and Release.** Upon Court approval and entry of this Consent  
19 Decree, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,  
20 assigns, directors, officers, agents, attorneys, representatives, and employees, releases the City  
21 and its officers, directors, employees, and elected officials, and each of their predecessors,  
22 successors and assigns, and each of their agents, attorneys, consultants, and other  
23 representatives (each a “Released City Party”) from, and waives all claims which arise or could  
24 have arisen from or pertain to the Action, including, without limitation, all claims for  
25 injunctive or equitable relief, damages, penalties, fines, sanctions, mitigation, fees (including  
26 fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
27 which could have been claimed in this Action, for storm water discharged from the Facility, up  
28

1 to the Court Approval Date of this Consent Decree.

2 During the term of the Consent Decree, CSPA agrees that neither CSPA, its officers,  
3 executive staff, or members of its governing board nor any organization under the control of  
4 CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit  
5 against the City seeking relief related to storm water discharged from the Facility. CSPA  
6 further agrees that, during the term of the Consent Decree, CSPA will not support other  
7 lawsuits, by providing financial assistance, personnel time or other affirmative actions, against  
8 the City arising from its operation of the Facility that may be proposed by other groups or  
9 individuals who would rely upon the citizen suit provision of the Clean Water Act or state law  
10 claims to challenge the City's management of storm water at the Facility.

11 **18. City's Waiver and Release.** The City, on its own behalf and on behalf of those  
12 Released City Parties under its control, releases CSPA (and its officers, directors, employees,  
13 members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its  
14 agents, attorneys, and other representative) from, and waives all claims which arise from or  
15 pertain to the Action, including all claims for fees (including fees of attorneys, experts, and  
16 others), costs, expenses or any other sum incurred or claimed or which could have been  
17 claimed for matters associated with or related to the Action.

18 **19.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation  
19 and Order that shall provide that:

20 a. the Complaint and all claims therein shall be dismissed with prejudice  
21 pursuant to Federal Rule of Civil Procedure 41(a)(2); and

22 b. the Court shall retain and have jurisdiction over the Parties with respect to  
23 disputes arising under this Consent Decree. Nothing in this Consent Decree shall be  
24 construed as a waiver of any Party's right to appeal from an order that arises from an  
25 action to enforce the terms of this Consent Decree.

26 **IV. MISCELLANEOUS PROVISIONS**

27 **20.** The Parties enter into this Consent Decree for the purpose of avoiding prolonged  
28

1 and costly litigation. Nothing in this Consent Decree shall be construed as, and the City  
2 expressly does not intend to imply, an admission as to any fact, finding, issue of law, or  
3 violation of law, nor shall compliance with this Consent Decree constitute or be construed as  
4 an admission by the City of any fact, finding, conclusion, issue of law, or violation of law.  
5 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities,  
6 and duties of the Parties under this Consent Decree.

7       **21.** The Consent Decree shall terminate on September 28, 2012.

8       **22.** The Consent Decree may be executed in one or more counterparts which, taken  
9 together, shall be deemed to constitute one and the same document. An executed copy of this  
10 Consent Decree shall be valid as an original.

11       **23.** In the event that any one of the provisions of this Consent Decree is held by a  
12 court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
13 affected.

14       **24.** The language in all parts of this Consent Decree, unless otherwise stated, shall be  
15 construed according to its plain and ordinary meaning. This Consent Decree shall be construed  
16 pursuant to California law, without regard to conflict of law principles.

17       **25.** The undersigned are authorized to execute this Consent Decree on behalf of their  
18 respective parties and have read, understood and agreed to be bound by all of the terms and  
19 conditions of this Consent Decree.

20       **26.** All agreements, covenants, representations and warranties, express or implied,  
21 oral or written, of the Parties concerning the subject matter of this Consent Decree are  
22 contained herein. This Consent Decree and its attachments are made for the sole benefit of the  
23 Parties, and no other person or entity shall have any rights or remedies under or by reason of  
24 this Stipulated Judgment, unless otherwise expressly provided for therein.

25       **27. Notices.** Any notices or documents required or provided for by this Consent  
26 Decree or related thereto that are to be provided to CSPA pursuant to this Consent Decree shall  
27 be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
28

1 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

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

7 With copies sent to:

8 Erik M. Roper  
9 Law Offices of Andrew L. Packard  
10 100 Petaluma Boulevard North, Suite 301  
11 Petaluma, CA 94952  
12 Tel: (707) 763-7227  
13 E-mail: Erik@packardlawoffices.com

14 And to:

15 Robert J. Tuerck, Esq.  
16 Jackson & Tuerck  
17 P.O. Box 148  
18 429 W. Main Street, Suite C  
19 Quincy, CA 95971  
20 Tel: 530-283-0406  
21 Fax: 530-283-0416  
22 E-mail: Bob@JacksonTuerck.com

23 Any notices or documents required or provided for by this Consent Decree or related thereto  
24 that are to be provided to the City pursuant to this Consent Decree shall be sent by U.S. Mail,  
25 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
26 transmission to the email addresses listed below except that notification of site visits under  
27 clause 10 shall be provided by e-mail and facsimile transmission:

28 Lori Barker, City Attorney  
City of Chico  
411 Main Street  
Chico, CA 95928  
Tel: (530) 896-7600  
Fax: (530) 895-4780  
lbarker@ci.chico.ca.us

With copies sent to:

Gregory J. Newmark  
Meyers, Nave, Riback, Silver & Wilson  
333 South Grand Avenue, Suite 1670  
Los Angeles, CA 90071  
Tel: (213) 626-2906

1 Fax: (213) 626-0215  
2 gnewmark@meyersnave.com

3 Each Party shall promptly notify the other of any change in the above-listed contact  
4 information.

5 **28.** Signatures of the Parties transmitted by facsimile or email shall be deemed  
6 binding.

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

16 **30.** Where implementation of the actions set forth in this Consent Decree, within the  
17 deadlines set forth above becomes impossible, despite the timely good faith efforts of the  
18 Parties, the Party who is unable to comply shall notify the other in writing within seven (7)  
19 calendar days of the date that the failure becomes apparent, and shall describe the reason for  
20 the non-performance. The Parties agree to meet and confer in good faith concerning the non-  
21 performance and, where the Parties concur that the non-performance was or is impossible,  
22 despite the timely good faith efforts of one of the Parties, new performance deadlines shall be  
23 established. In the event that the Parties cannot timely agree upon the terms of such a  
24 stipulation, either of the Parties shall have the right to invoke the dispute resolution procedure  
25 described herein.

26 **31.** If for any reason the United States Department of Justice, the United States  
27 Environmental Protection Agency or the Court should decline to approve this Consent Decree  
28 in the form presented, the Parties shall use their best efforts to work together to modify the

1 Consent Decree within thirty (30) days so that it is acceptable to the United States Department  
2 of Justice, the United States Environmental Protection Agency or the Court. If the Parties are  
3 unable to modify this Consent Decree in a mutually acceptable manner, this Consent Decree  
4 shall become null and void.

5 **32.** This Consent Decree shall be deemed to have been drafted equally by the Parties,  
6 and shall not be interpreted for or against any Party on the ground that any such party drafted  
7 it.

8 **33.** This Consent Decree and the attachments contain all of the terms and conditions  
9 agreed upon by the Parties relating to the matters covered by the Consent Decree, and  
10 supersede any and all prior and contemporaneous agreements, negotiations, correspondence,  
11 understandings, and communications of the Parties, whether oral or written, respecting the  
12 matters covered by this Consent Decree. This Consent Decree may be amended or modified  
13 only by a writing signed by the Parties or their authorized representatives, and then by order of  
14 the Court. However, the Parties agree that the persons designated as recipients of notices  
15 under clause 27, and/or the contact information for such persons, may be changed by written  
16 agreement of the parties without a Court order.

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

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

1 Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

2

3 By: \_\_\_\_\_  
4 Bill Jennings, Executive Director

5

6 Dated: \_\_\_\_\_ City of Chico

7

8 By: \_\_\_\_\_  
9 David Burkland, City Manager

10 **APPROVED AS TO FORM:**

11 LAW OFFICES OF ANDREW L. PACKARD

12

13 Dated: December \_\_\_\_, 2010 By: \_\_\_\_\_  
14 Erik M. Roper  
15 Attorneys for Plaintiff

16 CITY ATTORNEY FOR THE CITY OF CHICO

17

18 Dated: December \_\_\_\_, 2010 By: \_\_\_\_\_  
19 Lori Barker  
20 Attorneys for Defendant

21

22

23

24

25

26

27

28

1 ROBERT J. TUERCK (Bar No. 255741)  
Jackson & Tuerck  
2 P.O. Box 148  
3 429 W. Main Street, Suite C  
Quincy, CA 95971  
4 Tel: (530) 283-0406  
E-mail: bob@jacksontuerck.com

5 ANDREW L. PACKARD (Bar No. 168690)  
6 ERIK M. ROPER (Bar No. 259756)  
HALLIE B. ALBERT (Bar No. 258737)  
7 Law Offices of Andrew L. Packard  
100 Petaluma Blvd. N., Suite 301  
8 Petaluma, CA 94952  
9 Tel: (707) 763-7227  
Fax: (707) 763-9227  
10 E-mail: Andrew@packardlawoffices.com

11 Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
12 PROTECTION ALLIANCE

13  
14 **UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**

16 CALIFORNIA SPORTFISHING  
17 PROTECTION ALLIANCE, a non-profit  
corporation,

18 Plaintiff,

19 vs.

20 CONTECH CONSTRUCTION PRODUCTS,  
21 INC. an Ohio corporation, and DAN MOODY,  
an individual

22 Defendants.

Case No. 2:10-CV-00902-LKK-EFB

**[PROPOSED] CONSENT AGREEMENT**

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

23  
24  
25 **WHEREAS**, Defendant CONTECH CONSTRUCTION PRODUCTS, INC. (hereinafter  
26 "CONTECH") owns an approximately 34-acre metal work facility, which manufactures metal  
27

1 culvert pipe, located at 2245 Canyon Creek Road in Redding, California (the "Facility"), and  
2 Defendant DAN MOODY is an employee of CONTECH;

3 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the "Parties;"

4 **WHEREAS**, the Facility collects and discharges storm water to Canyon Creek and  
5 Canyon Creek ultimately flows into the Sacramento River, and the Sacramento-San Joaquin  
6 Delta (a map of the Facility is attached hereto as Exhibit A and incorporated herein by  
7 reference);

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

13 **WHEREAS**, on or about February 8, 2010 Plaintiff provided notice of Defendants'  
14 alleged violations of the Act, and of its intention to file suit against Defendants, to the  
15 Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator  
16 of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State  
17 Board"); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
18 Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. §  
19 1365(b)(1)(A) (true and correct copies of CSPA's notice letters are attached as Exhibit B and  
20 incorporated herein by reference);

21 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and  
22 maintain that they have complied at all times with the provisions of the General Permit, the  
23 Clean Water Act, and California Health & Safety Code sections 25249.5 *et seq.*;



1           **2. CONTECH's Implementation of Specific Storm Water Best Management**  
2 **Practices.** CONTECH shall implement the following structural and non-structural best  
3 management practices ("BMPs") to improve the storm water pollution prevention measures at  
4 the Facility, as marked on Exhibit A:

5           (a) CONTECH shall apply an asphalt sealant to all paved areas of the Facility  
6 previously used for the application of paint, as designated on Exhibit A, within thirty (30)  
7 days of the Court Approval Date;

8           (b) CONTECH shall coat the metal roof and siding of the main fabricating  
9 building and the metal siding of the office building with sealant to reduce metals leaching  
10 from the metal roof and siding to storm water within sixty (60) days of the Court  
11 Approval Date. The locations of these buildings are shown on Exhibit A;

12           (c) CONTECH shall conduct an elevation survey to identify all points of  
13 storm water discharge at the Facility within sixty (60) days of the Court Approval Date;

14           (d) CONTECH shall annually vacuum and cover all drop inlets at the Facility  
15 during the Dry Season (June 1 through September 30) to reduce the amount of pollutants  
16 entering the Facility's discharge points;

17           (e) CONTECH shall design and install swales, berms and infiltration areas to  
18 reduce and redirect storm water flow at the Facility no later than September 30, 2011,  
19 except as set forth below. The locations of these swales, berms and infiltration areas are  
20 generally set forth on Exhibit A and described as follows:

21           (i) A parallel swale and berm at the northern end of the Facility yard  
22 beginning at the base of the hill and running east along the northern property  
23 boundary of the Facility;

1 (ii) Three (3) pairs of swales and berms perpendicular to the northern  
2 boundary swale and berm described above and running generally south east there  
3 from; and

4 (iii) Four (4) infiltration areas as generally designated on the attached Facility  
5 map (Exhibit A).  
6

7 The Parties acknowledge that CONTECH's installation of some of the drainage  
8 features described in Paragraph 2(e) may be subject to various authorizations from state  
9 and local agencies and that these agencies might require significant alteration of the  
10 drainage feature plans as set forth on Exhibit A. Contech agrees to submit plans and / or  
11 applications to obtain necessary approvals to construct the drainage features to the City  
12 of Redding and other local land use authorities within seven (7) days of the Court  
13 Approval Date. Contech shall notify CSPA pursuant to the Notice provisions herein (at ¶  
14 24) within seven (7) days of any local authority requiring significant alteration of the  
15 drainage features set forth on Exhibit A. Contech shall apply for any additional state or  
16 federal permits or authorizations within thirty (30) days of the end of any appeal or  
17 review period applicable to Contech's local authorizations. In the event Contech is  
18 unable to complete construction of any drainage features described on Exhibit A by  
19 September 30, 2011 due to authorization delays, Contech shall complete construction of  
20 those drainage features by September 30, 2012 and the Term of this Consent Agreement  
21 shall be extended until May 30, 2015;  
22

23 (f) CONTECH shall remove the two (2) existing catch basins located in the  
24 northern yard of the Facility that lead to Outfall #1 within sixty (60) days of the Court  
25 Approval Date;  
26  
27

1 (g) CONTECH shall install concrete pads beneath the roll out racks of the  
2 Facility's "Helcor" machines and install a concrete berm around the Facility's arch  
3 presses no later than October 1, 2011;

4 (h) CONTECH shall install a filtration system near the Facility's palletizing  
5 rack no later than October 1, 2011;

6 (i) CONTECH shall add additional vegetation and rock to the existing bio-  
7 swale within thirty (30) days of the Court Approval Date and shall continue to maintain  
8 the swale to prevent erosion;

9 (j) CONTECH shall discontinue asphalt dipping operations in the northern  
10 yard of the Facility and shall discontinue the cleaning of air filters in the adjacent  
11 washout area within thirty (30) days of the Court Approval Date;

12 (k) CONTECH shall employ the use of a regenerative sweeper annually to  
13 sweep the paved areas of the Facility no more than seven (7) days immediately prior to  
14 the commencement of each of the Wet Seasons occurring during the Term of this  
15 Consent Agreement;

16 (l) CONTECH shall conduct regular sweeping of the paved areas of the  
17 Facility using a magnetic sweeper once per week during the Wet Season (October 1  
18 through May 30) and once per month during the Dry Season (June 1 through September  
19 30);

20 (m) CONTECH shall conduct sweeping of the paved areas of the Facility  
21 using a regenerative sweeper once per month during the Wet Season (October 1 through  
22 May 30);

1 (n) CONTECH shall keep a recorded log of all sweeping activities performed  
2 at the Facility. A sample blank log form will be included in the Facility's SWPPP;

3 **3. SWPPP Amendments/Additional BMPs.** Within 30 days of the Court Approval  
4 Date, CONTECH shall formally amend the SWPPP for the Facility to incorporate all of the  
5 relevant requirements of this Consent Agreement, as well as the revised Facility map attached  
6 hereto as Exhibit A.

7  
8 **4. Sampling Frequency.** CONTECH shall collect and analyze samples from four  
9 (4) Qualifying Storm Events ("QSE"), as set forth in the General Permit<sup>1</sup> for sampling purposes,  
10 in each of the Wet Seasons occurring during the Term of this Consent Agreement. The QSE  
11 sample results shall be compared with the values set forth in Exhibit C, attached hereto, and  
12 incorporated herein by reference. If the results of any QSE samples exceed the parameter values  
13 set forth in Exhibit C, CONTECH shall comply with the "Action Memorandum" requirements  
14 set forth below (at ¶ 6).

15  
16 **5. Sampling Parameters.** All QSE samples shall be analyzed for each of the  
17 constituents listed in Exhibit C by a laboratory accredited by the State of California. QSE  
18 samples collected from the Facility shall be delivered to the laboratory as soon as possible to  
19 ensure that sample "hold time" is not exceeded. Analytical methods used by the laboratory shall  
20 be adequate to detect the individual constituents at or below the values specified on Exhibit C.  
21 Sampling results shall be provided to CSPA within seven (7) days of CONTECH's receipt of the  
22 laboratory report from each QSE sampling event pursuant to the Notice provisions below.

23  
24 <sup>1</sup> "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are  
25 preceded by at least three (3) working days during which no storm water discharges from the Facility  
26 have occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge  
27 Point being sampled; and (iii) the samples are collected during daylight and scheduled facility operating  
28 hours.



1 Memorandum as set forth above, CONTECH shall permit representatives of CSPA to perform up  
2 to three (3) physical inspections of the Facility during the Term of this Consent Agreement.  
3 These inspections shall be performed by CSPA's counsel and consultants and may include  
4 stormwater water quality sampling, photographing, and/or videotaping and CSPA shall provide  
5 CONTECH with a copy of all sampling reports, photographs and/or video. CSPA shall provide  
6 at least forty-eight (48) hours advance Notice (as set forth in ¶ 24) of such physical inspection,  
7 except that CONTECH shall have the right to deny access if circumstances would make the  
8 inspection unduly burdensome and pose significant interference with business operations of  
9 CONTECH or its attorney, or threaten the safety of individuals. In such case, CONTECH shall  
10 specify at least three (3) dates within the two (2) weeks thereafter upon which a physical  
11 inspection by CSPA may proceed. CONTECH shall not make any material alterations to Facility  
12 conditions during the period between receiving CSPA's initial forty-eight (48) hour advance  
13 notice and the start of CSPA's inspection that CONTECH would not otherwise have made but  
14 for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting  
15 any actions taken in compliance with any applicable laws or regulations. CONTECH shall  
16 provide CSPA with written documentation of any alterations to Facility conditions during the  
17 period between receiving CSPA's notice of inspection and the start of CSPA's inspection.  
18 Nothing herein shall be construed to prevent CONTECH from continuing to implement any  
19 BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

22 **8. CONTECH's Communications with Regional and State Boards.** During the  
23 Term of this Consent Agreement, CONTECH shall provide CSPA with copies of all documents  
24 submitted to the Regional Board or the State Board concerning storm water discharges from the  
25 Facility, including, but not limited to, all documents and reports submitted to the Regional Board  
26

1 and/or State Board as required by the General Permit. Such documents and reports shall be  
2 provided to CSPA pursuant to the Notice provisions herein (at ¶ 24) and contemporaneously  
3 with CONTECH's submission to such agencies.

4           **9. SWPPP Amendments.** CONTECH shall provide CSPA with a copy of any  
5 amendments to the Facility SWPPP made during the Term of the Consent Agreement within  
6 fourteen (14) days of such amendment.  
7

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

9           **10.** As mitigation of the Clean Water Act violations alleged in CSPA Complaint,  
10 CONTECH agrees to pay the sum of \$42,500 within fifteen (15) days after the Court Approval  
11 Date to the Rose Foundation for Communities and the Environment for the sole purpose of  
12 providing grants to environmentally beneficial projects related to Canyon Creek, the Sacramento  
13 River or its tributaries, and/or the Sacramento-San Joaquin River Delta. Payment shall be  
14 provided to the Rose Foundation as follows: Rose Foundation, 6008 College Avenue, Oakland,  
15 CA 94618, Attn: Tim Little. The Rose Foundation shall provide notice to the Parties within thirty  
16 (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and  
17 purpose of the funds.  
18

19           **11.** CONTECH agrees to reimburse CSPA in the amount of \$38,025 to defray  
20 CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, incurred as a  
21 result of investigating the activities at the Facility, bringing the Action and negotiating a  
22 resolution in the public interest. Such payment shall be made to the Jackson & Tuerck Attorney-  
23 Client Trust Account within fifteen (15) days after the Court Approval Date.  
24

25           **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
26 expert, consultant and attorneys' fees and costs associated with monitoring CONTECH's  
27

1 compliance with this Consent Agreement, CONTECH agrees to contribute three payments of  
2 \$5,000, to a compliance monitoring fund maintained by CSPA. Compliance monitoring activities  
3 may include, but shall not be limited to, site inspections, review of water quality sampling  
4 reports, review of annual reports, discussions with representatives of CONTECH concerning the  
5 Action Memoranda referenced above, and potential changes to compliance requirements herein,  
6 preparation for and participation in meet-and-confer sessions, water quality sampling and  
7 analysis, and compliance-related activities. The first such payment in the amount of \$5,000 shall  
8 be made payable to the Jackson & Tuerck Attorney-Client Trust Account on or before August 1,  
9 2011, with the second installment due on August 1, 2012, and the third installment due on  
10 August 1, 2013.

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

13 13. With the exception of the timelines set forth above for addressing exceedances of  
14 values specified on Exhibit C and Action Memoranda, if a dispute under this Consent Agreement  
15 arises, or either CSPA or CONTECH believes that a breach of this Consent Decree has occurred,  
16 CSPA and CONTECH shall meet and confer within seven (7) days of receiving written  
17 notification from the other Party of a request for a meeting to determine whether a violation has  
18 occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve  
19 the dispute. If CSPA and CONTECH fail to meet and confer, or the meet-and-confer does not  
20 resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred or  
21 should have occurred, either CSPA or CONTECH shall be entitled to all rights and remedies  
22 under the law, including filing a motion with the District Court of California, Eastern District,  
23 which shall retain jurisdiction over the Action for the limited purposes of enforcement of the  
24 terms of this Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in  
25  
26

1 any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in  
2 Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting  
3 such provision.

4 **14. CSPA Waiver, Release and Covenant Not to Sue.**

5 (a) Upon Court approval and entry of this Consent Agreement, CSPA, on its  
6 own behalf and on behalf of its members, subsidiaries, successors, assigns, directors,  
7 officers, agents, attorneys, representatives, and employees, releases Defendants and their  
8 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each  
9 of their predecessors, successors and assigns, and each of their agents, attorneys,  
10 consultants, and other representatives (each a "Released Defendant Party") from, and  
11 waives all claims which arise from or pertain to the Action, including, without limitation,  
12 all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees  
13 (including fees of attorneys, experts, and others), costs, expenses or any other sum  
14 incurred or claimed or which could have been claimed in this Action, for the alleged  
15 failure of Defendants to comply with the Clean Water Act at the Facility, up to the  
16 Termination Date of this Consent Agreement.

17 (b) For the period beginning on the Court Approval Date and ending on the  
18 Termination Date, CSPA agrees that neither CSPA, its officers, executive staff, members  
19 of its governing board nor any organization under the control of CSPA, its officers,  
20 executive staff, or members of its governing board, will file any lawsuit against  
21 Defendants seeking relief for the alleged violations of the Clean Water Act or violations  
22 of the General Permit occurring at the Facility. CSPA further agrees that, beginning on  
23 the Court Approval Date and ending on the Termination Date, CSPA will not support  
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1 other lawsuits, by providing financial assistance, personal time or other affirmative  
2 actions, against Defendants that may be proposed by other groups or individuals who  
3 would rely upon the citizen suit provision of the Clean Water Act to challenge  
4 Defendants' compliance with the Clean Water Act or the General Permit.

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

13 **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation  
14 and Order that shall provide that:

15 (a) the Complaint and all claims therein shall be dismissed with prejudice  
16 pursuant to Federal Rule of Civil Procedure 41(a)(2); and

17 (b) the Court shall retain and have jurisdiction over the Parties with respect to  
18 disputes arising under this Consent Agreement. Nothing in this Consent Agreement shall  
19 be construed as a waiver of any Party's right to appeal from an order that arises from an  
20 action to enforce the terms of this Consent Agreement.  
21

22 **IV. MISCELLANEOUS PROVISIONS**

23 **17.** The Parties enter into this Consent Agreement for the purpose of avoiding  
24 prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as, and  
25 Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law,  
26  
27



1 the Parties, and no other person or entity shall have any rights or remedies under or by reason of  
2 this Consent Agreement, unless otherwise expressly provided for therein.

3       **24. Notices.** Any notices or documents required or provided for by this Consent  
4 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent  
5 Agreement shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as  
6 follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses  
7 listed below:  
8

9       Bill Jennings, Executive Director  
10       California Sportfishing Protection Alliance  
11       3536 Rainier Avenue  
12       Stockton, CA 95204  
13       E-mail: DeltaKeep@aol.com

14       With copies sent to:

15       Robert J. Tuerck, Esq.  
16       Jackson & Tuerck  
17       P.O. Box 148  
18       429 W. Main Street, Suite C  
19       Quincy, CA 95971  
20       Tel: 530-283-0406  
21       Fax: 530-283-0416  
22       E-mail: Bob@JacksonTuerck.com

23       And to:

24       Andrew L. Packard  
25       Law Offices of Andrew L. Packard  
26       100 Petaluma Boulevard North, Suite 301  
27       Petaluma, CA 94952  
28       Tel: (707) 763-7227  
      E-mail: Andrew@packardlawoffices.com

Any notices or documents required or provided for by this Consent Agreement or related thereto  
that are to be provided to Defendants pursuant to this Consent Agreement shall be sent by U.S.

1 Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic  
2 mail transmission to the email addresses listed below:

3 If to CONTECH:

4 Thomas D. Singer  
5 Contech Construction Products Inc.  
6 9025 Centre Pointe Drive, Suit 400  
7 West Chester, Ohio 45069  
8 Tel: 513-645-7400  
9 Fax.: 513-745-7502  
10 E-mail: SingerT@contech-cpi.com

11 With copies sent to:

12 Jill A. Weller, Esq.  
13 Keating Muething & Klekamp PLL  
14 One East Fourth Street, Suite 1400  
15 Cincinnati, Ohio 45202  
16 Tel: 513-579-6980  
17 Fax.: 513-579-6457  
18 E-mail: jweller@kmklaw.com

19 If to Dan Moody:

20 Dan L. Moody  
21 Contech Construction Products Inc.  
22 9025 Centre Pointe Drive, Suite 400  
23 West Chester OH 45069  
24 Tel: (513) 645-7055  
25 Fax: (513) 645-7994  
26 E-mail: dmoody@contech-cpi.com

27 With copies sent to:

28 Jill A. Weller, Esq.  
Keating Muething & Klekamp PLL  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202  
Tel: 513-579-6980  
Fax.: 513-579-6457  
E-mail: jweller@kmklaw.com

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

3       **25.** Signatures of the Parties transmitted by facsimile or email shall be deemed  
4 binding.

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

15       **27.** If for any reason the Court should decline to approve this Consent Agreement in  
16 the form presented, the Parties shall use reasonable efforts to work together to modify the  
17 Consent Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are  
18 unable to modify this Consent Agreement in a mutually acceptable manner, this Consent  
19 Agreement shall become null and void.  
20

21       **28.** This Consent Agreement shall be deemed to have been drafted equally by the  
22 Parties, and shall not be interpreted for or against any Party on the ground that any such party  
23 drafted it.

24       **29.** This Consent Agreement and the attachments contain all of the terms and  
25 conditions agreed upon by the Parties relating to the matters covered by the Consent Agreement,  
26

CONFIDENTIAL SETTLEMENT COMMUNICATION

1 and supersede any and all prior and contemporaneous agreements, negotiations, correspondence,  
2 understandings, and communications of the Parties, whether oral or written, respecting the  
3 matters covered by this Consent Agreement. This Consent Agreement may be amended or  
4 modified only by a writing signed by the Parties or their authorized representatives, and then by  
5 order of the Court.

6  
7 30. Except in case of an emergency but subject to the regulatory authority of any  
8 applicable governmental authority, any breach of or default under this Consent Agreement  
9 capable of being cured shall be deemed cured if, within five (5) days of first receiving notice of  
10 the alleged breach or default, or within such other period approved in writing by the Party  
11 making such allegation, which approval shall not be unreasonably withheld, the party allegedly  
12 in breach or default has completed such cure or, if the breach or default can be cured but is not  
13 capable of being cured within such five (5) day period, has commenced and is diligently  
14 pursuing to completion such cure.

15  
16 The Parties hereto enter into this Consent Agreement and respectfully submit it to the  
17 Court for its approval and entry as an Order and Final Judgment.

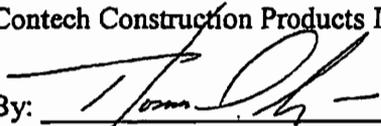
18 Dated: December 15, 2010

California Sportfishing Protection Alliance

19 By:   
Bill Jennings, Executive Director  
Bill Jennings  
cn=Bill Jennings, o=California Sportfishing  
Protection Alliance, ou,  
email=deltakeep@aol.com, c=US  
2010.12.15 16:03:59 -0800

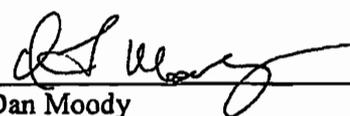
21 Dated: 12/15/10

Contech Construction Products Inc.

22 By:   
Thomas D. Singer  
Vice President: Contech

24 Dated: 12/15/10

Dan Moody

25 By:   
Dan Moody

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**EXHIBIT A – Facility Site**

## **EXHIBIT 'A'**

**First Page – Aerial view noting BMP's constructed prior to 2010**

**Second Page – Legend and Notes of BMP's noted on First Page**

**Third Page – BMP improvements made in 2010 and Future BMP improvements planned**

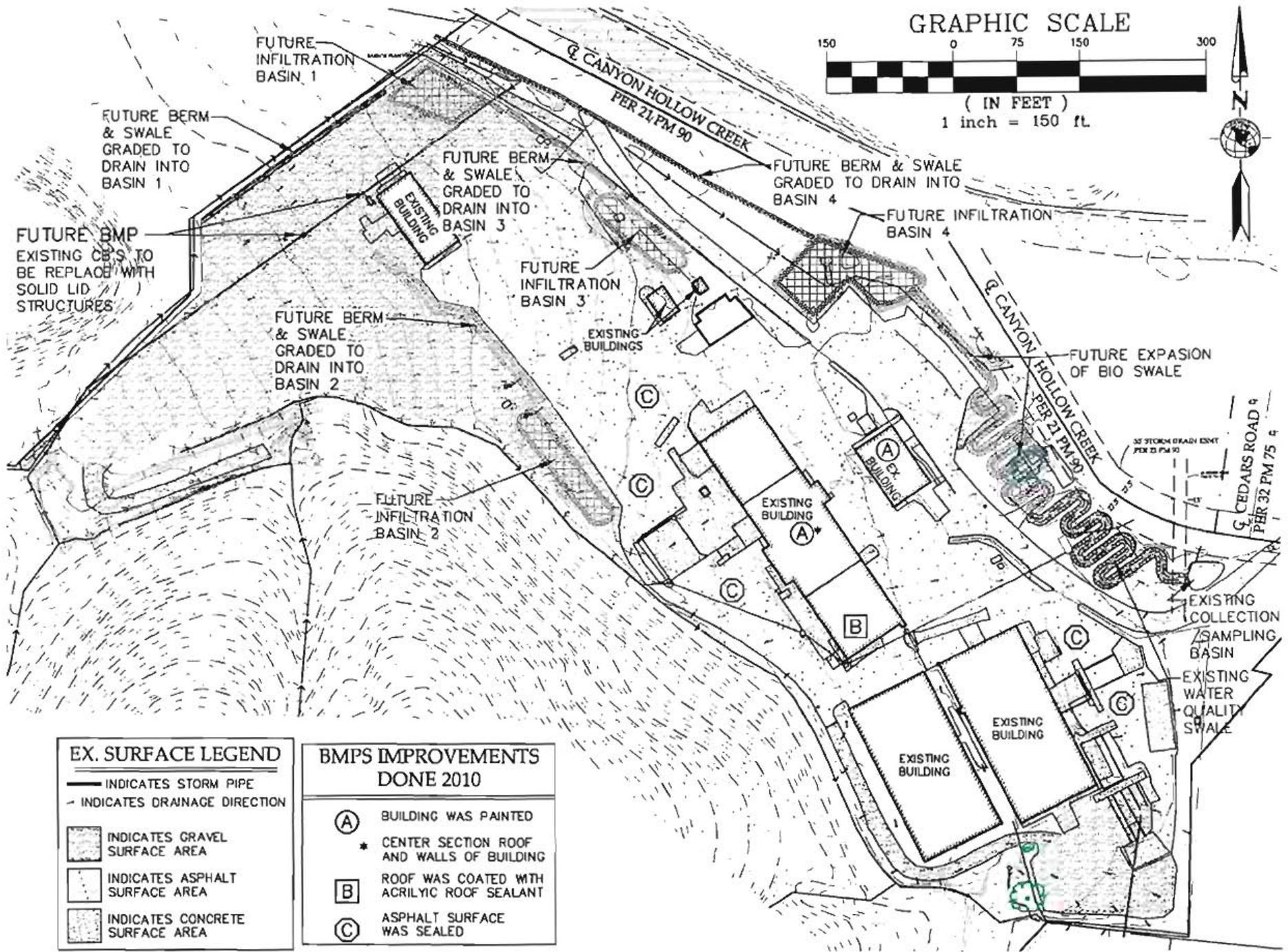


CONTECH Construction Products CMP Plant  
Redding, CA

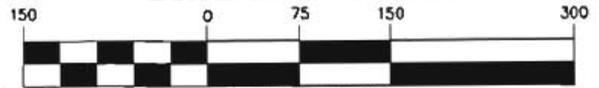
**CONTECH Construction Products CMP Plant  
Redding, CA**

**LEGEND AND NOTES:**

<b>Map Reference No.</b>	<b>Description</b>
1	Parking Lot (Paved in June 2004)
2	Monitored Stormwater Outfalls
3	Asphalt Pavement (Placed Spring 2006)
4	Paved in Fall 2006
5	Old Fabrication Building Location. Removed and Replaced with Paved Surface
6	Blacktop Pavement. (Patched, Repaired, and Layered in Spring 2006)
7	9'x21' CONTECH Stormfilter Vault with 44 StormFilter Cartridges
8	CONTECH TR24RD X 2 Catch Basin Insert
9	CONTECH Single Stage 2 Cartridge Downspout StormFilter
10	CONTECH TR24236 Catch Basin Insert
11	Bioswale



**GRAPHIC SCALE**



( IN FEET )  
1 inch = 150 ft.



EX. SURFACE LEGEND	
	INDICATES STORM PIPE
	INDICATES DRAINAGE DIRECTION
	INDICATES GRAVEL SURFACE AREA
	INDICATES ASPHALT SURFACE AREA
	INDICATES CONCRETE SURFACE AREA

BMPs IMPROVEMENTS DONE 2010	
	BUILDING WAS PAINTED
	CENTER SECTION ROOF AND WALLS OF BUILDING
	ROOF WAS COATED WITH ACRYLIC ROOF SEALANT
	ASPHALT SURFACE WAS SEALED

FUTURE INFILTRATION BASIN 1

FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 1

FUTURE BMP EXISTING CB'S TO BE REPLACED WITH SOLID LID STRUCTURES

FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 2

FUTURE INFILTRATION BASIN 2

FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 3

FUTURE INFILTRATION BASIN 3

EXISTING BUILDINGS

FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 4

FUTURE INFILTRATION BASIN 4

FUTURE EXPANSION OF BIO SWALE

Q CANYON HOLLOW CREEK PER 21 PM 90

Q CANYON HOLLOW CREEK PER 21 PM 90

35' STORM GRAB EXENT PER 21 PM 90

Q CEDARS ROAD 4 PER 32 PM 75 4

EXISTING COLLECTION/SAMPLING BASIN

EXISTING WATER QUALITY SWALE

EXISTING BUILDING

EXISTING BUILDING

EXISTING BUILDING

EXISTING BUILDING

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**EXHIBIT B – Notice of Violation**

February 8, 2010

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. Ronald C. Keating  
President, Chief Executive Officer  
Contech Construction Products, Inc.  
9025 Centre Point Drive, Suite 400  
West Chester, Ohio 45069

Mr. Dan Moody  
Facility Operator  
Contech Construction  
1001 Grove St  
Middletown, Ohio 45044

Mr. Leonard Osborn  
Contech Construction Products  
2245 Canyon Creek Road  
Redding, California 96001

Mr. Jeff Hallam  
Contech Construction Products  
2245 Canyon Creek Road  
Redding, California 96001

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

---

Dear Sir:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the culvert pipe manufacturing facility owned and operated by Contech Construction Products ("Contech"), located at 2245 Canyon Creek Road, Redding, CA 96001 ("the Facility"). The WDID identification number for the Facility is 5R45I002236. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento River and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of Contech.

This letter addresses Contech's unlawful discharges of pollutants from the Facility directly, and indirectly via the local storm water conveyance system, into Canyon Creek, which is a tributary to the Sacramento River and the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Federal Water Pollution Control Act, ("the Clean Water Act") and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit").

CSPA is particularly concerned about these ongoing unlawful discharges because Contech is well aware of issues regarding its compliance with the General Industrial

Storm Water Permit, as it manufactures various piping materials used specifically for drainage treatment and storm-water detention/retention systems that are employed as Best Management Practices (“BMPs”) for compliance with that same permit at other facilities located throughout California. It is CSPA’s intention, through this letter, to bring these violations to Contech’s attention so that they may be resolved in a comprehensive and efficient manner.

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

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, Contech is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Contech under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

#### **I. Background.**

On March 31, 1992, Contech submitted its notice of intent to comply (“NOI”) with the terms of the General Industrial Storm Water Permit. The Facility manufactures culvert pipe and is classified as a sheet metal work facility under Standard Industrial Classification code 3444, and as a coating, engraving, and allied services NEC facility under Standard Industrial Classification code 3479. Contech is not a member of any monitoring group. The Facility collects and discharges storm water from its 33-acre industrial site through at least three discharge points to storm water drains which drain to Canyon Hallow Creek and, ultimately, to the Delta.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>.

The Regional Board has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L) 0.1 mg/L for copper, 0.3 mg/L for

iron, and 0.016 mg/L for zinc. *Id.* at III-4.00. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.*, p. III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; manganese – 0.05 mg/L; and iron – 0.3 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1.0 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; manganese – 0.05 mg/L (secondary); nitrate+nitrite (as nitrogen) – 1.0 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration); zinc – 0.12 mg/L (maximum concentration) and 0.12 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag. Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9<sup>th</sup> Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag. Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005)(finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by Contech: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; magnesium – 0.0636 mg/L; manganese – 1.0 mg/L; nitrate + nitrite oxygen – 0.68 mg/L; and zinc – 0.117 mg/L. The State Water Quality Control Board also proposed adding a benchmark level for specific conductance of 200  $\mu$ mho/cm.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

Contech 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 Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are total suspended solids ("TSS"), oil and grease ("O&G"), pH, biochemical oxygen demand ("BOD"), and fecal coliform.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

### **A. Contech Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

Contech has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (TSS), zinc (Zn), iron (Fe), aluminum (Al), oil and grease

(O&G), nitrate + nitrite (N+N), and magnesium (Mg) in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto. Contech's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. 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 Contech Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
02/22/2007	Outfall #2	TSS	241 mg/L	100 mg/L
10/16/2007	Outfall #2	TSS	104 mg/L	100 mg/L
10/16/2007	Outfall #3	TSS	745 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Zinc (Zn) at Levels in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Zn	2.22 mg/L	0.117 mg/L
11/02/2006	Outfall #3	Zn	0.905 mg/L	0.117 mg/L
02/22/2007	Outfall #2	Zn	1.05 mg/L	0.117 mg/L
02/22/2007	Outfall #3	Zn	0.266 mg/L	0.117 mg/L
10/16/2007	Outfall #2	Zn	0.549 mg/L	0.117 mg/L
10/16/2007	Outfall #3	Zn	7.40 mg/L	0.117 mg/L
01/21/2008	Outfall #2	Zn	0.937 mg/L	0.117 mg/L
01/21/2008	Outfall #3	Zn	0.464 mg/L	0.117 mg/L
01/22/2009	Outfall #2	Zn	1.61 mg/L	0.117 mg/L

**3. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Fe	6.48 mg/L	1.0 mg/L
11/02/2006	Outfall #3	Fe	6.03 mg/L	1.0 mg/L
02/22/2007	Outfall #2	Fe	5.92 mg/L	1.0 mg/L
02/22/2007	Outfall #3	Fe	1.29 mg/L	1.0 mg/L
10/16/2007	Outfall #2	Fe	5.56 mg/L	1.0 mg/L
10/16/2007	Outfall #3	Fe	42.3 mg/L	1.0 mg/L
01/21/2008	Outfall #2	Fe	2.34 mg/L	1.0 mg/L
01/21/2008	Outfall #3	Fe	1.98 mg/L	1.0 mg/L
01/22/2009	Outfall #2	Fe	3.74 mg/L	1.0 mg/L

**4. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Al	4.48 mg/L	0.75 mg/L
11/02/2006	Outfall #3	Al	4.73 mg/L	0.75 mg/L
02/22/2007	Outfall #2	Al	3.54 mg/L	0.75 mg/L
02/22/2007	Outfall #3	Al	0.907 mg/L	0.75 mg/L
10/16/2007	Outfall #2	Al	4.05 mg/L	0.75 mg/L
10/16/2007	Outfall #3	Al	29.3 mg/L	0.75 mg/L
01/21/2008	Outfall #2	Al	1.66 mg/L	0.75 mg/L
01/21/2008	Outfall #3	Al	1.17 mg/L	0.75 mg/L
01/22/2009	Outfall #2	Al	2.73 mg/L	0.75 mg/L

**5. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #3	O&G	40.3 mg/L	15 mg/L
10/16/2007	Outfall #2	O&G	25.0 mg/L	15 mg/L

**6. Discharges of Storm Water Containing Nitrate + Nitrite Nitrogen (N+N) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	N+N	0.87 mg/L	0.68 mg/L
11/02/2006	Outfall #3	N+N	0.83 mg/L	0.68 mg/L

**7. Discharges of Storm Water Containing Magnesium (Mg) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Mg	3.00 mg/L	0.0636 mg/L
11/02/2006	Outfall #3	Mg	4.00 mg/L	0.0636 mg/L
02/22/2007	Outfall #2	Mg	1.00 mg/L	0.0636 mg/L
02/22/2007	Outfall #3	Mg	0.50 mg/L	0.0636 mg/L
10/16/2007	Outfall #2	Mg	4.00 mg/L	0.0636 mg/L
10/16/2007	Outfall #3	Mg	18.00 mg/L	0.0636 mg/L
01/21/2008	Outfall #2	Mg	1.00 mg/L	0.0636 mg/L
01/21/2008	Outfall #3	Mg	1.00 mg/L	0.0636 mg/L
01/22/2009	Outfall #2	Mg	2.00 mg/L	0.0636 mg/L

CSPA is informed and believes that Contech has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 8, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since February 8, 2005, 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 CSPA alleges that Contech has discharged storm water containing impermissible levels of zinc, iron, aluminum, oil and grease, specific conductivity, total suspended solids, and magnesium in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Contech is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 8, 2005.

**B. Contech Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as Contech, designated under standard industrial code (“SIC”) 3444 and 3479 are also required to sample for zinc, iron, aluminum and nitrate + nitrite nitrogen. Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that Contech has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Contech has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, Contech has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Third, Contech has failed to analyze its storm water for all pollutants likely to be present in significant quantities in its storm water discharge. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Contech is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 8, 2005. These violations are set forth in greater detail below.

***1. Contech Has Failed to Collect at Least Two Storm Water Samples From Each Facility Discharge Point During Each of the Last Five Wet Seasons.***

Based on its review of publicly available documents, CSPA is informed and believes that Contech has failed to collect storm water samples from all discharge points at the Facility for at least two storm events during each Wet Season as required by Section B(5)(a). For example, Contech failed to collect and analyze any samples from Outfall#1 at any time during the last five years. Moreover, Contech failed to collect and/or report any storm water samples from any of its designated discharge points for the entire 2005-2006 Wet Season. Continuing its pattern and practice of failing to collect the

required minimum of two storm water samples from each discharge point, Contech collected and analyzed only one storm water sample during the 2008-2009 Wet Season. CSPA is informed and believes that January 22, 2009 was not the first qualifying storm event for the 2008-2009 wet season, nor was October 16, 2007 the first qualifying storm event for the 2007-2008 wet season. ALI's failure to sample the first qualifying storm event constitutes an additional and separate violation of the General Permit. Contech's failure to comply with the sampling requirements of the GMP and the Permit constitute separate and ongoing violations of the Permit and the Act.

**2. *Contech Has Failed to Analyze Its Storm Water for All Pollutants Likely to Be Present in Significant Quantities in Its Storm Water Discharge.***

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on a review of Contech's Annual Reports submitted to the Regional Board, CSPA believes during the 2005-2006 Wet Season Contech has failed to monitor for at least four pollutants likely to be present in storm water discharges in significant quantities – chromium, nickel, copper, and lead. CSPA further believes that Contech has failed to monitor for nickel in any storm water discharge over the past five (5) year period. Contech also failed to collect and analyze nitrate + nitrite nitrogen, as required for industries falling under Standard Industrial Classification 3444, during the 2007-2008 Wet Season. Each failure to monitor for each separate parameter constitutes a separate violation of the General Industrial Storm Water Permit and the Act. The Facility's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and Act.

**3. *Contech Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 8, 2005.***

CSPA is informed and believes that available documents demonstrate Contech's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Contech is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 8, 2005.

**C. *Contech Has Failed to Implement BAT and BCT.***

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Contech

potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Contech has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Contech has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Contech has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that Contech fails to develop and implement an effective SWPPP. Contech is subject to penalties for violations of the Order and the Act occurring since February 8, 2005.

**E. Contech Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

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

As indicated above, Contech is discharging elevated levels of zinc, iron, aluminum, oil and grease, total suspended solids, and magnesium that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Contech was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. Contech has failed to do so.

Based on CSPA's review of available documents, Contech was aware of high levels of many of these pollutants well before February 8, 2005. Likewise, Contech has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Contech has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since February 8, 2005, and will continue to be in violation every day that Contech fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Contech is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 8, 2005.

**F. Contech Has Failed to File Timely, True and Correct Reports.**

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

CSPA's investigation indicates that Contech has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, Contech certified that it failed to collect the requisite number of storm water samples because there was only one qualifying storm events during the wet season; CSPA is informed and believes that this statement is false and constitutes a breach of Section A(9)(d) of the General Permit. Moreover, Contech failed to even submit an Annual Report for the 2005-2006 Wet Season. As indicated above, Contech has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Contech has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Contech submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Contech's failure to submit true and complete

reports constitutes continuous and ongoing violations of the Permit and the Act. Contech is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 8, 2005.

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

CSPA puts Contech 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, CSPA puts Contech on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

**V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

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

Andrew L. Packard  
Law Offices of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
(707) 763-7227

**VI. 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 Contech to civil penalties of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Contech and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we

Notice of Violation and Intent To File Suit  
February 8, 2005  
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suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive style with a large, looping initial "B".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**ATTACHMENT A**  
**Notice of Intent to File Suit, Contech Construction Products, Inc.**  
**Significant Rain Events\*, February 8, 2005 – February 8, 2010**

Feb.	13	2005	Nov.	28	2005	Mar.	12	2006
Feb.	16	2005	Nov.	29	2005	Mar.	13	2006
Feb.	17	2005	Nov.	30	2005	Mar.	14	2006
Feb.	19	2005	Dec.	01	2005	Mar.	15	2006
Feb.	20	2005	Dec.	10	2005	Mar.	16	2006
Feb.	21	2005	Dec.	17	2005	Mar.	17	2006
Feb.	22	2005	Dec.	18	2005	Mar.	20	2006
Feb.	27	2005	Dec.	19	2005	Mar.	23	2006
March	01	2005	Dec.	20	2005	Mar.	24	2006
March	02	2005	Dec.	21	2005	Mar.	25	2006
March	18	2005	Dec.	22	2005	Mar.	27	2006
March	19	2005	Dec.	23	2005	Mar.	28	2006
March	20	2005	Dec.	25	2005	Mar.	29	2006
March	21	2005	Dec.	26	2005	Mar.	30	2006
March	22	2005	Dec.	27	2005	Mar.	31	2006
March	23	2005	Dec.	28	2005	April	01	2006
March	24	2005	Dec.	29	2005	April	02	2006
March	25	2005	Dec.	30	2005	April	03	2006
March	27	2005	Dec.	31	2005	April	05	2006
March	28	2005	Jan.	01	2006	April	06	2006
April	03	2005	Jan.	02	2006	April	07	2006
April	07	2005	Jan.	03	2006	April	09	2006
April	08	2005	Jan.	04	2006	April	10	2006
April	09	2005	Jan.	05	2006	April	11	2006
April	23	2005	Jan.	10	2006	April	12	2006
April	24	2005	Jan.	11	2006	April	13	2006
April	25	2005	Jan.	13	2006	April	15	2006
April	30	2005	Jan.	14	2006	April	16	2006
May	04	2005	Jan.	17	2006	April	26	2006
May	05	2005	Jan.	18	2006	May	19	2006
May	08	2005	Jan.	19	2006	May	20	2006
May	09	2005	Jan.	20	2006	May	21	2006
May	10	2005	Jan.	21	2006	May	22	2006
May	15	2005	Jan.	28	2006	Oct.	04	2006
May	17	2005	Jan.	30	2006	Nov.	02	2006
May	18	2005	Feb.	01	2006	Nov.	03	2006
May	19	2005	Feb.	02	2006	Nov.	04	2006
Oct.	14	2005	Feb.	03	2006	Nov.	06	2006
Oct.	26	2005	Feb.	04	2006	Nov.	11	2006
Oct.	28	2005	Feb.	26	2006	Nov.	12	2006
Oct.	29	2005	Feb.	27	2006	Nov.	13	2006
Oct.	30	2005	Feb.	28	2006	Nov.	14	2006
Nov.	03	2005	Mar.	01	2006	Nov.	16	2006
Nov.	04	2005	Mar.	02	2006	Nov.	18	2006
Nov.	07	2005	Mar.	03	2006	Nov.	21	2006
Nov.	08	2005	Mar.	05	2006	Nov.	22	2006
Nov.	09	2005	Mar.	06	2006	Nov.	23	2006
Nov.	25	2005	Mar.	07	2006	Nov.	26	2006

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**  
**Notice of Intent to File Suit, Contech Construction Products, Inc.**  
**Significant Rain Events\*, February 8, 2005 – February 8, 2010**

Nov.	27	2006	Oct.	19	2007	April	23	2008
Dec.	08	2006	Oct.	20	2007	April	26	2008
Dec.	09	2006	Oct.	22	2007	May	24	2008
Dec.	10	2006	Nov.	10	2007	Oct.	03	2008
Dec.	11	2006	Nov.	13	2007	Oct.	04	2008
Dec.	12	2006	Nov.	19	2007	Oct.	06	2008
Dec.	13	2006	Dec.	03	2007	Oct.	30	2008
Dec.	14	2006	Dec.	04	2007	Oct.	31	2008
Dec.	17	2006	Dec.	06	2007	Nov.	01	2008
Dec.	21	2006	Dec.	07	2007	Nov.	02	2008
Dec.	22	2006	Dec.	16	2007	Nov.	03	2008
Dec.	26	2006	Dec.	17	2007	Nov.	04	2008
Dec.	27	2006	Dec.	18	2007	Nov.	06	2008
Jan.	03	2007	Dec.	19	2007	Nov.	07	2008
Jan.	04	2007	Dec.	20	2007	Nov.	09	2008
Feb.	07	2007	Dec.	27	2007	Nov.	13	2008
Feb.	08	2007	Dec.	28	2007	Dec.	14	2008
Feb.	09	2007	Dec.	29	2007	Dec.	15	2008
Feb.	10	2007	Dec.	30	2007	Dec.	16	2008
Feb.	11	2007	Jan.	03	2008	Dec.	18	2008
Feb.	16	2007	Jan.	04	2008	Dec.	19	2008
Feb.	22	2007	Jan.	05	2008	Dec.	21	2008
Feb.	24	2007	Jan.	06	2008	Dec.	24	2008
Feb.	25	2007	Jan.	07	2008	Dec.	25	2008
Feb.	27	2007	Jan.	08	2008	Dec.	28	2008
Feb.	28	2007	Jan.	09	2008	Dec.	30	2008
Mar.	02	2007	Jan.	10	2008	Jan.	02	2009
Mar.	10	2007	Jan.	12	2008	Jan.	06	2009
Mar.	11	2007	Jan.	13	2008	Jan.	22	2009
Mar.	26	2007	Jan.	21	2008	Jan.	23	2009
April	11	2007	Jan.	22	2008	Jan.	24	2009
April	14	2007	Jan.	24	2008	Jan.	30	2009
April	16	2007	Jan.	25	2008	Feb.	06	2009
April	19	2007	Jan.	26	2008	Feb.	07	2009
April	21	2007	Jan.	27	2008	Feb.	08	2009
April	22	2007	Jan.	28	2008	Feb.	10	2009
April	23	2007	Jan.	29	2008	Feb.	11	2009
May	01	2007	Jan.	31	2008	Feb.	12	2009
May	02	2007	Feb.	02	2008	Feb.	13	2009
May	03	2007	Feb.	04	2008	Feb.	14	2009
May	04	2007	Feb.	09	2008	Feb.	15	2009
May	06	2007	Feb.	21	2008	Feb.	16	2009
Oct.	09	2007	Feb.	22	2008	Feb.	17	2009
Oct.	10	2007	Feb.	23	2008	Feb.	18	2009
Oct.	12	2007	Feb.	24	2008	Feb.	19	2009
Oct.	13	2007	Feb.	26	2008	Feb.	22	2009
Oct.	15	2007	Mar.	12	2008	Feb.	23	2009
Oct.	16	2007	Mar.	28	2008	Feb.	24	2009
Oct.	17	2007	April	22	2008	Feb.	25	2009

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**  
**Notice of Intent to File Suit, Contech Construction Products, Inc.**  
**Significant Rain Events\*, February 8, 2005 – February 8, 2010**

Feb.	26	2009	Oct.	20	2009	Jan.	01	2010
Mar.	01	2009	Oct.	23	2009	Jan.	02	2010
Mar.	03	2009	Nov.	06	2009	Jan.	12	2010
Mar.	04	2009	Nov.	17	2009	Jan.	13	2010
Mar.	15	2009	Nov.	20	2009	Jan.	16	2010
Mar.	16	2009	Nov.	21	2009	Jan.	17	2010
Mar.	17	2009	Nov.	24	2009	Jan.	18	2010
April	09	2009	Dec.	11	2009	Jan.	19	2010
April	10	2009	Dec.	12	2009	Jan.	20	2010
April	24	2009	Dec.	13	2009	Jan.	21	2010
May	01	2009	Dec.	15	2009	Jan.	23	2010
May	02	2009	Dec.	16	2009	Jan.	24	2010
May	03	2009	Dec.	17	2009	Jan.	25	2010
May	04	2009	Dec.	18	2009	Jan.	26	2010
May	05	2009	Dec.	20	2009	Jan.	31	2010
May	06	2009	Dec.	21	2009	Feb.	01	2010
May	07	2009	Dec.	22	2009	Feb.	02	2010
Oct.	13	2009	Dec.	25	2009	Feb.	04	2010
Oct.	14	2009	Dec.	27	2009	Feb.	05	2010
Oct.	16	2009	Dec.	29	2009	Feb.	06	2010
Oct.	18	2009	Dec.	30	2009	Feb.	07	2010
Oct.	19	2009	Dec.	31	2009			

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**EXHIBIT C**

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Zinc	0.117 mg/L
Iron	1.0 mg/L
Aluminum	0.75 mg/L
Magnesium	0.0636 mg/L
Nitrate + Nitrite Nitrogen	0.68 mg/L
Copper	0.0636 mg/L
Cadmium*	0.0159 mg/L
Lead*	0.0816 mg/L

\* If the storm water samples demonstrate that cadmium and lead levels are below requisite water quality criteria for three (3) consecutive sampling events, then they may be removed from the monitoring program.

1 ANDREW L. PACKARD (Bar No. 168690)  
2 ERIK M. ROPER (Bar No. 259756)  
3 HALLIE B. ALBERT (Bar No. 258737)  
4 Law Offices of Andrew L. Packard  
5 100 Petaluma Blvd. N., Suite 301  
6 Petaluma, CA 94952  
7 Tel: (707) 763-7227  
8 Fax: (707) 763-9227  
9 E-mail: Andrew@packardlawoffices.com

6 ROBERT J. TUERCK (Bar No. 255741)  
7 Jackson & Tuerck  
8 P. O. Box 148  
9 429 W. Main Street, Suite C  
10 Quincy, CA 95971  
11 Tel: (530) 283-0406  
12 E-mail: bob@jacksontuerck.com

10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING  
12 PROTECTION ALLIANCE

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15 CALIFORNIA SPORTFISHING  
16 PROTECTION ALLIANCE, a non-profit  
17 corporation,

17 Plaintiff,

18 vs.

19 COOK CONCRETE PRODUCTS, INC., a  
20 California corporation, and L. EDWARD  
21 SHAW, an individual,

22 Defendants.

Case No. 2:10-CV-01083-JAM-DAD

**[PROPOSED] CONSENT AGREEMENT**

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

23 WHEREAS, Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
24 (hereinafter "CSPA" or "Plaintiff") is a non-profit public benefit corporation dedicated to the  
25 preservation, protection, and defense of the environment, wildlife, and natural resources of  
26 California's waters;

28 WHEREAS, Defendants COOK CONCRETE PRODUCTS, INC. (hereinafter "COOK") and

1 L. EDWARD SHAW (collectively, “Defendants”) own and/or operate an approximately 5-acre  
2 precast concrete manufacturing facility located at 5461 Eastside Road in Redding, California (the  
3 “Facility”). Defendant L. EDWARD SHAW is the Owner and President of COOK;

4 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the “Parties;”

5 **WHEREAS**, the Facility collects and discharges storm water to a system of irrigation ditches  
6 which may ultimately flow into the Sacramento River, and the Sacramento-San Joaquin Delta (a map  
7 of the Facility, together with drawings demonstrating related storm water management features of the  
8 Facility, are attached hereto as Exhibit A and incorporated herein by reference);

9 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
10 to the National Pollutant Discharge Elimination System (“NPDES”), General Permit No. CAS000001  
11 [State Water Resources Control Board], Water Quality Order No. 91-13-DWQ (as amended by Water  
12 Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act  
13 (“the Act”), 33 U.S.C. § 1342 (hereinafter “General Permit”);

14 **WHEREAS**, on or about March 2, 2010, Plaintiff provided notice of Defendants’ violations of  
15 the Act (“Notice Letter”), and of its intention to file suit against Defendants, to the Administrator of  
16 the United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX;  
17 the Executive Director of the State Water Resources Control Board (“State Board”); the Executive  
18 Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional Board”); and  
19 to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a true and correct copy of CSPA’s  
20 Notice Letter is attached as Exhibit B and incorporated herein by reference);

21 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notice Letter and  
22 maintain that they have complied at all times with the provisions of the General Permit and the Act;

23 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States  
24 District Court, Eastern District of California, on May 3, 2010;

25 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is proper  
26 in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this  
27 Consent Agreement;

28

1           **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of  
2 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall thereafter be  
3 submitted for approval by the Court, the date of which approval shall be referred to herein as the  
4 “Court Approval Date;”

5           **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States  
6 District Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall  
7 stipulate and request that the Court retain jurisdiction for the enforcement of this Agreement through  
8 September 30, 2012, as provided herein;

9           **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter  
10 without further litigation.

11           **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**  
12 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

13 **I.       COMMITMENT OF DEFENDANTS**

14           **1.       Compliance With General Permit & Clean Water Act.** Defendants shall at all times  
15 operate the Facility in full compliance with the requirements of the General Permit and the Clean  
16 Water Act, subject to any defenses available under the law.

17           **2.       Defendants’ Implementation of Specific Storm Water Best Management Practices**  
18 **On or Before October 15, 2010.** On or before October 15, 2010, Defendants shall complete the  
19 implementations of the following storm water control measures/best management practices (“BMPs”):

20                   (a)       Defendants shall install two new precast concrete boxes referred to as Storm  
21 Water Discharge Point Boxes (“SWDP #1”) and (“SWDP #2”) as set forth on Exhibit A, just  
22 north of the southern border of the Facility over the Facility’s two underground storm water  
23 drainage pipes at each of the points over the pipe on Cook property prior to going offsite.  
24 SWDP #1 and SWDP #2 will have straw bale filters and serve as the Facility’s new storm  
25 water monitoring and sampling locations;

26                   (b)       Defendants shall install, as set forth on Exhibit A, Sediment Trap & Oil Water  
27 Separators (“ST/OWS # 1”) and (“ST/OWS #2 ”), a sediment trap (“ST”), two catch basin  
28

1 sediment traps (“CB/ST #1”) and (“CB/ST # 2”), catch basins with wattle filters (“CBFs”), and  
2 two concrete trench sediment traps (“CT/ST”) with wheat straw wattles or wheat straw bale  
3 filters as needed (and either grates or removable lids to better facilitate maintenance), to  
4 eliminate or reduce the concentration of pollutants in the Facility’s storm water discharges to a  
5 level at or below EPA benchmark levels;

6 (c) Defendants shall engage in enhanced maintenance of the treatment control  
7 BMPs discussed in subsection (b). Pursuant to this Agreement, Defendants agree to an  
8 enhanced maintenance schedule whereby the Facility’s treatment control BMPs will be  
9 inspected at least once a week during the Wet Season to ensure they are continuing to function  
10 as intended. All written records of these maintenance inspections shall be kept with the  
11 SWPPP. In the event that Defendants’ weekly inspection results in a finding that any of these  
12 BMPs are no longer functioning as intended, Defendants shall repair (e.g., by cleaning it)  
13 and/or replace the malfunctioning BMP as needed to ensure compliance with the Act and the  
14 General Permit;

15 (d) Defendants shall monitor the level of sludge and sediment accumulation in the  
16 Facility’s concrete wash water collection and sediment settling structure (“Settling Basin”) and  
17 remove and properly dispose of it as needed to ensure the Facility does not discharge  
18 unauthorized non-storm water (e.g., “wash water”) in violation of the General Permit;

19 (e) Defendants shall daily collect all concrete waste having accumulated on the  
20 floors of the Facility’s concrete production areas and deposit all such wastes in one of the four  
21 (4) fabricated steel hoppers located in the active production areas, and emptied as needed at the  
22 west end of the Facility’s Settling Basin. The concrete waste deposited at the west end of the  
23 Facility’s Settling Basin shall be properly disposed of off-site as needed to ensure the Settling  
24 Basin retains sufficient capacity to properly contain storm water and non-storm water  
25 generated at the Facility;

26 (f) Defendants shall require Facility personnel to wash tools which have  
27 accumulated concrete waste from the manufacturing process in one of the four fabricated steel  
28

1           hoppers located in the active production areas to prevent concrete residue from entering the  
2 Facility's storm water drainage system;

3           (g)     Defendants shall employ a regenerative sweeper to sweep all impervious  
4 surfaces at the Facility the week prior to the onset of each Wet Season for the term of this  
5 Agreement. During the Wet Seasons within the term of this Agreement, Defendants shall daily  
6 monitor the 5-day national weather service forecast to anticipate when the Facility will most  
7 likely next be subjected to a storm event likely to result in discharges from the Facility. In the  
8 event that Defendants learn through their monitoring of national weather service forecasts that  
9 the Facility is likely to be subjected to a storm event likely to result in discharges from the  
10 Facility, Defendants shall make good faith efforts to arrange to lease a regenerative sweeper,  
11 consistent with the use described above, at a time one to three days prior to the commencement  
12 of such anticipated storm event. CSPA is mindful that the scarcity of available regenerative  
13 sweepers in the Redding area may result in Defendants not being able to arrange to have a  
14 regenerative sweeper employed at the Facility prior to the commencement of the anticipated  
15 qualifying storm event, notwithstanding Defendants having made a good faith effort to do so.  
16 In the event Defendants' good faith efforts to lease a regenerative sweeper prior to the  
17 commencement of the anticipated storm event are unsuccessful, Defendants shall lease a  
18 mechanical sweeper and/or have Facility personnel manually sweep the Facility's impervious  
19 surfaces prior to the commencement of the anticipated storm. Consistent with the rationale for  
20 employing a regenerative sweeper, the objective of this mechanical and/or manual sweeping  
21 would be to remove pollutants from the Facility's impervious surfaces to the greatest extent  
22 feasible prior to the storm to prevent such pollutants from discharging in the Facility's storm  
23 water discharge;

24           (h)     Defendants shall use shop vacuums and/or sweep within the covered production  
25 areas of the Facility as needed to collect any dry waste (e.g., Styrofoam, concrete dust, iron  
26 dust, etc.) produced as a result of manufacturing processes that accumulates on floors in these  
27 areas so that the floors are efficiently cleaned up;

1 (i) Defendants shall replace the limestone gravel formerly covering the ground near  
2 the Facility's high traffic product storage and staging areas outside the paved driveway along  
3 the south side of the Facility with a much harder 1.5" washed crushed granite gravel. The  
4 parties believe the use of this harder, washed granite gravel may significantly reduce the  
5 amount of dust entering the Facility's storm drain system;

6 (j) Defendants shall install a roof over the entire rebar rack in front of the Facility's  
7 rebar fabrication shop such that all materials on the rebar rack are prevented from coming into  
8 contact with storm water at the Facility;

9 (k) Defendants shall remove and properly dispose of obsolete rusty materials from  
10 the Facility;

11 (l) Defendants shall daily ensure Facility shop/production personnel  
12 contemporaneously sweep up dust, metal filings, welding slag and any other potential pollutant  
13 generated as a result of manufacturing processes in the Facility's production and fabrication  
14 areas to prevent these materials from entering the Facility's storm water drainage system;

15 (m) Defendants shall update the Facility SWPPP and the SWPPP map to reflect  
16 storm water flow vectors, the new sampling locations described above in subsection (a) and the  
17 location and type of BMPs employed throughout the Facility;

18 (n) Defendants shall create storm water monitoring and inspection checklist forms  
19 and include these as appendices to the updated SWPPP;

20 (o) Defendants shall update the Facility SWPPP to include a detailed discussion of  
21 the storm water management training provided to Facility personnel and the storm water  
22 monitoring and sampling regimen adhered to by Facility personnel;

23 (p) Defendants shall annually re-train all Facility personnel within the month of  
24 September on how to properly manage storm water and how to properly follow and implement  
25 the Facility SWPPP. This training will require Facility personnel to receive training in, among  
26 other subjects, the proper use of spill kits and the location of such materials within the Facility.  
27 Defendants shall maintain a record of these trainings with the Facility SWPPP;

28

1           **3. SWPPP Amendments/Additional BMPs.** Within 30 days of mutual execution of this  
2 Consent Agreement, Defendants shall transmit to CSPA the formally amended SWPPP for the  
3 Facility. This amended SWPPP shall incorporate all of the relevant requirements of this Consent  
4 Agreement, as well as the revised Facility map attached hereto as Exhibit A.

5           **4. Sampling Frequency.** Defendants shall collect and analyze samples from four (4)  
6 storm events, as qualified in the General Permit<sup>1</sup> for sampling purposes, in each of the two Wet  
7 Seasons occurring during the term of this Consent Agreement (2010-2011 and 2011-2012). The storm  
8 water sample results shall be compared with the values set forth in Exhibit C, attached hereto, and  
9 incorporated herein by reference. If the results of any such samples exceed the parameter values set  
10 forth in Exhibit C, Defendants shall comply with the "Action Memorandum" requirements set forth  
11 below. In addition, if by March 1, 2011, Defendants have not sampled and analyzed storm water  
12 discharges from four (4) qualifying storm events, Defendants shall sample and analyze two (2)  
13 additional storm water discharges, regardless of whether they originate from qualifying storm events  
14 as set forth in the General Permit.

15           **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents  
16 listed in Exhibit C by a laboratory accredited by the State of California. All samples collected from  
17 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample "hold time" is  
18 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual  
19 constituents at or below the values specified on Exhibit C. Sampling results shall be provided to  
20 CSPA within fourteen (14) days of Defendants' receipt of the laboratory report from each sampling  
21 event pursuant to the Notice provisions below.

22           **6. "Action Memorandum" Trigger; CSPA Review Of "Action Memorandum";**  
23 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4  
24 above exceeds the evaluation levels set forth in Exhibit C, or if Defendants fail to collect and analyze  
25

26 \_\_\_\_\_  
27 <sup>1</sup> "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are  
28 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 samples from four (4) storm events, Defendants shall prepare a written statement discussing the  
2 exceedance(s) and/or failure to collect and analyze samples from four (4) storm events, the possible  
3 cause and/or source of the exceedance(s), and additional measures that will be taken to address and  
4 eliminate the problem and future exceedances (“Action Memorandum”). The Action Memorandum  
5 shall be provided to CSPA upon completion and in any case no later than 30 days after Defendants’  
6 receipt of the sample results at issue. Recognizing that a SWPPP is an ongoing iterative process meant  
7 to encourage innovative BMPs, such additional measures may include, but are not limited to, taking  
8 samples, further material improvements to the storm water collection and discharge system, changing  
9 the frequency of Facility sweeping, changing the type and extent of storm water filtration media or  
10 modifying other industrial activities or management practices at the Facility. Such additional  
11 measures, to the extent feasible, shall be implemented immediately and in no event later than 60 days  
12 after the due date of the Action Memorandum. Within seven (7) days of implementation, the Facility  
13 SWPPP shall be amended to include all additional BMP measures designated in the Action  
14 Memorandum. CSPA may review and comment on an Action Memorandum and suggest any  
15 additional pollution prevention measures it believes are appropriate; however, CSPA’s failure to do so  
16 shall not be deemed to constitute agreement with the proposals set forth in the Action Memorandum.  
17 Upon request by CSPA, Defendants agree to meet and confer in good faith (at the Facility, if requested  
18 by Plaintiff) regarding the contents and sufficiency of the Action Memorandum.

19 **7. Inspections During The Term Of This Agreement.** In addition to any site  
20 inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as  
21 set forth above, Defendants shall permit representatives of CSPA to perform up to three (3) physical  
22 inspections of the Facility during the term of this Consent Agreement. These inspections shall be  
23 performed by CSPA’s counsel and consultants and may include sampling, photographing, and/or  
24 videotaping and CSPA shall provide Defendants with a copy of all sampling reports, photographs  
25 and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical  
26 inspection, except that Defendants shall have the right to deny access if circumstances would make the  
27 inspection unduly burdensome and pose significant interference with business operations or any  
28

1 party/attorney, or the safety of individuals. In such case, Defendants shall specify at least three (3)  
2 dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed.  
3 Defendants shall not make any alterations to Facility conditions during the period between receiving  
4 CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that Defendants  
5 would not otherwise have made but for receiving notice of CSPA's request to conduct a physical  
6 inspection of the Facility, excepting any actions taken in compliance with any applicable laws or  
7 regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement  
8 any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

9       **8. Defendants' Communications with Regional and State Boards.** During the term of  
10 this Consent Agreement, Defendants shall provide CSPA with copies of all documents submitted to  
11 the Regional Board or the State Board concerning storm water discharges from the Facility, including,  
12 but not limited to, all documents and reports submitted to the Regional Board and/or State Board as  
13 required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to  
14 the Notice provisions herein (at ¶ 24) and contemporaneously with Defendants' submission to such  
15 agencies.

16       **9. SWPPP Amendments.** Defendants shall provide CSPA with a copy of any  
17 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen  
18 (14) days of such amendment.

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

20       **10.** As mitigation of the Clean Water Act violations alleged in CSPA's Complaint,  
21 Defendants agree to pay the sum of \$35,000 within seven (7) days after the Court Approval Date to  
22 the Rose Foundation for Communities and the Environment for projects to improve water quality in  
23 the Sacramento River and/or the Sacramento-San Joaquin River Delta. The Rose Foundation shall  
24 provide notice to the SETTLING PARTIES setting forth the recipient and purpose of the funds.

25       **11.** Defendants agree to reimburse CSPA in the amount of \$28,750 to defray CSPA's  
26 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred  
27 as a result of investigating the activities at the Facility, bringing the Action and negotiating a  
28

1 resolution in the public interest. Such payment shall be made to the Law Offices of Andrew L.  
2 Packard Attorney-Client Trust Account within seven (7) days after the Court Approval Date.

3 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
4 expert, consultant and attorneys' fees and costs associated with monitoring Defendants' compliance  
5 with this Consent Agreement, Defendants agree to contribute \$6,250 for each of the two years covered  
6 by this Consent Agreement, to a compliance monitoring fund maintained by CSPA. Compliance  
7 monitoring activities may include, but shall not be limited to, site inspections, review of water quality  
8 sampling reports, review of annual reports, discussions with representatives of Defendants concerning  
9 the Action Memoranda referenced above, and potential changes to compliance requirements herein,  
10 preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and  
11 compliance-related activities. The first such payment in the amount of \$6,250 shall be made payable  
12 to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within seven (7) days of the  
13 Court Approval Date, with the second installment of \$6,250 due on June 1, 2011.

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

15 **13.** With the exception of the timelines set forth above for addressing exceedances of  
16 values specified on Exhibit C and Action Memoranda, if a dispute under this Consent Agreement  
17 arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet  
18 and confer within seven (7) days of receiving written notification from the other Party of a request for  
19 a meeting to determine whether a violation has occurred and to develop a mutually agreed upon plan,  
20 including implementation dates, to resolve the dispute. If the Parties fail to meet and confer, or the  
21 meet-and-confer does not resolve the issue, after at least seven days have passed after the meet-and-  
22 confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under  
23 the law, including filing a motion with the District Court of California, Eastern District, which shall  
24 retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent  
25 Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such  
26 fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean  
27 Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

28

1           **14. CSPA Waiver and Release.** Upon Court approval and entry of this Consent  
2 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
3 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their  
4 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their  
5 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other  
6 representatives (each a “Released Defendant Party”) from, and waives all claims which arise from or  
7 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,  
8 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or  
9 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged  
10 failure of Defendants to comply with the Clean Water Act at the Facility, up to the Effective Date of  
11 this Consent Decree.

12           **15. Defendants’ Waiver and Release.** Defendants, on their own behalf and on behalf of  
13 those Released Defendant Parties under its control, releases CSPA (and its officers, directors,  
14 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and  
15 its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain  
16 to the Action, including all claims for fees (including fees of attorneys, experts, and others), costs,  
17 expenses or any other sum incurred or claimed or which could have been claimed for matters  
18 associated with or related to the Action.

19           **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and  
20 Order that shall provide that:

21           a. the Complaint and all claims therein shall be dismissed with prejudice pursuant  
22 to Federal Rule of Civil Procedure 41(a)(2); and

23           b. the Court shall retain and have jurisdiction over the Parties with respect to  
24 disputes arising under this Agreement through September 30, 2012. Nothing in this Consent  
25 Agreement shall be construed as a waiver of any party’s right to appeal from an order that  
26 arises from an action to enforce the terms of this Consent Agreement.

27  
28

1 **IV. MISCELLANEOUS PROVISIONS**

2 17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged  
3 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants  
4 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,  
5 nor shall compliance with this Consent Agreement constitute or be construed as an admission by  
6 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph  
7 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under  
8 this Consent Agreement.

9 18. The Consent Agreement shall terminate on September 30, 2012.

10 19. The Consent Agreement may be executed in one or more counterparts which, taken  
11 together, shall be deemed to constitute one and the same document. An executed copy of this Consent  
12 Agreement shall be valid as an original.

13 20. In the event that any one of the provisions of this Consent Agreement is held by a court  
14 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15 21. The language in all parts of this Consent Agreement, unless otherwise stated, shall be  
16 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed  
17 pursuant to California law, without regarding to conflict of law principles.

18 22. The undersigned are authorized to execute this Consent Agreement on behalf of their  
19 respective parties and have read, understood and agreed to be bound by all of the terms and conditions  
20 of this Consent Agreement.

21 23. All agreements, covenants, representations and warranties, express or implied, oral or  
22 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.  
23 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other  
24 person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment,  
25 unless otherwise expressly provided for therein.

26 24. **Notices.** Any notices or documents required or provided for by this Consent  
27 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement

28

1 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
2 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

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

8 With copies sent to:

9 Andrew L. Packard  
10 Law Offices of Andrew L. Packard  
11 100 Petaluma Boulevard North, Suite 301  
12 Petaluma, CA 94952  
13 Tel: (707) 763-7227  
14 E-mail: Andrew@packardlawoffices.com  
15 Erik@packardlawoffices.com  
16 Hallie@packardlawoffices.com

17 And to:

18 Robert J. Tuerck, Esq.  
19 Jackson & Tuerck  
20 P.O. Box 148  
21 429 W. Main Street, Suite C  
22 Quincy, CA 95971  
23 Tel: (530) 283-0406  
24 Fax: 530-283-0416  
25 E-mail: Bob@JacksonTuerck.com

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

29 L. Edward Shaw  
30 Cook Concrete Products, Inc.  
31 5461 Eastside Road  
32 Redding, CA 96001  
33 Tel: (530) 243-2562  
34 Fax: (530) 243-6881

35 With copies sent to:

36 Diane G. Kindermann  
37 Abbott & Kindermann, LLP  
38 2100 Twenty First Street  
Sacramento, CA 95818  
Tel: (916) 456-9595

1 Fax: (916) 456-9599  
E-mail: dkindermann@aklandlaw.com

2 Each Party shall promptly notify the other of any change in the above-listed contact information.

3 25. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

4 26. No Party shall be considered to be in default in the performance of any of its  
5 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any  
6 circumstances beyond the Party's control, including, without limitation, any act of God, war, fire,  
7 earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not  
8 include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm  
9 event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of  
10 establishing that it could not reasonably have been expected to avoid, and which by exercise of due  
11 diligence has been unable to overcome, the Force Majeure.

12 27. If for any reason the Court should decline to approve this Consent Agreement in the  
13 form presented, the Parties shall use their best efforts to work together to modify the Consent  
14 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to  
15 modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall  
16 become null and void.

17 28. This Consent Agreement shall be deemed to have been drafted equally by the Parties,  
18 and shall not be interpreted for or against any Settling Party on the ground that any such party drafted  
19 it.

20 29. This Consent Agreement and the attachments contain all of the terms and conditions  
21 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede  
22 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and  
23 communications of the Parties, whether oral or written, respecting the matters covered by this Consent  
24 Agreement. This Consent Agreement may be amended or modified only by a writing signed by the  
25 Parties or their authorized representatives, and then by order of the Court.

26 30. Except in case of an emergency but subject to the regulatory authority of any applicable  
27 governmental authority, any breach of or default under this Consent Agreement capable of being cured  
28

1 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,  
2 or within such other period approved in writing by the Party making such allegation, which approval  
3 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure  
4 or, if the breach or default can be cured but is not capable of being cured within such five (5) day  
5 period, has commenced and is diligently pursuing to completion such cure.

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

8  
9 Dated: 17 Sept 2010 California Sportfishing Protection Alliance  
10  
11 By: Bill Jennings  
12 Bill Jennings, Executive Director

13 Dated: \_\_\_\_\_ Cook Concrete Products, Inc. and L. Edward Shaw  
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16 By: \_\_\_\_\_  
17 L. Edward Shaw, President  
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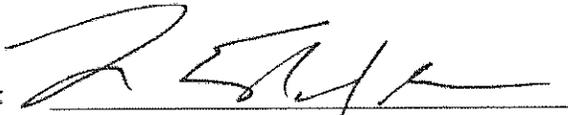
1 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,  
2 or within such other period approved in writing by the Party making such allegation, which approval  
3 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure  
4 or, if the breach or default can be cured but is not capable of being cured within such five (5) day  
5 period, has commenced and is diligently pursuing to completion such cure.

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

8  
9 Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

10  
11 By: \_\_\_\_\_  
12 Bill Jennings, Executive Director

13 Dated: September 17, 2010 Cook Concrete Products, Inc. and L. Edward Shaw

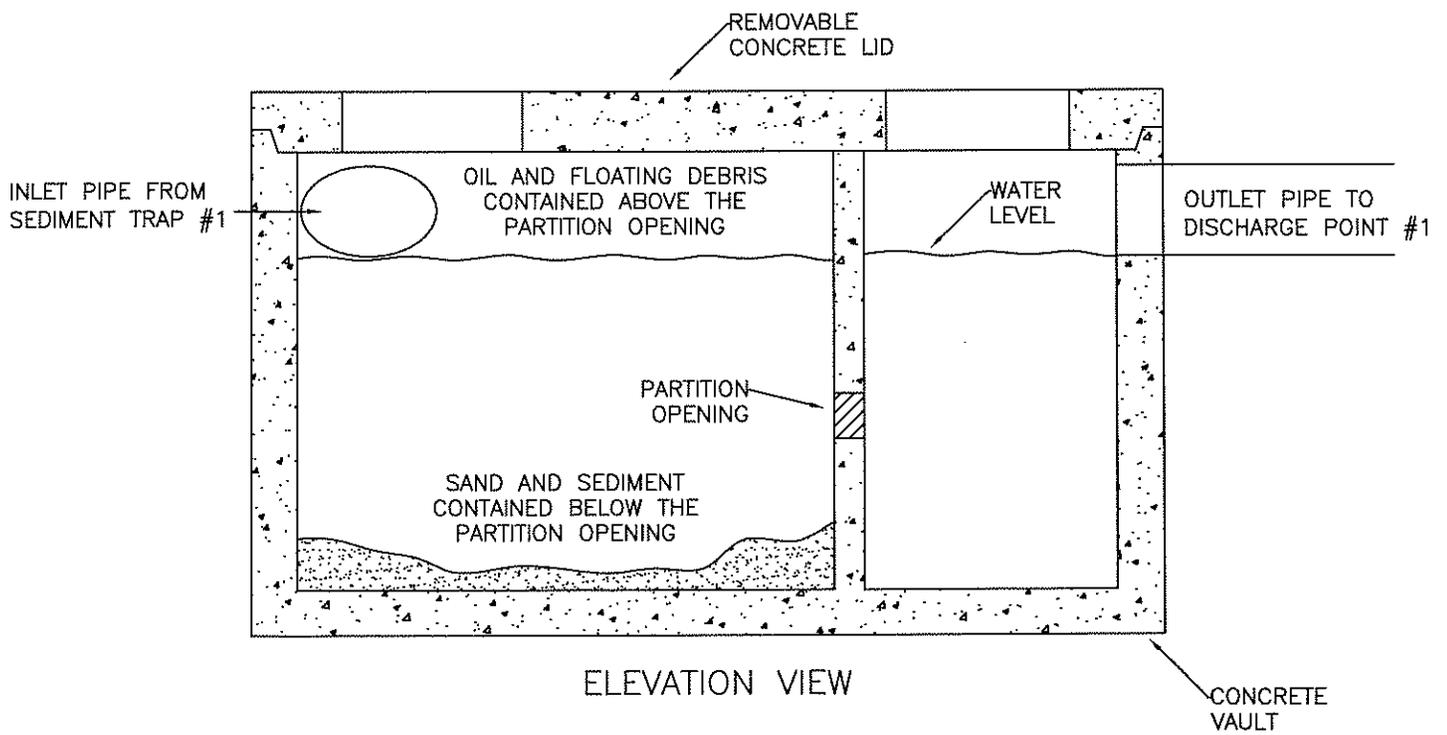
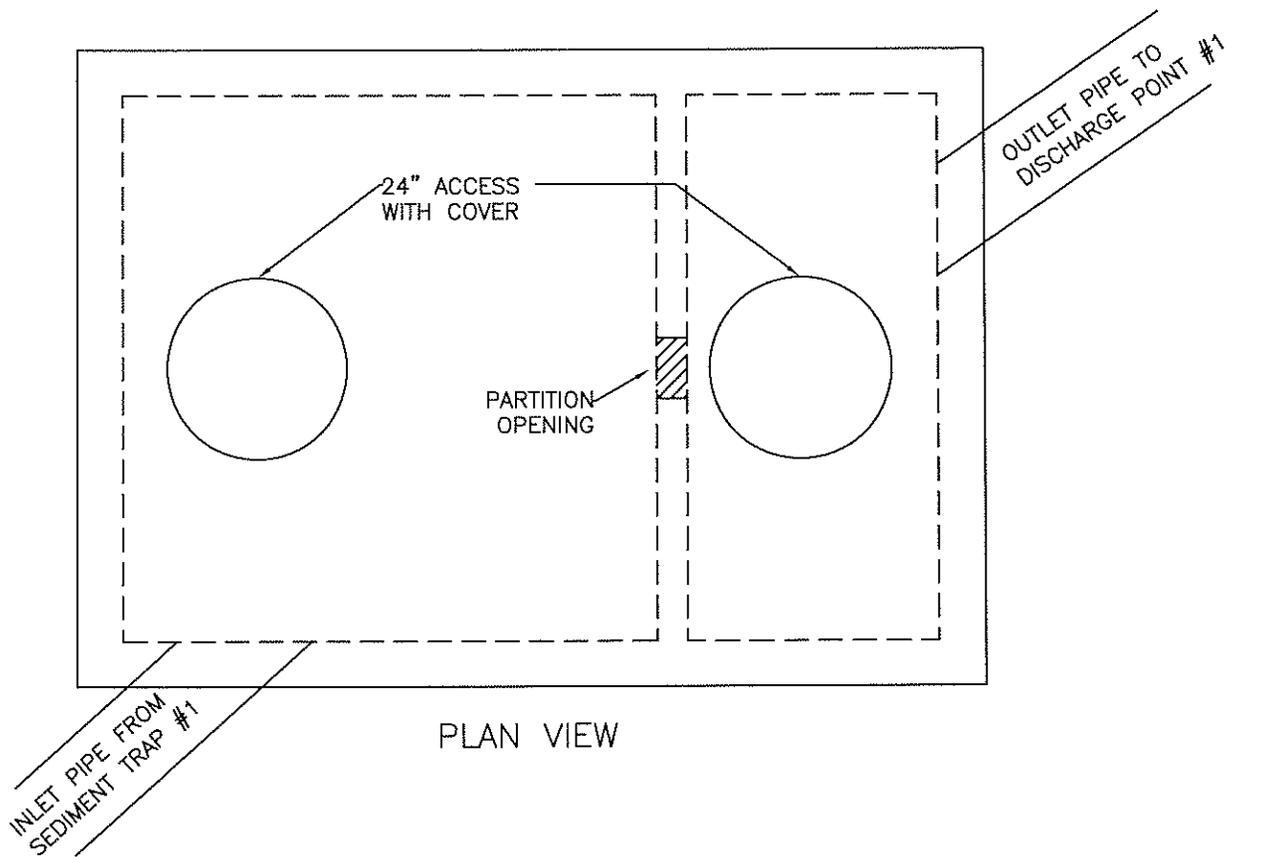
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15 By:   
16 L. Edward Shaw, President

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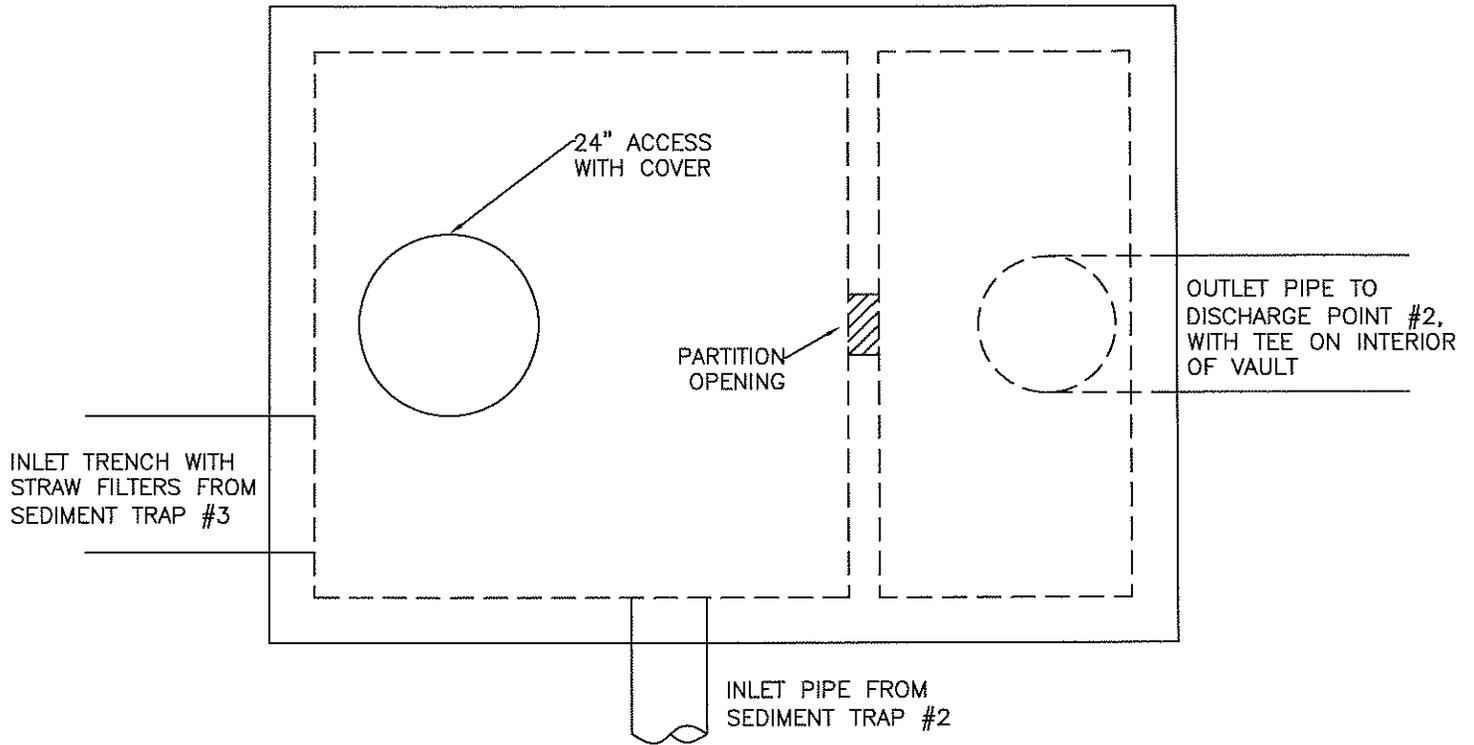
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**EXHIBIT A – Facility Site Map & Related BMP Drawings**

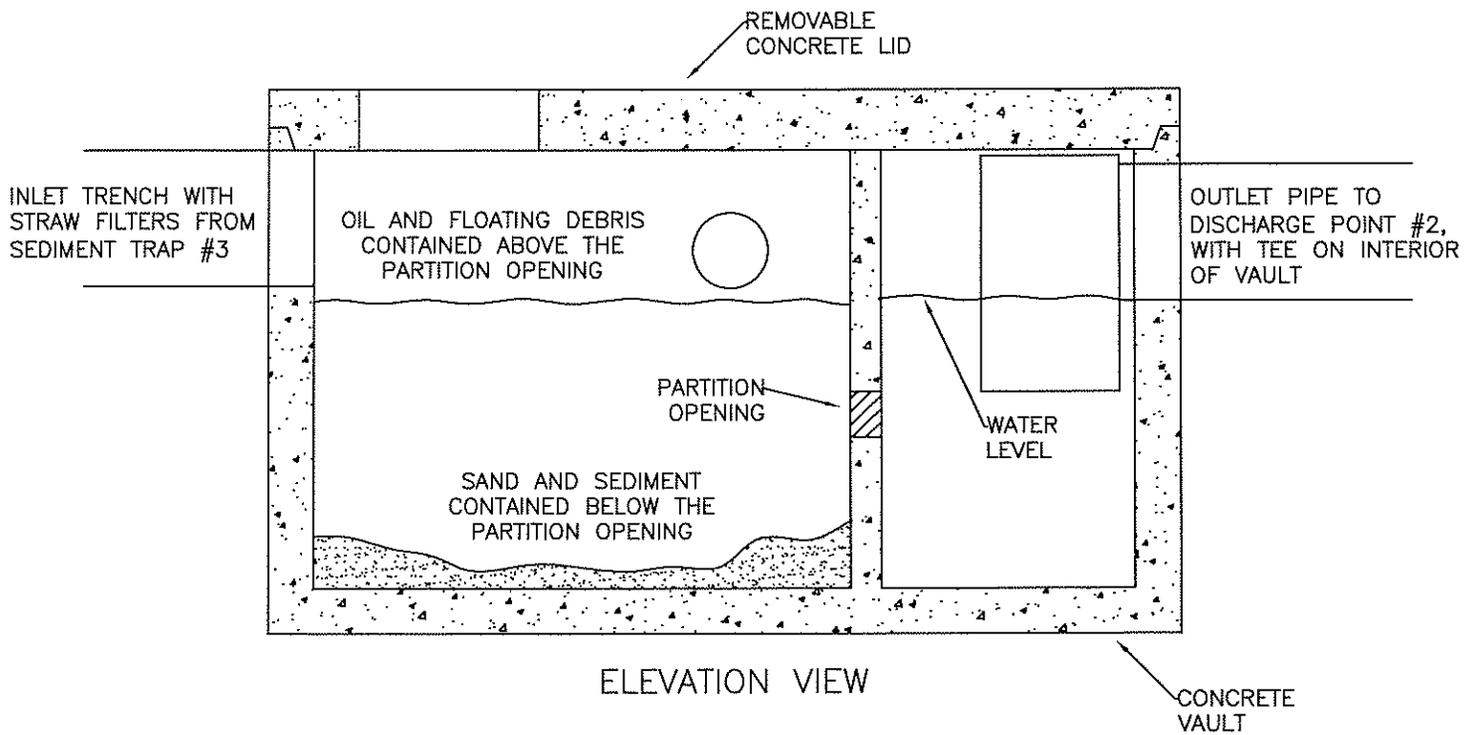




SEDIMENT TRAP/OIL WATER SEPARATOR #1  
(ST/OWS #1)

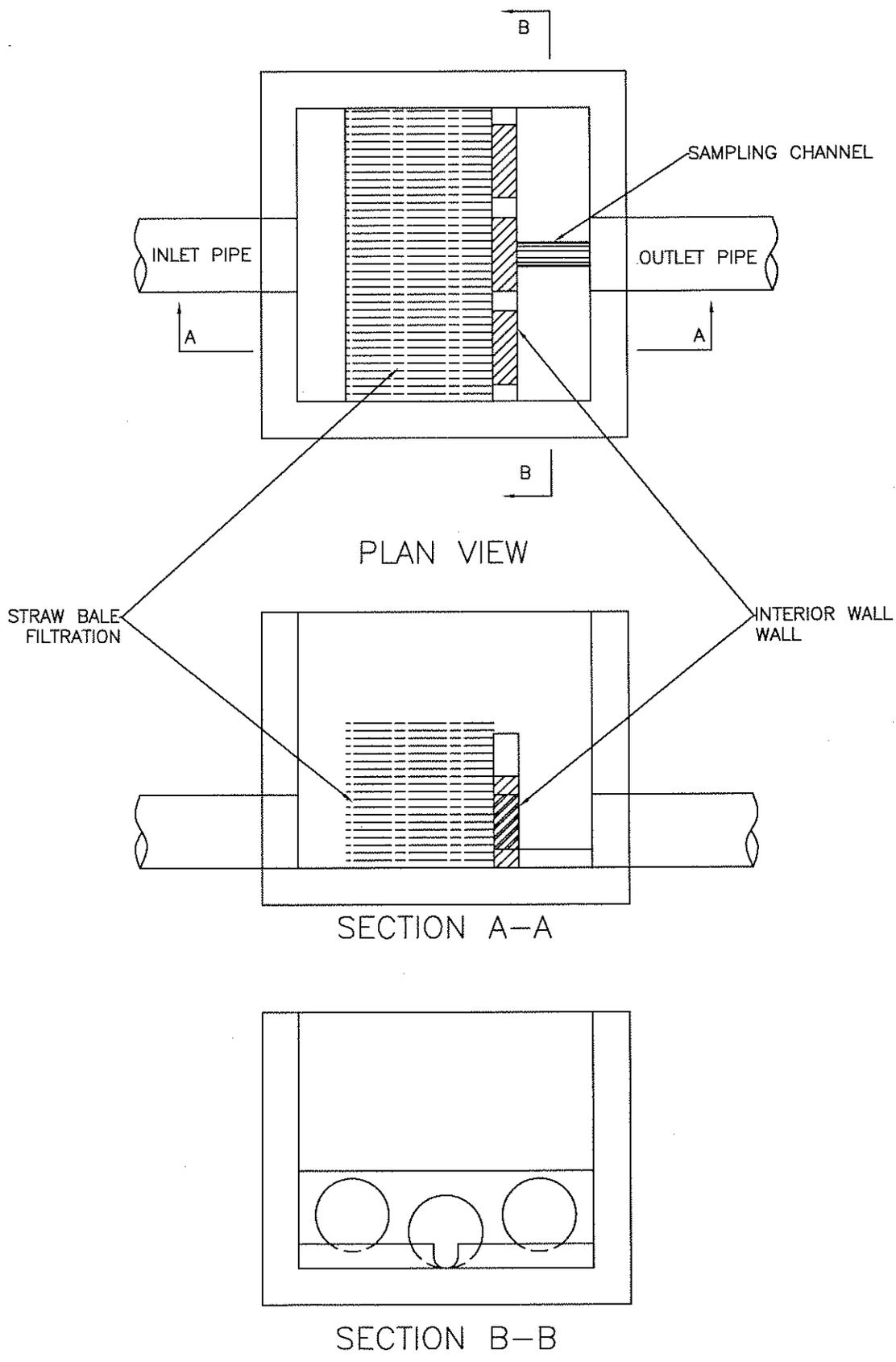


PLAN VIEW



ELEVATION VIEW

SEDIMENT TRAP/OIL WATER SEPARATOR #2  
(ST/OWS #2)



STORM WATER DISCHARGE POINT  
 BOX WITH STRAW BALE FILTER  
 (SWDP #1 AND #2)

**EXHIBIT B – Notice of Violation**



California Sportfishing Protection Alliance  
"An Advocate for Fisheries, Habitat and Water Quality"  
3536 Rainier Avenue, Stockton, CA 95204  
Tel: 209-464-5067, Fax: 209-464-1028, E: deltakcep@aol.com

March 2, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. L. Edward Shaw, President  
Cook Concrete Products, Inc.  
5461 Eastside Road  
Redding, CA 96001

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

Dear Mr. Shaw:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Cook Concrete Products, Inc. ("Cook Concrete") concrete manufacturing facility located at 5461 Eastside Road in Redding, California ("the Facility"). The WDID identification number for the Facility is 5R45I009117. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of Cook Concrete Products, Inc.

This letter addresses Cook Concrete's unlawful discharges of pollutants from the Facility to the storm water conveyance system for the City of Redding, which ultimately flows into the Sacramento River and the Sacramento - San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

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

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, Cook Concrete is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Cook Concrete under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

Cook Concrete is a concrete manufacturing facility located in Redding, California. The facility is used to receive, store, handle and transport aggregate materials for the manufacture of concrete. Other activities at the facility include the use, storage, and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to and from the facility.

On or about September 18, 1992, Cook Concrete submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as a concrete manufacturing facility under Standard Industrial Classification code 3272 ("Precast Concrete Manufacturing"). The Facility collects and discharges storm water from its approximately five-acre industrial site through at least one discharge point to the local storm water conveyance system, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta, the Sacramento River, and the creeks that receive storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L." *Id.* at III-3.00. The Basin Plan also provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Cook Concrete: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmho/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are discharged from

the Facility, including but not limited to, copper – 0.0636 mg/L; lead – 0.0816 mg/L; and zinc – 0.117 mg/L.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

Cook Concrete has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On May 18, and 23, 2007, the Regional Water Quality Control Board, Region 5, sent Cook Concrete letters (collectively, “the May 2007 letters”) conveying its conclusion that Cook Concrete’s 2005-2006 Annual Report contained evidence that the BMPs then in effect were “not sufficient to reduce pollutant concentrations below [EPA] benchmark levels.” The May 2007 letters informed Cook Concrete that its 2005-2006 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered Cook Concrete to: (1) Identify sources of pollutants at the Facility that contributed to the exceedance(s); (2) Review current BMPs; and (3) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants. The Board also requested that the Facility’s SWPPP and Monitoring Plan be updated to reflect these changes.

Cook Concrete responded to these concerns with a June 29, 2007 letter concurrently submitted with its 2006-2007 Annual Report. Specifically, in its June 29, 2007 letter, Cook Concrete explained how it would modify existing BMPs or implement additional BMPs to reduce or eliminate its discharge of pollutants which contribute to its reported exceedances of benchmarks for Specific Conductance (EC), Iron (Fe), Total Suspended Solids (TSS), and pH. Based on its review of available public documents, CSPA is informed and believes that Cook Concrete continues to discharge these very

same pollutants in excess of benchmarks and that Cook Concrete has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. Cook Concrete's ongoing violations are discussed further below.

**A. Cook Concrete Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

Cook Concrete has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (EC), Iron (Fe), and pH in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Cook Concrete's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. 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 violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of Applicable EPA Benchmarks**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/03/2005	Yard Drain	TSS	191 mg/L	100 mg/L
05/19/2006	Yard Drain	TSS	109 mg/L	100 mg/L
10/04/2006	Yard Drain	TSS	114 mg/L	100 mg/L
10/12/2007	Yard Drain	TSS	142 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Proposed EPA Benchmark**

Date	Outfall	Parameter	Concentration in Discharge	Proposed Benchmark Value
05/04/2005	Yard Drain	Spec. Con.	7330 µmho/cm	200 µmhos/cm
11/03/2005	Yard Drain	Spec. Con.	209 µmho/cm	200 µmhos/cm
05/19/2006	Yard Drain	Spec. Con.	2770 µmho/cm	200 µmhos/cm
10/04/2006	Yard Drain	Spec. Con.	527 µmho/cm	200 µmhos/cm
03/26/2007	Yard Drain	Spec. Con.	600 µmho/cm	200 µmhos/cm
10/12/2007	Yard Drain	Spec. Con.	225 µmho/cm	200 µmhos/cm
04/22/2008	Yard Drain	Spec. Con.	1540 µmho/cm	200 µmhos/cm

**3. Discharges of Storm Water with a pH in Excess of Applicable EPA Benchmark**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
05/04/2005	Yard Drain	pH	9.79	6.0 – 9.0
11/03/2005	Yard Drain	pH	9.08	6.0 – 9.0
05/19/2006	Yard Drain	pH	9.56	6.0 – 9.0
10/04/2006	Yard Drain	pH	9.73	6.0 – 9.0
10/12/2007	Yard Drain	pH	9.19	6.0 – 9.0
04/22/2008	Yard Drain	pH	9.28	6.0 – 9.0

**4. Discharges of Storm Water with Iron (Fe) in Excess of Applicable EPA Benchmark**

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
05/04/2005	Yard Drain	Fe	1.25	1 mg/L
11/03/2005	Yard Drain	Fe	7.05	1 mg/L
10/04/2006	Yard Drain	Fe	2.21	1 mg/L
03/26/2007	Yard Drain	Fe	7.04	1 mg/L
10/12/2007	Yard Drain	Fe	4.88	1 mg/L
04/22/2008	Yard Drain	Fe	1.57	1 mg/L

CSPA's investigation, including its review of Cook Concrete's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for specific conductivity, indicates that Cook Concrete has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Specific Conductivity (EC), and unacceptable levels of pH, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Cook Concrete was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, Cook Concrete is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Cook Concrete has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 2, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since March 2, 2005, 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 CSPA alleges that Cook Concrete has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (EC), Iron (Fe), and pH, and other unmonitored pollutants in violation of

Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Cook Concrete is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 2, 2005.

**B. Cook Concrete Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as Cook Concrete, designated under SIC 3272 are also required to sample for Iron (Fe). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that Cook Concrete has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Cook Concrete has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, Cook Concrete has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Cook Concrete is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 2, 2005. These violations are set forth in greater detail below:

**1. Cook Concrete Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that Cook Concrete has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one discharge point currently designated by Cook Concrete. This failure to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

**2. Cook Concrete Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires Cook Concrete to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as Cook Concrete which are designated as SIC 3272 to analyze their storm water discharge for Iron (Fe). Further, based on its investigation, CSPA is informed and believes that Cook Concrete has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Cook Concrete's failure to monitor these pollutants extends back to at least March 2, 2005. Cook Concrete's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. Cook Concrete Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since March 2, 2005.**

CSPA is informed and believes that available documents demonstrate Cook Concrete's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Cook Concrete is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since March 2, 2005.

**C. Cook Concrete Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Cook Concrete has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity, pH, Iron (Fe) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, Cook Concrete must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Cook Concrete must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Cook Concrete has failed to adequately implement such measures.

Cook Concrete was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Cook Concrete has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that Cook Concrete fails to implement BAT and BCT. Cook Concrete is subject to penalties for violations of the Order and the Act occurring since March 2, 2005.

**D. Cook Concrete Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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 also include BMPs that achieve BAT and BCT

(Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby 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)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Cook Concrete has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Cook Concrete has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Based on its investigation CSPA is informed and believes that the revised SWPPP filed by Cook Concrete on June 29, 2007, fails to include any of the required maps, including, but not limited to, a Facility map. Cook Concrete has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that Cook Concrete fails to develop and implement an effective SWPPP. Cook Concrete is subject to penalties for violations of the Order and the Act occurring since March 2, 2005.

**E. Cook Concrete Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by

the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Cook Concrete is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Iron (Fe) and pH that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Cook Concrete was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Cook Concrete was aware of high levels of these pollutants prior to March 2, 2005. Likewise, Cook Concrete has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Cook Concrete has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since March 2, 2005, and will continue to be in violation every day that Cook Concrete fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Cook Concrete is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since March 2, 2005.

**F. Cook Concrete Has Failed to File Timely, True and Correct Reports.**

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

CSPA's investigation indicates that Cook Concrete has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, Cook Concrete has failed to comply with the Permit and the Act consistently for at least

the past five years; therefore, Cook Concrete has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Cook Concrete submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Cook Concrete's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Cook Concrete is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since March 2, 2005.

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

CSPA puts Cook Concrete, including Mr. L. Edward Shaw, 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, CSPA puts Cook Concrete on notice that it intends to include those persons in this action.

**IV. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

**V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
Erik M. Roper  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
E-mail: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (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 Cook Concrete and L. Edward Shaw to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, 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, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Cook Concrete and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

**ATTACHMENT A**  
**Notice of Intent to File Suit, Cook Concrete (Redding, CA)**  
**Significant Rain Events,\* March 2, 2005-March 2, 2010**

March 18 2005	Jan. 13 2006	Nov. 22 2006	Jan. 08 2008
March 19 2005	Jan. 14 2006	Nov. 26 2006	Jan. 09 2008
March 20 2005	Jan. 17 2006	Dec. 08 2006	Jan. 10 2008
March 21 2005	Jan. 18 2006	Dec. 09 2006	Jan. 12 2008
March 22 2005	Jan. 20 2006	Dec. 10 2006	Jan. 21 2008
March 23 2005	Jan. 28 2006	Dec. 11 2006	Jan. 24 2008
March 24 2005	Jan. 30 2006	Dec. 12 2006	Jan. 25 2008
March 27 2005	Feb. 01 2006	Dec. 13 2006	Jan. 26 2008
April 03 2005	Feb. 02 2006	Dec. 14 2006	Jan. 27 2008
April 07 2005	Feb. 04 2006	Dec. 21 2006	Jan. 29 2008
April 08 2005	Feb. 26 2006	Dec. 26 2006	Jan. 31 2008
April 23 2005	Feb. 27 2006	Dec. 27 2006	Feb. 02 2008
April 24 2005	Mar. 02 2006	Jan. 03 2007	Feb. 21 2008
April 30 2005	Mar. 03 2006	Feb. 07 2007	Feb. 22 2008
May 04 2005	Mar. 05 2006	Feb. 08 2007	Feb. 23 2008
May 05 2005	Mar. 06 2006	Feb. 09 2007	Feb. 24 2008
May 08 2005	Mar. 07 2006	Feb. 10 2007	Mar. 12 2008
May 09 2005	Mar. 12 2006	Feb. 22 2007	Mar. 28 2008
May 15 2005	Mar. 13 2006	Feb. 24 2007	April 22 2008
May 17 2005	Mar. 14 2006	Feb. 27 2007	May 24 2008
May 18 2005	Mar. 15 2006	Mar. 26 2007	Oct. 03 2008
Oct. 14 2005	Mar. 20 2006	April 11 2007	Oct. 04 2008
Oct. 26 2005	Mar. 23 2006	April 19 2007	Oct. 30 2008
Nov. 03 2005	Mar. 24 2006	April 21 2007	Oct. 31 2008
Nov. 07 2005	Mar. 25 2006	April 22 2007	Nov. 01 2008
Nov. 25 2005	Mar. 27 2006	May 01 2007	Nov. 02 2008
Nov. 28 2005	Mar. 28 2006	May 02 2007	Nov. 03 2008
Nov. 29 2005	Mar. 29 2006	May 03 2007	Nov. 08 2008
Nov. 30 2005	Mar. 31 2006	Oct. 09 2007	Dec. 14 2008
Dec. 01 2005	April 01 2006	Oct. 10 2007	Dec. 15 2008
Dec. 17 2005	April 02 2006	Oct. 12 2007	Dec. 18 2008
Dec. 18 2005	April 03 2006	Oct. 16 2007	Dec. 21 2008
Dec. 19 2005	April 05 2006	Oct. 19 2007	Dec. 24 2008
Dec. 20 2005	April 09 2006	Nov. 10 2007	Dec. 28 2008
Dec. 21 2005	April 10 2006	Nov. 19 2007	Jan. 02 2009
Dec. 22 2005	April 11 2006	Dec. 03 2007	Jan. 22 2009
Dec. 25 2005	April 12 2006	Dec. 04 2007	Jan. 24 2009
Dec. 26 2005	April 15 2006	Dec. 06 2007	Feb. 06 2009
Dec. 27 2005	April 16 2006	Dec. 18 2007	Feb. 08 2009
Dec. 28 2005	May 19 2006	Dec. 19 2007	Feb. 10 2009
Dec. 29 2005	May 21 2006	Dec. 20 2007	Feb. 11 2009
Dec. 30 2005	Oct. 04 2006	Dec. 27 2007	Feb. 13 2009
Dec. 31 2005	Nov. 02 2006	Dec. 28 2007	Feb. 14 2009
Jan. 01 2006	Nov. 03 2006	Dec. 29 2007	Feb. 15 2009
Jan. 03 2006	Nov. 11 2006	Jan. 03 2008	Feb. 16 2009
Jan. 04 2006	Nov. 12 2006	Jan. 04 2008	Feb. 17 2009
Jan. 10 2006	Nov. 13 2006	Jan. 05 2008	Feb. 18 2009
Jan. 11 2006	Nov. 16 2006	Jan. 06 2008	Feb. 22 2009

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**  
**Notice of Intent to File Suit, Cook Concrete (Redding, CA)**  
**Significant Rain Events,\* March 2, 2005-March 2, 2010**

Feb.	25	2009
Mar.	01	2009
Mar.	03	2009
April	09	2009
April	24	2009
May	01	2009
May	02	2009
May	03	2009
May	04	2009
May	06	2009
Oct.	13	2009
Oct.	19	2009
Nov.	06	2009
Nov.	17	2009
Nov.	20	2009
Dec.	11	2009
Dec.	12	2009
Dec.	15	2009
Dec.	16	2009
Dec.	20	2009
Dec.	21	2009
Dec.	27	2009
Dec.	29	2009
Jan.	01	2010
Jan.	12	2010
Jan.	13	2010
Jan.	16	2010
Jan.	17	2010
Jan.	18	2010
Jan.	19	2010
Jan.	20	2010
Jan.	21	2010
Jan.	23	2010
Jan.	24	2010
Jan.	25	2010
Feb.	01	2010
Feb.	04	2010
Feb.	06	2010
Feb.	09	2010
Feb.	21	2010
Feb.	23	2010
Feb.	24	2010
Feb.	26	2010

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**EXHIBIT C**

<b>Parameter</b>	<b>Value</b>
pH	6.0 – 9.0
Specific Conductivity	< 200 µmhos/cm
Total Suspended Solids	< 100 mg/L
Total Organic Carbon	< 110mg/L
Iron	< 1 mg/L

1 Michael R. Lozeau (State Bar No. 142893)  
Richard T. Drury (State Bar No. 163559)  
2 David A. Zizmor (State Bar No. 255863)  
LOZEAU DRURY LLP  
3 1516 Oak Street, Suite 216  
Alameda, CA 94501  
4 Tel: (510) 749-9102  
Fax: (510) 749-9103 (fax)  
5 E-mail: michael@lozeaudrury.com  
richard@lozeaudrury.com  
6 david@lozeaudrury.com

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 12. All samples collected from the CASS Facility shall be delivered to a California state  
2 accredited environmental laboratory and shall be analyzed in accordance with the provisions of the  
3 General Permit.

4 13. Analytical methods used by CASS or its analytical laboratory shall be adequate to  
5 detect the individual constituents at or below the Levels of Concern set forth in Paragraph 15.

6 14. Results from CASS's sampling and analysis shall be provided to GCM within  
7 fourteen (14) days of receipt of the final written laboratory report from each sampling event.

8 **MEET AND CONFER REGARDING**  
9 **EXCEEDANCE OF LEVELS OF POTENTIAL CONCERN**

10 15. If analytical results of storm water samples taken by CASS during the 2010-2011  
11 and/or 2011-2012 wet season indicate that storm water discharges from the Facility exceed the  
12 following Levels of Concern – pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L; oil  
13 and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; aluminum – 0.75  
14 mg/L; zinc – .117 mg/L, 0.090 mg/L; iron – 1 mg/L; copper – .0636 mg/L, 0.0048 mg/L, lead –  
15 0.0816 mg/L, nickel – 1.417 mg/L, 0.074 mg/L, manganese – 1.0 mg/L, magnesium – 0.0636 mg/L,  
16 chromium VI – 1.1 mg/L, and arsenic – 0.16854 mg/L – CASS agrees to take additional feasible  
17 measures aimed at reducing pollutants in the Facility's storm water to levels at or below these levels.

18 16. In furtherance of that objective, when one or more analytical results of storm water  
19 samples taken by CASS during the 2010-2011 and/or 2011-2012 wet season indicate that storm  
20 water discharges from the Facility exceed the following Levels of Concern, CASS shall prepare a  
21 written statement (“Memorandum”) discussing:

- 22 (1) Any exceedance or exceedances of any Level of Concern;
- 23 (2) An explanation of the possible cause(s) and/or source(s) of any exceedance; and
- 24 (3) Additional feasible best management practices (“BMPs”) that will be taken to further  
25 reduce the possibility of future exceedance(s).

26 17. Such Memorandum shall be e-mailed and sent via first class mail to GCM not later  
27 than July 30th following the conclusion of each wet season. Any additional measures set forth in the  
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  
28

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

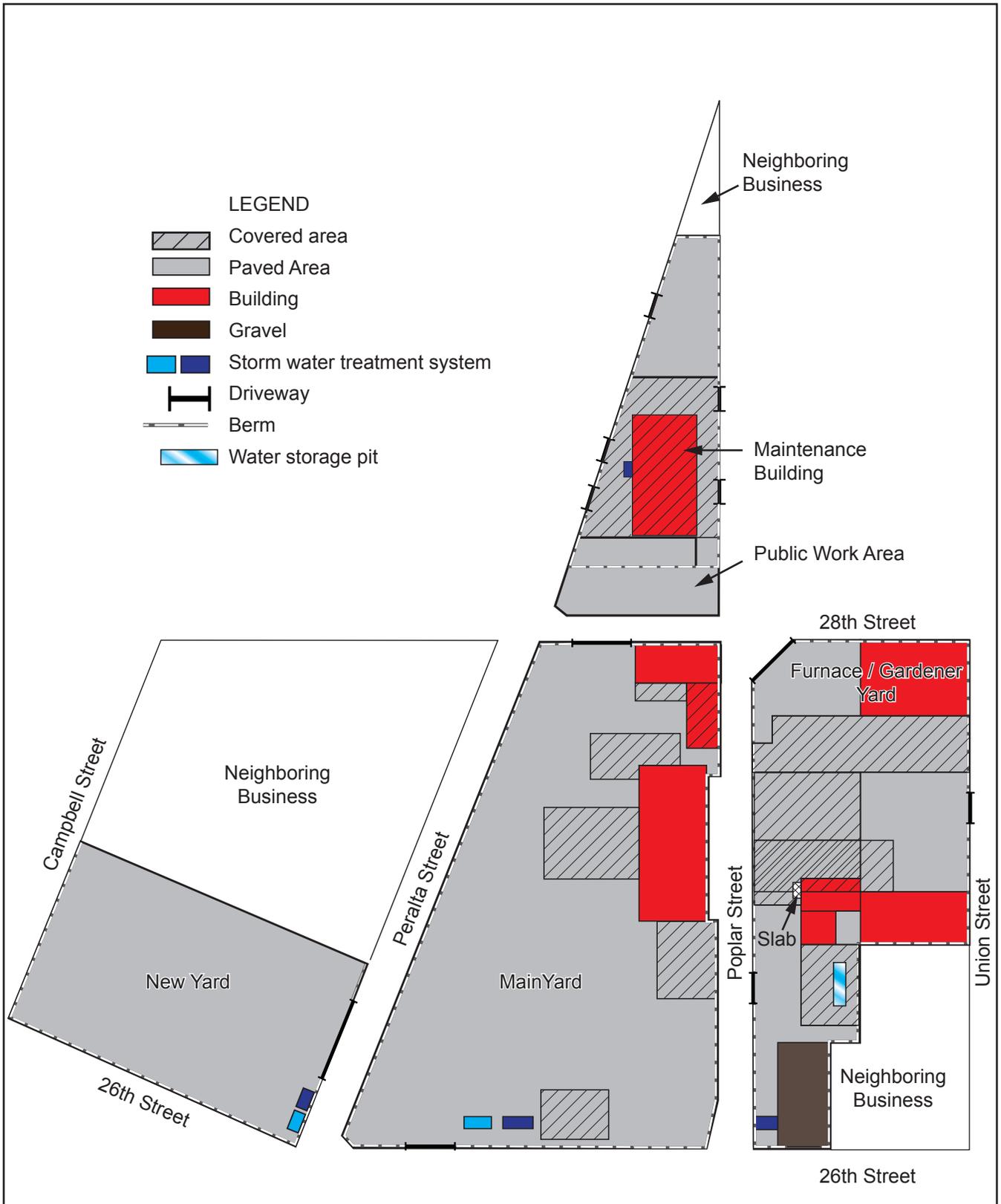
21 **APPROVED AND SO ORDERED.**

22  
23 Date: \_\_\_\_\_

UNITED STATES DISTRICT COURT JUDGE

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**EXHIBIT 1**



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

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**EXHIBIT 2**

E-filing

1 Michael R. Lozeau (State Bar No. 142893)  
Richard T. Drury (State Bar No. 163559)  
2 Douglas J. Chermak (State Bar No. 233382)  
LOZEAU DRURY LLP  
3 1516 Oak Street, Suite 216  
Alameda, CA 94501  
4 Tel: (510) 749-9102  
Fax: (510) 749-9103 (fax)  
5 E-mail: michael@lozeaudrury.com  
richard@lozeaudrury.com  
6 doug@lozeaudrury.com

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**

**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

MHP

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 average) – Marine	#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,

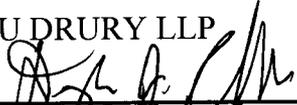
22 k. Award any such other and further relief as this Court may deem appropriate.

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



T 510.749.9102  
F 510.749.9103

1516 Oak Street, Suite 216  
Alameda, Ca 94501

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[doug@lozeaudrury.com](mailto: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](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.

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
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.

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
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  
doug@lozeaudrury.com

**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  
Sacramento, CA 95812-0100

Eric H. Holder, Jr., U.S. Attorney General  
U.S. Department of Justice  
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	

1 LAWYERS FOR CLEAN WATER, INC.  
2 Daniel Cooper (Bar No. 153576)  
3 Email: Daniel@lawyersforcleanwatercom  
4 Martin McCarthy (Bar No. 194915)  
5 Email: Martin@lawyersforcleanwater.com  
6 1004-A O'Reilly Avenue  
7 San Francisco, California 94129  
8 Telephone: (415) 440-6520  
9 Facsimile: (415) 440-4155

10 Attorney for Plaintiff  
11 INLAND EMPIRE WATERKEEPER, a program of  
12 ORANGE COUNTY WATERKEEPER

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 EASTERN DIVISION - RIVERSIDE

16 INLAND EMPIRE WATERKEEPER, a  
17 program of ORANGE COUNTY  
18 WATERKEEPER, a non-profit corporation,

19 Plaintiff,

20 v.

21 J LEE'S METALS, INC., dba D&M  
22 METALS, and J LEE'S METALS, INC., a  
23 California corporation,

24 Defendants.

Civil Case No.: EDCV 09-1549 VAP  
(OPx)

**[Proposed]**  
**CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 et seq.)**

25 ///

26 ///

27 ///

28 ///

1           **WHEREAS**, Inland Empire Waterkeeper, a program of Orange County  
2 Coastkeeper (“Waterkeeper” or “Plaintiff”) is a non-profit corporation dedicated to the  
3 preservation, protection, and defense of the environment, the wildlife, and the natural  
4 resources of Orange County and Inland Empire area receiving waters;

5           **WHEREAS**, J Lee’s Metals, Inc., dba D & M Metals, Inc., and J. Lee’s Metals,  
6 Inc. (collectively “Defendants”), operate a scrap metals recycling operation located at  
7 840 E. State Street, in Ontario, California 91761 (hereinafter the “D & M Metals  
8 Facility,” “Site,” or “Facility”).

9           **WHEREAS**, Waterkeeper contends that the operations at the D & M Metals  
10 Facility result in discharges of pollutants into storm drains, West Cucamonga Creek,  
11 Cucamonga Creek, the Santa Ana River, and ultimately the Pacific Ocean (collectively  
12 referred to as the “Receiving Waters”); and that discharges from the Facility are  
13 regulated by the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean  
14 Water Act”, “CWA” or “Act”), Sections 301 (a) and 402, 33 U.S. C. §§ 1311 (a), 1342;

15           **WHEREAS**, on June 10, 2009, Waterkeeper served Defendants, the United States  
16 Environmental Protection Agency (“EPA”), EPA Region IX, the State Water Resources  
17 Control Board (“State Board”) and the Regional Water Quality Control Board  
18 (“Regional Board”), with a notice of intent to file suit (“60-Day Notice”) under Sections  
19 505 (a) and (b) of the CWA, 33 U.S.C. § 1365 (a) and (b). The 60-Day Notice alleged  
20 that the recipients had in the past and continues to violate Sections 301 (a) and 402 of  
21 the Act, 33 U.S.C. §§ 1311 (a) and 1342, by discharging pollutants into Receiving  
22 Waters in violation of National Pollution Discharge Elimination System (“NPDES”)   
23 General Permit No. CAS0000001 [State Board] Water Quality Order No. 92-12-DWQ,  
24 as amended by Order No. 97-03-DWQ (“Industrial Permit”) and the Act;

25           **WHEREAS**, on August 13, 2009, Waterkeeper filed a complaint against  
26 Defendants in the United States District Court, Central District of California (Civil Case  
27 No. EDCV 09-1549 VAP (OPx)) entitled *Inland Empire Waterkeeper et al. v. J Lee’s  
28 Metals, Inc. et al.* (“Complaint”);

1           **WHEREAS**, on August 24, 2009, Waterkeeper filed a corrected complaint against  
2 Defendants with the same caption set forth in the preceding paragraph, which corrected  
3 a typographical error in the Complaint (“Corrected Complaint”);

4           **WHEREAS**, Defendants deny all allegations of the Complaint and Corrected  
5 Complaint and the contentions of Waterkeeper, as set forth in these Recitals and in the  
6 60-Day Notice;

7           **WHEREAS**, Waterkeeper and Defendants (collectively referred to herein as the  
8 “Settling Parties” or “Parties”) have agreed that it is in the Parties’ mutual interest to  
9 enter into a Consent Decree setting forth terms and conditions appropriate to resolving  
10 the allegations set forth in the Complaint without further proceedings and without any  
11 admission of liability on the part of the Defendants;

12           **WHEREAS**, Defendants intend to continue their industrial activities at the D & M  
13 Metals Facility and will therefore undertake additional measures to control stormwater  
14 pollution associated with continuing industrial activities;

15           **WHEREAS**, this Consent Decree shall be submitted to the United States  
16 Department of Justice and EPA for the statutory review period pursuant to 33 U.S.C. §  
17 1365 (c) and 40 C.F.R. § 135.5;

18           **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree  
19 shall be made in compliance with all applicable Federal and State laws and local rules  
20 and regulations.

21           **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
22 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**  
23 **FOLLOWS:**

24           1.     The Court has jurisdiction over the subject matter of this action pursuant to  
25 Section 505 (a)(1)(A) of the Act, 33 U.S.C. § 1365 (a)(1)(A);

26           2.     Venue is appropriate in the Central District Court pursuant to Section 505(c)  
27 (1) of the Act, 33 U.S.C. § 1365 (c)(1), because the D & M Metals Facility at which the  
28 alleged violations took place is located within this District;

1           3.     The Complaint and Corrected Complaint state a claim upon which relief  
2 may be granted pursuant to Section 505 of the Act, 33 U.S.C. § 1365.

3           4.     Waterkeeper has standing to bring this action.

4           5.     The Court shall retain jurisdiction over this matter for purposes of  
5 interpreting, modifying or enforcing the terms of this Consent Decree, or as long  
6 thereafter as is necessary for the Court to resolve any motion to enforce this Consent  
7 Decree.

8 **I.    CONSENT DECREE OBJECTIVES**

9           6.     It is the express purpose of the Parties entering into this Consent Decree to  
10 further the objectives set forth in Sections 101 *et seq.* of the CWA, 33 U.S.C. §§ 1251 *et*  
11 *seq.*, and to resolve those issues alleged by Waterkeeper in its Complaint. In light of  
12 these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply  
13 with the provisions of this Consent Decree and to comply with the requirements of the  
14 Industrial Permit and all applicable provisions of the CWA at the D & M Metals  
15 Facility. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires  
16 that the D & M Metals Facility “not cause or contribute to the exceedance of an  
17 applicable water quality limit.” Effluent Limitation B(3) of the Industrial Permit  
18 requires that Best Management Practices (“BMPs”) be developed and implemented to  
19 achieve Best Available Technology (“BAT”) and the Best Conventional Pollutant  
20 Control Technology (“BCT”). Defendants are required to develop and implement  
21 BMPs necessary to comply with the Industrial Permit’s requirement to achieve  
22 compliance with Water Quality Standards and BAT/BCT standards. BMPs must be  
23 developed and implemented to prevent discharges or to reduce contamination in storm  
24 water discharged from the D & M Metals Facility sufficient to achieve the numeric  
25 action limits detailed in paragraph 12 below.

26 **II.   COMMITMENTS OF THE PARTIES**

27           **A.    Industrial Stormwater Pollution Control Measures**

1           7.     Design Storm Event. The Parties agree that the Design Storm Event for the  
2 D & M Metals Facility is a 25-year 24-hour return period rain event as defined by the  
3 County of San Bernardino Hydrology Manual (August 1986) with an assumed dry  
4 antecedent condition and 5.87 total inches of rainfall over a 24-hour period; or any  
5 single event exceeding a rainfall intensity of 1.67 inches in one hour.

6           8.     BMP Plan. The BMP Plan attached as Exhibit A hereto is designed to  
7 capture and infiltrate stormwater generated during rain events up to and including the  
8 Design Storm Event (the "Infiltration Unit") within the D & M Metals Facility  
9 Containment Zone (set forth on and attached hereto as Exhibit B). The BMPs set forth  
10 in the plan shall be implemented to ensure that no stormwater discharges occur from the  
11 D & M Metals Facility Containment Zone during rain events up to and including the  
12 Design Storm Event, and so that no pollutants from the D & M Metals Facility's  
13 stormwater infiltration system cause degradation of groundwater. As set forth on the  
14 attached BMP Plan (Exhibit A), the location and design of the Infiltration Unit shall be  
15 accessible for future inspection and maintenance. Defendants shall also ensure that the  
16 soils and groundwater conditions at the installation site of the Infiltration Unit are at  
17 least as conducive to effective infiltration as those on the property owned and/or  
18 operated by Defendants directly to the east of the D & M Metals Facility operations  
19 yard, shown on Exhibit B as area "YY". If the proposed site of the Infiltration Unit  
20 does not provide equally effective infiltration capacity, Defendants and Waterkeeper  
21 shall meet and confer to determine an alternate site for the Infiltration Unit. Defendants  
22 shall continue to properly implement the BMP Plan during the life of this Consent  
23 Decree.

24           9.     Stormwater discharges from the D & M Metals Facility that do occur shall  
25 be monitored as described in Section B below of this Consent Decree during the life of  
26 this Consent Decree, and discharges from the D & M Metals Facility Containment Zone  
27 during storm events less than the Design Storm Event shall constitute a breach of this  
28 Consent Decree.

1 10. Non-stormwater discharges from the D & M Metals Facility Containment  
2 Zone during the life of this Consent Decree not authorized by the Industrial Permit shall  
3 be considered breaches of this Consent Decree.

4 **B. Stormwater Sampling and Numeric Action Levels**

5 11. Sampling. During the life of this Consent Decree, Defendants shall sample  
6 every offsite discharge from the D & M Metals Facility Containment Zone and shall  
7 provide the results of such sampling to Waterkeeper in accordance with the provisions  
8 set forth below. Samples shall be evaluated consistent with the requirements of the  
9 Industrial Permit and shall have detection limits sufficiently sensitive to evaluate  
10 compliance with the Numeric Action Levels set forth in paragraph 12.

11 12. Numeric Action Levels. During the life of this Consent Decree,  
12 contaminants in discharges occurring during storm events smaller than the Design  
13 Storm Event from the D & M Metals Facility Containment Zone shall not exceed the  
14 Numeric Action Levels set forth in Table 1, consistent with paragraphs 13 and 14  
15 below.

16 **Table 1. Numeric Action Levels for D & M Facility Discharges**

17 <b>Contaminant</b>	18 <b>Numeric Action Level</b>
19 Total suspended solids	100 mg/L
20 Copper	0.0636 mg/L
21 Lead	0.0816 mg/L
22 Zinc	0.117 mg/
23 Oil and grease	15 mg/L
24 Aluminum	0.750 mg/L
25 Arsenic	0.16854 mg/L
26 Cadmium	0.0159 mg/L
27 Iron	1.0 mg/L
28 Mercury	0.0024 mg/L
Nickel	1.417 mg/L
Silver	0.0318 mg/L
Chemical oxygen demand	120 mg/L
pH	6.0-9.0

1           13.    Comparing Analytical Monitoring Results to Numeric Action Levels:

2   Following each sampling event, discharge data for storm events smaller than the Design  
3   Storm Event will be compared to the Numeric Action Levels in paragraph 12 above. In  
4   the event that one or more of the pollutant concentrations exceed the Numeric Action  
5   Levels, Defendants shall prepare an Action Plan as described below in paragraph 15,  
6   unless Defendants can demonstrate that contaminant mass for that parameter has been  
7   reduced through onsite stormwater infiltration and/or diversion of runoff from existing  
8   or newly installed roofs or canopies to avoid contact with industrial contaminants  
9   consistent with the requirements of paragraph 14 below.

10           14.    Comparing Analytical Monitoring Results to Numeric Action Levels

11   Considering Mass Reduction Through Infiltration and/or Diversion: In the event that  
12   onsite infiltration and/or diversion are implemented to reduce the mass of contaminants  
13   discharged from the D & M Metals Facility, the following method will be used to assess  
14   compliance with the Numeric Action Levels described in paragraph 12 for any  
15   discharge point where stormwater discharges occur during storm events smaller than the  
16   Design Storm Event.

17           a.     Based on existing site conditions (100 percent impervious surfaces  
18   and no stormwater infiltration or diversion) and the amount of rainfall that falls on the D  
19   & M Metals Facility during each of the monitored storm events described in paragraphs  
20   11 and 12, the volume of water that would have discharged from the D & M Metals  
21   Facility prior to installation of the infiltration and/or diversion measures shall be  
22   calculated.

23           b.     Using the Numeric Action Levels described in paragraph 12, the mass  
24   of “allowable” pollutants will be calculated (volume of water assuming no  
25   infiltration/diversion multiplied by the Numeric Action Levels) for each constituent  
26   listed in paragraph 12.

1 c. The actual contaminant mass discharged for each of the pollutants  
2 listed in paragraph 12 will be calculated (volume of water actually discharged  
3 multiplied by the analytical results for storm events where discharges occur);

4 d. For each of the monitored storm events, the calculated mass of actual  
5 contaminants discharged under subparagraph (c) above will be compared to the mass of  
6 allowable contaminants calculated under subparagraph b above. If the mass of actual  
7 contaminants is above the allowable mass of contaminants, an Action Plan shall be  
8 prepared as described in paragraph 15 below.

9 15. Numeric Action Level Action Plan. In the event that one or more of the  
10 Numeric Action Levels in Table 1 are found to be exceeded using the procedures set  
11 forth in paragraphs 13 and 14 above during storms of intensity less than the Design  
12 Storm, Defendants shall produce an Action Plan within 45 days of receipt of laboratory  
13 reports demonstrating the exceedance. The Action Plan shall include additional BMPs  
14 designed to achieve compliance with the Numeric Action Levels set forth in Table 1 and  
15 include deadlines for implementation of the proposed BMPs that will be as soon as  
16 practicable, but in no event later than the beginning of the next wet season as defined by  
17 the Industrial Permit. Defendants agree to submit the Action Plan to Waterkeeper for  
18 review and comment as soon as it is completed but in any event no later than 45 days  
19 following receipt of laboratory reports for the data demonstrating the exceedance.  
20 Waterkeeper shall provide comments, if any, to the Defendants within 30 days of  
21 receipt. Defendants shall incorporate Waterkeeper's comments into the Action Plan and  
22 implement the revisions within 14 days of receiving Waterkeeper's comments. If any of  
23 Waterkeeper's comments are not utilized, Defendants shall justify in writing why any  
24 comment is not being incorporated within 14 days of receiving comments. Any disputes  
25 as to the adequacy of the Action Plan shall be resolved pursuant to the dispute resolution  
26 provisions of this Consent Decree, set out at paragraphs 28 through 31 below.  
27 Defendants shall notify Waterkeeper in writing when the Action Plan has been  
28 implemented.

1           **C. Vadose Zone Sampling**

2           16. Sampling. During the first two years of the Consent Decree, Defendants  
3 shall collect samples of infiltrating stormwater in areas where significant stormwater  
4 infiltration occurs. During the first and second wet seasons, vadose zone samples will be  
5 collected after at least three storm events from a minimum of one lysimeter or similar  
6 device. At least two lysimeters shall be installed in mutually agreed locations on the  
7 edge of the infiltration field. The lysimeter samples will be analyzed for the metals (both  
8 total and dissolved) presented in Table 1.

9           17. Vadose Zone Results Evaluation. The vadose zone sampling results from the  
10 first wet season under this Consent Decree (October 1, 2010-May 31, 2011) will be used  
11 to prepare a Stormwater Infiltration Evaluation Report, which will evaluate the potential  
12 for infiltrating stormwater to degrade groundwater below the D & M Metals Facility.  
13 The evaluation of potential impacts to groundwater will include a comparison of the  
14 vadose zone sample results to Maximum Contaminant Levels (MCLs) established by  
15 US EPA for the metals in Table 1 in groundwater. If any MCL is exceeded, Defendants  
16 shall inform Waterkeeper within 48 hours of receiving the result and shall prepare a  
17 plan to perform additional assessments to evaluate the potential for MCL exceedances  
18 in groundwater itself (Contingency Plan) to be ready and available to implement if the  
19 wet season mean of sampling results from the lysimeter exceeds the MCL for any metal  
20 listed on Table 1. The Contingency Plan, if necessary, will be included as part of the  
21 Stormwater Infiltration Evaluation Report and may include literature research regarding  
22 background concentrations of metals in soil and groundwater; collection and analysis of  
23 background soil, pore water, and groundwater samples; additional monitoring of the  
24 existing lysimeter; installation and monitoring of deeper lysimeters; installation and  
25 monitoring of upgradient/downgradient groundwater wells; vadose zone modeling;  
26 additional pretreatment BMPs, or other methods as appropriate to assess or to mitigate  
27 the potential for exceedances of MCLs in groundwater. Defendants shall prepare for the  
28

1 Stormwater Infiltration Evaluation Report, including potential vadose zone modeling,  
2 by collecting appropriate soils and hydrogeologic data when the lysimeters are installed.

3 18. Defendants agree to submit the Contingency Plan, if required under  
4 paragraph 17, to Waterkeeper as part of the Stormwater Infiltration Evaluation Report  
5 for Waterkeeper's review and comment no later than 60 days following the end of the  
6 2010/2011 wet season. In addition to evaluating the potential for infiltrating stormwater  
7 to degrade groundwater, the report will provide recommendations for additional  
8 pretreatment BMPs as appropriate to protect groundwater. The report will also establish  
9 "trigger levels" for infiltrating stormwater collected from the lysimeters, which if  
10 exceeded, will require Defendants to prepare Stormwater Infiltration Evaluation Reports  
11 at the completion of the second wet season under this Consent Decree. Waterkeeper  
12 shall provide comments, if any, to Defendants within 30 days of receipt. Defendants  
13 shall incorporate Waterkeeper's comments into the contingency plan, if any, and into the  
14 Stormwater Infiltration Evaluation Report, and re-issue this Report to Waterkeeper  
15 within 14 days of receiving Waterkeeper's comments. If any of Waterkeeper's comments  
16 are not utilized, Defendants shall justify in writing why any comment is not being  
17 incorporated within 14 days of receiving comments. Any disputes as to the adequacy of  
18 the contingency plan, if any, and the Stormwater Infiltration Evaluation Report, shall be  
19 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at  
20 paragraphs 28 through 31 below. If the wet season mean of vadose sampling results  
21 exceeds the MCL or background if background exceeds the MCL for any metal,  
22 Defendants shall implement the contingency plan immediately upon its finalization.

23 **D. Monitoring and Reporting**

24 19. Site Inspections. Waterkeeper's Water Quality Engineer, accompanied by  
25 Waterkeeper's attorney or other representative approved by Defendants, may conduct up  
26 to one Site Inspection per year at the D & M Metals Facility during the life of this  
27 Consent Decree. The Site Inspections shall occur during normal business hours and  
28 Waterkeeper shall provide Defendants with 48 hours notice prior to each inspection.

1 During the Site Inspections, Waterkeeper and/or its representatives shall be allowed  
2 access to the D & M Metals Facility's SWPPP and monitoring records and to all  
3 monitoring reports and data for the Facility. During the Site Inspections, Waterkeeper  
4 and/or its representatives may collect samples of stormwater discharges from the D & M  
5 Metals Facility, if any. A certified California laboratory shall analyze stormwater  
6 samples collected by Waterkeeper and copies shall be provided to Defendants within ten  
7 (10) business days of receipt. At the request of Defendants, the samples shall be split  
8 and one half provided to Defendants to allow Defendants to have their own certified  
9 California laboratory analyze stormwater samples collected by Waterkeeper, in which  
10 case Defendants shall provide their laboratory results to Waterkeeper within ten (10)  
11 business days of receipt. Waterkeeper shall make all reasonable efforts to ensure that its  
12 inspections are scheduled in such a manner as to allow Defendants' compliance officer  
13 to be present at all inspections.

14 20. Compliance Monitoring and Oversight. Defendants agree to help defray  
15 Waterkeeper's monitoring costs by reimbursing Waterkeeper Two Thousand Dollars  
16 (\$2,000.00) within 60-days of the Effective Date of this Consent Decree. Defendants  
17 agree to make compliance monitoring and oversight funds payable to "Lawyers for  
18 Clean Water Attorney Client Trust Account" and deliver them by certified mail or  
19 overnight delivery to Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San  
20 Francisco, California 94129, attention Layne Friedrich. Waterkeeper shall provide  
21 copies of any invoicing for Site Inspections and compliance oversight within 30-days of  
22 receiving a written request by Defendants. Any compliance monitoring money  
23 remaining when this Consent Decree terminates shall be refunded to Defendants.

24 21. Reporting. During the life of this Consent Decree, each January 15 and July  
25 15, Defendants shall provide Waterkeeper with a copy of all stormwater-related  
26 compliance and monitoring data, including inspection reports, related to the D & M  
27 Metals Facility for the wet season. The reports shall be submitted every January 15 for  
28 the period from October 1 to December 31, and on July 15 for the period from January 1

1 through April 30<sup>th</sup>. During the life of this Consent Decree, Defendants shall provide  
2 Waterkeeper with all laboratory analyses related to the D & M Metals Facility within 7  
3 business days of Defendants' receipt of such information.

4 22. Document Provision. During the life of this Consent Decree, Defendants  
5 shall copy Waterkeeper on all documents related to water quality at the D & M Metals  
6 Facility that are submitted to the Regional Board, the State Board, and/or any State or  
7 local agency or municipality. Such reports and documents shall be provided to  
8 Waterkeeper concurrently as they are sent to the agencies and/or municipalities.

9 **E. ENVIRONMENTAL PROJECTS AND FEES**

10 23. Environmental Mitigation Project. Defendants agree to pay Four Thousand  
11 Dollars (\$4,000.00) to the Public Interest Green Fund at the Orange County Community  
12 Foundation, 30 Corporate Park, Suite 410 Irvine, California 92606, [www.oc-cf.org](http://www.oc-cf.org).  
13 The Public Interest Green Fund is a nonprofit organization that uses its funds to support  
14 environmental advocacy by area law students, either via stipends or scholarships. This  
15 mitigation payment shall be used to support student advocacy in projects that reduce or  
16 mitigate the impacts of storm water pollution in Orange County and the Inland Empire.  
17 Defendants shall make the mitigation payment within 60-days of the Effective Date of  
18 this Consent Decree and mail the payment via certified mail or overnight delivery to the  
19 Public Interest Green Fund. Defendants shall provide Waterkeeper with a copy of such  
20 payment.

21 24. Waterkeeper's Fees and Costs. Defendants agree to reimburse Waterkeeper  
22 for Waterkeeper's investigation fees and costs, expert fees and costs, reasonable  
23 attorneys' fees, and other costs incurred as a result of investigating and preparing the  
24 lawsuit, and negotiating a resolution of this matter, totaling Fifty-six Thousand Dollars  
25 (\$56,000.00). Such payment shall be made within sixty (60) days of the Effective Date,  
26 payable to "Lawyers for Clean Water Attorney Client Trust Account" and delivered by  
27 certified mail or overnight delivery to: Lawyers for Clean Water, Inc., 1004 O'Reilly  
28 Avenue, San Francisco, California 94129, attention Layne Friedrich.

1           **F. COMMITMENTS OF PLAINTIFF**

2           25. Within 10-days of the execution of this Consent Decree by the Parties,  
3 Waterkeeper shall file a Notice of Tentative Settlement and Notice of 45-Day Review in  
4 the United States District Court for the Central District of California (“District Court”).

5           26. Review by Federal Agencies. Plaintiff shall submit this Consent Decree to  
6 the United States Environmental Protection Agency (“EPA”) and the United States  
7 Department of Justice (“DOJ”) within three days of the execution of this Consent  
8 Decree for review consistent with 40 C.F.R. § 135.5. In the event that EPA or DOJ  
9 comments negatively on the provisions of this Consent Decree, the Parties agree to meet  
10 and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

11           27. Plaintiff shall lodge this Consent Decree with the District Court within forty-  
12 eight (48) days after receipt by EPA and DOJ of the Consent Decree for the review set  
13 forth in paragraph 26 above. Waterkeeper is responsible for notifying Defendants of the  
14 District Court’s entry of the Order dismissing these claims with prejudice. Such  
15 notification can be satisfied by the Central District of California’s Case  
16 Management/Electronic Case Filing (“CM/ECF”) notification to the Parties that the  
17 Order was executed and entered by the District Court.

18           **G. DISPUTE RESOLUTION**

19           28. This Court shall retain jurisdiction over this matter for a period of five years  
20 from the date of entry of the Consent Decree for the purposes of implementing and  
21 enforcing the terms and conditions of this Consent Decree, and adjudicating all disputes  
22 among the parties that may arise under the provisions of this Consent Decree. The  
23 Court shall have the power to enforce this Consent Decree with all available legal and  
24 equitable remedies, including contempt.

25           29. Meet and Confer. A party to this Consent Decree shall invoke the dispute  
26 resolution procedures of this Section by notifying all other Parties in writing of the  
27 matter(s) in dispute and of the party's intention to resolve the dispute under this Section.  
28 The Parties shall then meet and confer in good faith (either telephonically or in person)

1 in an attempt to resolve the dispute informally over a period of 14-calendar days from  
2 the date of the notice.

3 30. If the Parties cannot resolve a dispute by the end of meet and confer  
4 informal negotiations, the party invoking the dispute resolution provision shall provide  
5 notice to the other party that it intends to invoke formal dispute resolution by filing a  
6 motion before the United States District Court for the Central District of California.

7 31. If Waterkeeper initiates a motion or proceeding before the Court relating to  
8 enforcement of the terms and conditions of this Consent Decree, and is determined by  
9 the Court to be the prevailing party, Waterkeeper shall be entitled to recover fees  
10 incurred to enforce the terms of this Consent Decree consistent with the provisions of  
11 Sections 505 and 309 of the CWA, 33 U.S.C. §1365 and § 1319.

12 **III. RETENTION OF JURISDICTION AND TERMINATION**

13 32. During the life of this Consent Decree, the Court shall retain jurisdiction  
14 over this matter for purposes of interpreting, modifying or enforcing the terms of this  
15 Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion  
16 to enforce this Consent Decree filed within 60-days after completion of the obligations  
17 set forth in the Consent Decree. This Consent Decree and the Court's jurisdiction shall  
18 terminate five years from the Effective Date.

19 **IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

20 33. In consideration of the above, upon the Effective Date of this Consent  
21 Decree, the Parties hereby fully release, except for claims for the Defendants' failure to  
22 comply with this Consent Decree and as expressly provided below, each other and their  
23 respective successors, assigns, officers, agents, employees, and all persons, firms and  
24 corporations having an interest in them, from any and all alleged CWA violations  
25 claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

26 34. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to  
27 address or take any position that it deems necessary or appropriate in any formal or  
28 informal proceeding before the Regional Board, EPA, or any other judicial or

1 administrative body on any other matter relating to stormwater discharges from the D &  
2 M Metals Facility occurring or arising after the Effective Date of the Consent Decree  
3 but specifically excluding the discharges and all other matters addressed by this Consent  
4 Decree.

5 **V. MISCELLANEOUS PROVISIONS**

6 35. No Admission of Liability. Neither this Consent Decree, the  
7 implementation of additional BMPs nor any payment pursuant to the Consent Decree  
8 shall constitute or be construed as a finding, adjudication, admission or  
9 acknowledgment of any fact, law, or liability, nor shall it be construed as an admission  
10 of violation of any law, rule, or regulation. Defendants maintain and reserve all  
11 defenses they may have to any alleged violations that may be raised in the future.

12 36. Force Majeure. Force Majeure includes any act of God, war, fire,  
13 earthquake, windstorm, flood or natural catastrophe; civil disturbance, vandalism,  
14 sabotage or terrorism; restraint by court order or public authority or agency; or action or  
15 non-action by, or inability to obtain the necessary authorizations or approvals from any  
16 governmental agency. Force Majeure shall not include normal inclement weather,  
17 economic hardship or inability to pay. Any party seeking to rely upon this paragraph to  
18 excuse or postpone performance, shall have the burden of establishing that it could not  
19 reasonably have been expected to avoid and which by exercise of due diligence has  
20 been unable to overcome the failure of performance. Defendants shall exercise due  
21 diligence to resolve and remove any force majeure event.

22 37. Construction. The language in all parts of this Consent Decree shall be  
23 construed according to its plain and ordinary meaning, except as to those terms defined  
24 in the Industrial Permit, the Clean Water Act, or specifically herein.

25 38. Choice of Law. The laws of the United States shall govern this Consent  
26 Decree.

1           39. Severability. In the event that any provision, paragraph, section, or sentence  
2 of this Consent Decree is held by a court to be unenforceable, the validity of the  
3 enforceable provisions shall not be adversely affected.

4           40. Correspondence. All notices required herein or any other correspondence  
5 pertaining to this Consent Decree shall be sent by overnight mail or courier as follows:

6           If to Plaintiff:

7           Daniel Cooper  
8           Martin McCarthy  
9           Lawyers for Clean Water, Inc.  
10          1004 A O'Reilly Ave.  
11          San Francisco, CA 94129

12          With copies to:

13          Garry Brown  
14          Orange County Waterkeeper  
15          3151 Airway Ave, Suite F-110  
16          Costa Mesa, CA 92626

17          If to Defendants:

18          Wayne S. Rosenbaum  
19          Foley & Lardner LLP  
20          402 W. Broadway, Suite 2100  
21          San Diego, CA 92101

22          With copies to:

23          Albert Lee  
24          D & M Metals/ J. Lee's Metals, Inc.  
25          840 E. State Street  
26          Ontario, CA 91761

27          Notifications of communications shall be deemed submitted the next business day  
28 after having been deposited with an overnight mail/delivery service, or within three days  
after mailing via regular or certified mail. Any change of address or addresses shall be

1 communicated in the manner described above for giving notices. In addition, the Parties  
2 may agree to transmit documents electronically or by facsimile.

3 41. Effect of Consent Decree. Except as provided herein, Plaintiff does not, by  
4 its consent to this Consent Decree, warrant or aver in any manner that Defendants'  
5 compliance with this Consent Decree will constitute or result in compliance with any  
6 Federal or State law or regulation. Nothing in this Consent Decree shall be construed to  
7 affect or limit in any way the obligation of the Defendants to comply with all Federal,  
8 State, and local laws and regulations governing any activity required by this Consent  
9 Decree.

10 42. Counterparts. This Consent Decree may be executed in any number of  
11 counterparts, all of which together shall constitute one original document. Telecopy,  
12 email of a .pdf signature and/or facsimile copies of original signature shall be deemed to  
13 be originally executed counterparts of this Consent Decree.

14 43. Modification of the Consent Decree. This Consent Decree, and any  
15 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
16 written instrument, signed by the Parties.

17 44. Full Settlement. This Consent Decree constitutes a full and final settlement  
18 of this matter.

19 45. Integration Clause. This is an integrated Consent Decree. This Consent  
20 Decree is intended to be a full and complete statement of the terms of the agreement  
21 between the Parties and expressly supersedes any and all prior oral or written  
22 agreements covenants, representations, and warranties (express or implied) concerning  
23 the subject matter of this Consent Decree.

24 46. Authority. The undersigned representatives for Plaintiff and Defendants  
25 each certify that he/she is fully authorized by the party whom he/she represents to enter  
26 into the terms and conditions of this Consent Decree.

27 47. The provisions of this Consent Decree apply to and bind the Parties,  
28 including any successors or assigns, upon execution of the Consent Decree. The Parties

1 certify that their undersigned representatives are fully authorized to enter into this  
2 Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to  
3 its terms.

4 48. The Parties agree to be bound by this Consent Decree and not to contest its  
5 validity in any subsequent proceeding to implement or enforce its terms. By entering  
6 into this Consent Decree, the Defendants do not admit liability for any purpose as to any  
7 allegation or matter arising out of this Action.

8 49. The term "Effective Date," as used in this Consent Decree, shall mean the  
9 tenth (10<sup>th</sup>) calendar day after the date that Waterkeeper lodges the Consent Decree with  
10 the District Court for approval, or the date the District Court signs the Consent Decree,  
11 whichever date occurs earlier.

12 The undersigned representatives for Waterkeeper and Defendants each certify that  
13 he/she is fully authorized by the party whom he/she represents to enter into the terms  
14 and conditions of this Consent Decree and that this Consent Decree binds that party.

15 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as  
16 of the date first set forth below.

17  
18 LAWYERS FOR CLEAN WATER, INC.

19  
20  
21 Dated: 7 April 2010

22 By: 

23 Martin McCarthy  
24 Daniel Cooper  
25 Lawyers for Clean Water, Inc.  
26 Attorneys for Plaintiff  
27 Inland Empire Waterkeeper/  
28 Orange County Coastkeeper

INLAND EMPIRE WATERKEEPER/  
ORANGE COUNTY COASTKEEPER

Dated: 5 April 2010

By: Garry Brown  
Garry Brown  
Inland Empire Waterkeeper/  
Orange County Coastkeeper

FOLEY & LARDNER, LLP

Dated: \_\_\_\_\_ April 2010

By: S. Wayne Rosenbaum  
S. Wayne Rosenbaum  
Attorney for Defendants  
J Lee's Metals, Inc., dba  
D & Metals, Inc., and  
J Lee's Metals, Inc.

J. LEE'S METALS, INC., dba  
D & M METALS, and J. LEE'S  
METALS, INC.

Dated: 1 April 2010

By: Joong T. Lee  
Joong T. Lee

**IT IS SO ORDERED:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable Virginia A. Phillips  
UNITED STATES DISTRICT COURT JUDGE  
CENTRAL DISTRICT OF CALIFORNIA

# EXHIBIT A

To Consent Decree

*Inland Empire Waterkeeper et. al. v. J Lee's Metals, Inc., et al.*, EDCV 09-1549 VAP (OPx)

# D & M METALS

840 E. STATE STREET  
ONTARIO, CA. 91761

REVISIONS
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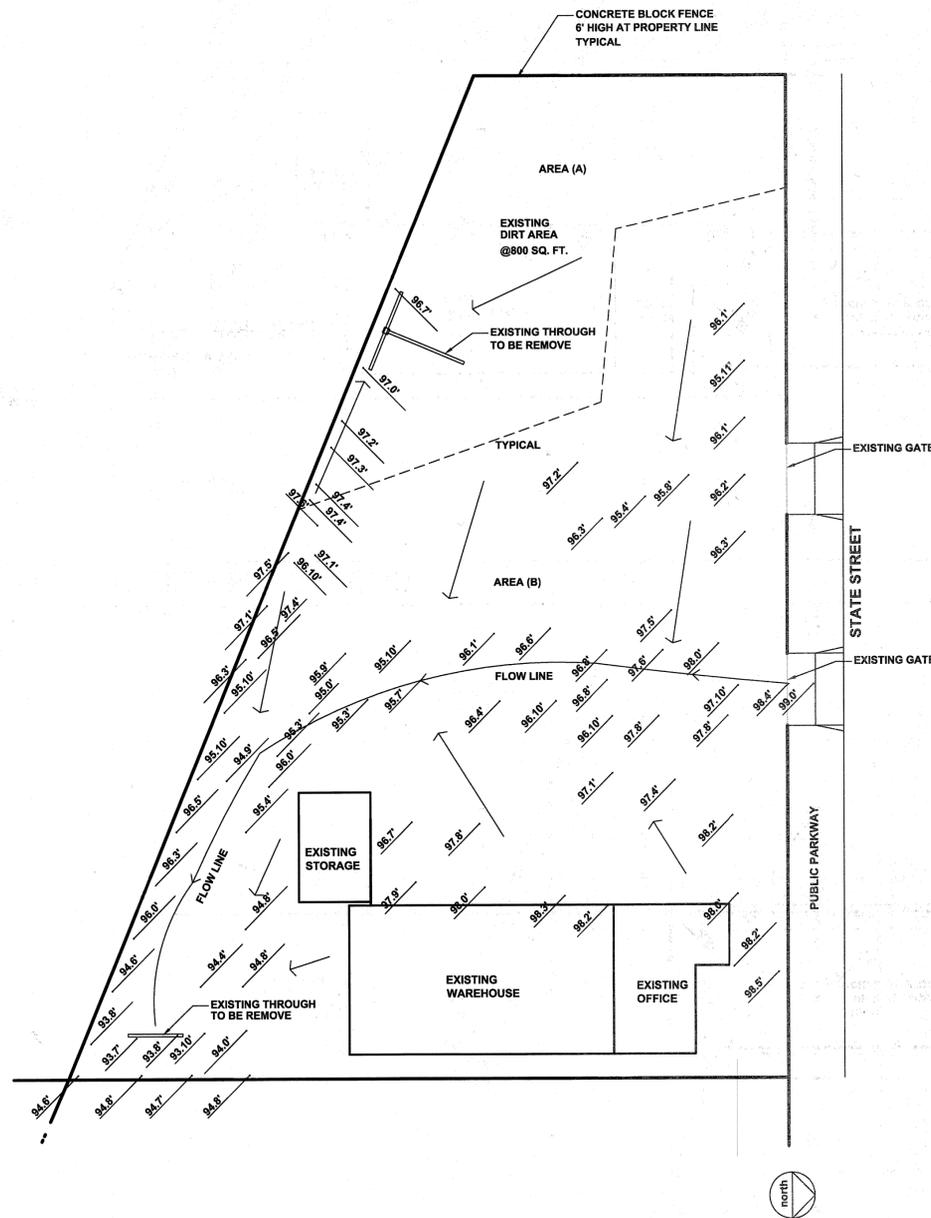
**PES ENGINEERING**  
9060 TELSTAR AVE #225  
EL MONTE, CA. 91731  
phone (626) 288-2444  
fax (626) 288-2771

JOB TITLE TITLE SHEET, SITE PLAN, SHEET INDEX,  
**D & M METALS**  
840 E. STATE STREET  
ONTARIO, CA. 91761

JOB TITLE  
DRAWN BY  
DATE  
JOB NO.  
SHEET  
**1**  
OF

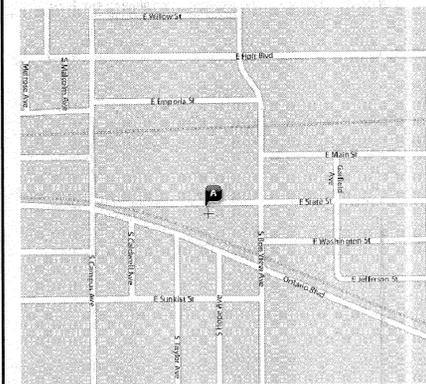
NOTE:  
EXCAVATION DEPTH CAN  
NOT EXCEED 5'-0" BELOW  
EXISTING GRADE

APPROXIMATE AREA  
60,100 SQ. FT.  
1.38 ACRES



EXISTING SITE PLAN / TOPO

SCALE: 1" = 30'-0"



VICINITY MAP

1. THE TOTAL AREA OF THE SITE SUBJECT OF THIS PLAN IS 1.38 ACRES MOSTLY COVERED WITH ASPHALT PAVEMENT.
2. REMOVE THE EXISTING TWO CHANNEL TYPE CLOTH FILTERS LOCATED AT THE SOUTH-EAST AND SOUTH-WEST OF THE PROPERTY. (SEE DRAWING FOR DETAILS)
3. BUILD TWO CATCH BASINS LOCATED AT THE LOWEST POINTS WHERE THE DIRECTION OF THE RUN-OFF STORM WATER IS FLOWING.
4. FOR THE PURPOSE OF THE DESIGN CALCULATIONS I DIVIDED THE SITE TO AREA (A) AND AREA (B) FLOW TO THE S-E CATCH BASIN. AREA (B) IS THE LARGER AREA.
5. INSTALL ONE SET OF TWO PUMPS INSIDE THE S-W CATCH BASIN WITH LEVEL SWITCHES TO ACTIVATE THE PUMPS TO RESPOND TO THE WATER LEVEL IN THE CATCH BASIN. THE PUMP ARE SELECTED TO HAVE THE CAPABILITY TO MEET THE MAXIMUM (PEAK) FLOW OF THE RUN OFF VOLUME FROM AREA (A). THE OUTLET OF THE PUMPS IS DIRECTED THROUGH, ABOVE GROUND 4" DIAMETER PVC PIPE TO THE S-E CATCH BASIN.
6. FROM THE S-E CATCH BASIN THE RUN OFF COLLECTED WATER WILL FLOW BY GRAVITY THROUGH 8" DIAMETER PVC PIPE TO THE STORM WATER CHAMBERS THRU ONE OR TWO FILTERS.
7. TOTAL PROPOSED NUMBER OF STORM CHAMBERS IS 36 WITH TOTAL STORAGE CAPACITY OF 4,500 CU.FT. AS MINIMUM. THE PROPOSED MODEL OF FILTERS AND STORM CHAMBERS CAN BE REPLACED WITH EQUIVALENT SET FROM DIFFERENT VENDOR BASED ON THE OWNER DECISION AS LONG AS THE SYSTEM WILL MATCH IN CAPACITY AND QUALITY.
8. THERE ARE TWO AREAS WE CALLED ON THE DRAWING DETENTION AREA 1 AND 2 AROUND THE TWO CATCH BASINS. THESE ARE LOWER ELEVATION AREAS WE ARE USING TO DETAIN PART OF THE STORM WATER DURING HE PEAK RAIN INTENSITY. THE DETAINED STORM WATER IN THESE TWO AREAS WILL SURFACE FLOW TO THE CATCH BASINS AND END UP FLOWING TO THE STORM CHAMBERS.

PROJECT SUMMARY

PROPERTY ADDRESS: D & M METALS  
840 E. STATE STREET  
ONTARIO, CA. 91761

APN #

LEGAL DISCRPTION:

ZONING:

SITE INFORMATION

1. GENERAL AND/OR SUBCONTRACTOR SHALL VISIT JOB SITE PRIOR TO THE START OF ANY WORK TO VERIFY ALL DIMENSIONS, GRADES, AND/OR ANY OTHER FIELD CONTINGENCIES THAT MIGHT OCCUR DURING CONSTRUCTION AND SHALL CONFORM TO LOCAL CODES REGARDLESS OF WHAT IS SHOWN OR NOT SHOWN ON THESE DRAWINGS. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT/ENGINEER BEFORE ANY WORK IS DONE. THE CONTRACT DRAWINGS AND SPECIFICATIONS REPRESENT THE FINISHED STRUCTURE. UNLESS OTHERWISE SHOWN, THEY DO NOT INDICATE THE METHOD OF CONSTRUCTION. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE WORK AND SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES AND PROCEDURES. OBSERVATION VISITS TO THE SITE BY FIELD REPRESENTATIVES OF THE DESIGNER SHALL NOT INCLUDE INSPECTIONS OF THE PROTECTIVE MEASURES OR THE CONSTRUCTION PROCEDURES REQUIRED FOR SAME. ANY SUPPORT SERVICES PERFORMED BY THE ARCHITECT/ENGINEER DURING CONSTRUCTION SHALL BE DISTINGUISHED FOR CONTINUOUS AND DETAILED INSPECTION SERVICES WITH ARE FURNISHED BY OTHERS. THESE SUPPORT SERVICES PERFORMED BY THE DESIGNER WHETHER OF SERVICES PERFORMED BY THE DESIGNER WHETHER OF MATERIAL OR WORK AND WHETHER PERFORMED PRIOR TO DURING OR AFTER COMPLETION OF CONSTRUCTION ARE PERFORMED SOLELY OF THE PURPOSE OF ASSISTING IN QUALITY CONTROL AND IN ACHIEVING CONFORMANCE WITH CONTRACT DRAWING AND SPECIFICATIONS, BUT THEY DO NOT GUARANTEE CONTRACTOR'S PERFORMANCE AND SHALL NOT BE CONSTRUED AS SUPERVISION OF CONSTRUCTION.
2. IT IS THE INTENT OF THESE CONTRACT DOCUMENTS THAT, THE NEW CONSTRUCTION. THE PROJECT WHEN COMPLETED SHALL CONFORM TO REGULATIONS AT THE TIME OF PLAN CHECK, OF THE FOLLOWING CODES. GOVERNING CODES: PERFORM ALL WORKING ACCORDANCE WITH THE LATEST EDITION OF CALIFORNIA ADMINISTRATIVE CODES AND THE FOLLOWING ADOPTED CODES AND REGULATIONS, AND STANDARDS:
  - NATIONAL FIRE PROTECTION ASSOC.
  - CALIFORNIA BUILDING CODE 1997 EDITION
  - CALIFORNIA MECHANICAL CODE
  - CALIFORNIA PLUMBING CODE
  - NATIONAL ELECTRICAL CODE
  - MASONRY ASSOCIATION
  - CALIFORNIA BUILDING CODE
3. IN THE CASE WHERE TWO OR MORE DETAILS APPLYING TO THE SAME PART OF THE WORK ARE IN CONFLICT, THE MOST RESTRICTIVE SHALL GOVERN UNLESS CLARIFIED OR OTHERWISE APPROVED BY THE ENGINEER.
4. THE CONTRACTOR AND EACH SUBCONTRACTOR SHALL CAREFULLY EXAMINE THE CONDITIONS AFFECTING HIS WORK BEFORE PROCEEDING AND SHALL REPORT TO THE ENGINEER ANY CONDITION WHICH WOULD PREVENT THE PROPER AND LEGAL COMPLETION OF HIS WORK. NOT REPORTING ANY SUCH UNSUITABLE CONDITION WILL CONSTITUTE ACCEPTANCE OF ALL CONDITIONS BY THE CONTRACTOR AND/OR SUBCONTRACTOR.
5. APPROVAL OF SHOP DRAWINGS MEANS APPROVAL OF GENERAL METHOD OF FABRICATION ONLY. DIMENSIONS AND QUANTITIES MAY NOT BE CHECKED, AND APPROVAL OF SHOP DRAWINGS DOES NOT RELIEVE THE CONTRACTOR FROM COMPLIANCE WITH THE REQUIREMENTS OF THE DRAWINGS AND SPECIFICATIONS UNLESS SPECIFICALLY SO INDICATED IN THE APPROVAL.
6. CONTRACTOR TO VERIFY ALL DIMENSION IN FIELD
7. CONCRETE TO HAVE 2500 PSI COMPRESSION STRENGTH WITHIN 28 DAYS.

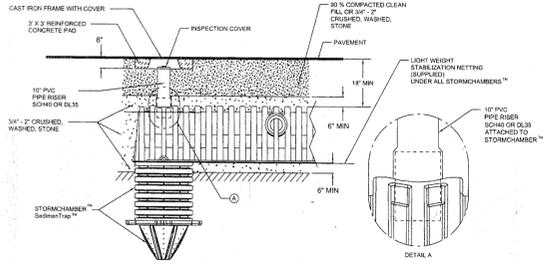
GENERAL NOTES



**INSTALLING THE SEDIMENT TRAPS™** ADDENDUM TO INSTALLATION BROCHURE

Some StormChamber™ systems require the inclusion of our SedimenTraps™. The SedimenTraps™ are used as a low cost and highly effective method to capture and facilitate removal of sediment.

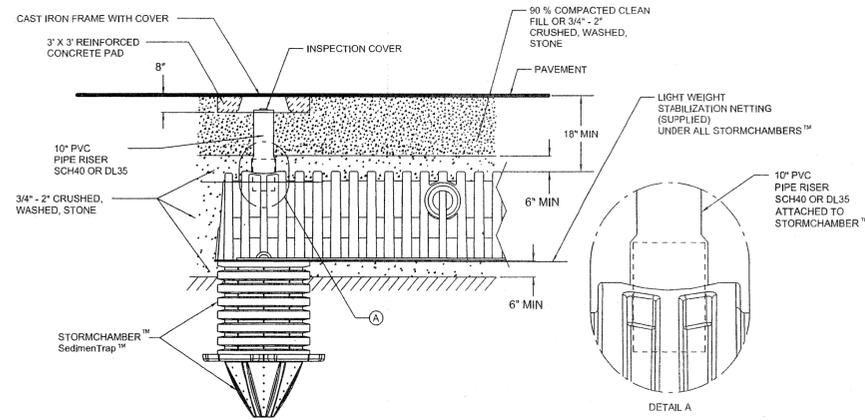
1. Prepare the StormChamber™ system trench as described on page 3.
2. StormChamber™ systems typically incorporate SedimenTraps™ at the first and last chamber of the row receiving the storm water inflow (see page 3). StormChamber™ systems are installed by placing all start units first, then building each row equally with Middle Units and finish building the rows with the End Units (see page 4).
3. Working from the Start Unit end of the StormChamber™ system, identify the location for the first SedimenTrap™. The SedimenTrap™ must be located so that the bottom is aligned exactly under the 10" PVC riser pipe.



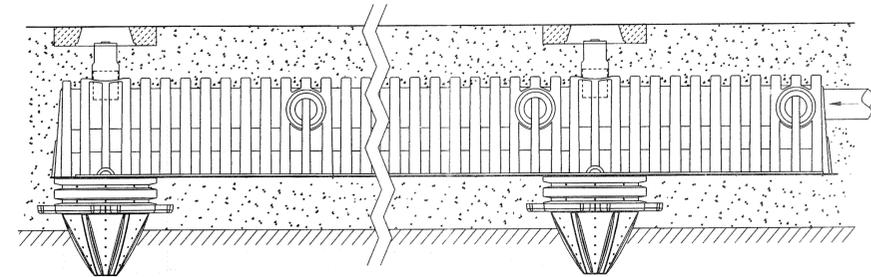
4. Excavate a hole deep enough so that the SedimenTrap™, when placed on about 6" of a crushed, washed 3/4" - 2" non-calcareous stone base, only the top corrugation of the 30" HDPE pipe will be exposed above the finished trench stone base (about 3").
5. Fill around the SedimenTrap™ with the crushed, washed 3/4" - 2" non-calcareous stone up to the level of the surrounding stone base.
6. Cut the plastic netting to fit snugly around the exposed portion of the SedimenTrap™.



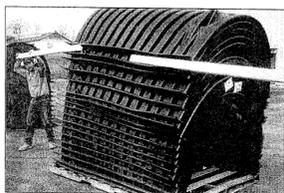
7. Place the chamber over the SedimenTrap™ and install the 10" PVC riser pipe as instructed on page 7.



**FIRST ROW OF STORMCHAMBER™ SYSTEM**

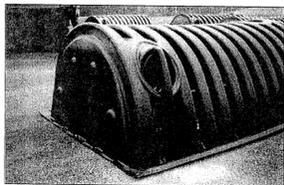


**STORMCHAMBER™ INSTALLATION**



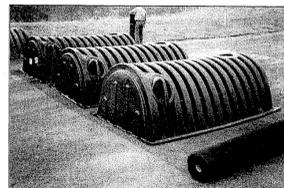
You may need to use 2x4's to separate chambers.

1. You may need assistance in separating the StormChambers™. Based on weather and transit conditions, sometimes the StormChambers™ become tightly compacted. Separate StormChambers™ using two 2x4 studs along one of its sides for leverage. Do not use any damaged units - contact HydroLogic Solutions immediately.



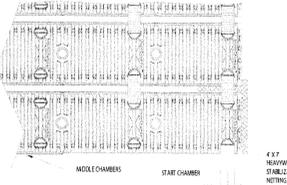
Row placement begins at inflow end of chamber system with Start Model StormChambers™.

2. Start building the StormChamber™ system with the Start Model StormChamber™ at the inflow end of the StormChamber™ system. The Start Models are completely closed at the end with the two side portals.



Place lightweight stabilization netting under StormChambers™.

3. Roll out two rows of the light weight stabilization netting (provided with the StormChambers™) perpendicular to the rows of where the Start StormChambers™ will be placed. Overlap the rows by approximately 1'. Keep the netting flat; if moved, re-straighten and flatten out.

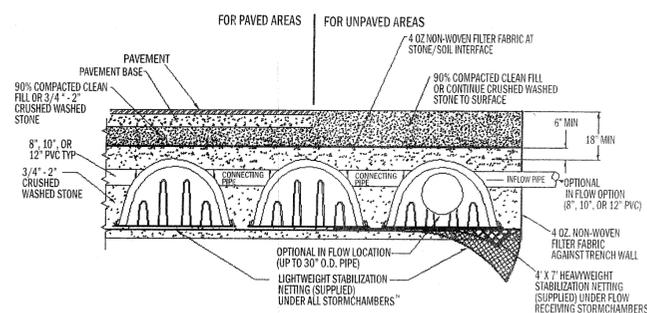


Place heavyweight stabilization netting under chambers receiving storm drain inflow.

4. Place one piece of the heavy weight stabilization netting (provided with the StormChambers™) perpendicular to and under each StormChamber™ that will be receiving inlet storm drain pipes. Place on top of the light weight netting and place one edge of the netting under, and slightly extending beyond, the closed end wall of the StormChamber™. Have the netting extend equally beyond both sides of the StormChamber™. The purpose of the heavy weight stabilization netting is to function as a "splash pan," preventing excavation of the underlying stone and soil, while allowing infiltration to occur.

**PARTIAL INSTALLATION PROCEDURE**

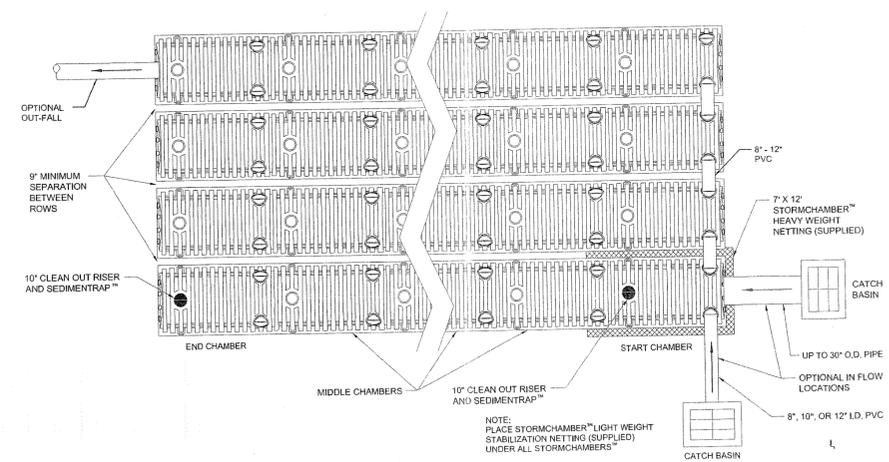
**RECOMMENDED INSTALLATION OF STORMCHAMBER™**



**SECTION**

**SEDIMENT TRAP AND STORM CHAMBERS DETAILS**

**STORMCHAMBER™ EXAMPLE CONFIGURATION**




**PES ENGINEERING**  
9060 TELSTAR AVE #225  
EL MONTE, CA 91731  
TEL: (626) 955-2844  
FAX: (626) 288-2771

**D & M METALS**  
840 E. STATE STREET  
ONTARIO, CA. 91761

JOB TITLE \_\_\_\_\_  
DRAWN BY \_\_\_\_\_  
DATE \_\_\_\_\_  
JOB NO. \_\_\_\_\_  
SHEET \_\_\_\_\_  
OF \_\_\_\_\_

# EXHIBIT B

To Consent Decree

*Inland Empire Waterkeeper et al. v. J Lee's Metals, Inc., et al.*, EDCV 09-1549 VAP (OPx)



1 Daniel Cooper (Bar No. 153576)  
2 daniel@lawyersforcleanwater.com  
3 Drevet Hunt (Bar No. 240487)  
4 drev@lawyersforcleanwater.com  
5 Lawyers for Clean Water, Inc.  
6 1004 O'Reilly Avenue  
7 San Francisco, California 94129  
8 Tel: (415) 440-6520  
9 Fax: (415) 440-4155

Attorneys for Plaintiff Orange County Coastkeeper

10 UNITED STATES DISTRICT COURT  
11  
12 CENTRAL DISTRICT OF CALIFORNIA

13 ORANGE COUNTY  
14 COASTKEEPER, a non-profit  
15 corporation,

16 Plaintiff,

17 v.

18 DBW & ASSOCIATES, INC., a  
19 California corporation, and DBW &  
20 ASSOCIATES, INC., dba DBW  
21 Metals,

Defendants.

Case No. SACV-09-1063-DOC (MLGx)

Hon. David O. Carter

**[Proposed]**  
**CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 *et seq.*)**

1           **WHEREAS**, Orange County Coastkeeper is a non-profit corporation dedicated to  
2 the preservation, protection and defense of the environment, the wildlife, and the natural  
3 resources of Orange County area waters, including the Santa Ana River Watershed and  
4 its receiving waters;

5           **WHEREAS**, Orange County Coastkeeper is referred to herein as (“Coastkeeper” or  
6 “Plaintiff”);

7           **WHEREAS**, DBW & Associates, Inc. is an owner and/or operator of the scrap  
8 metal recycling facility located at 3250 East Frontera Street, Anaheim, California, 92806  
9 (“Facility”);

10           **WHEREAS**, DBW & Associates, Inc. dba DBW Metals is an owner and/or  
11 operator of the scrap metal recycling facility located at 3250 East Frontera Street,  
12 Anaheim, California, 92806;

13           **WHEREAS**, DBW & Associates, Inc., and DBW & Associates, Inc. dba DBW  
14 Metals are collectively referred to herein as “Defendants” or “DBW Metals”;

15           **WHEREAS**, on July 1, 2009, Coastkeeper served Defendants, the United States  
16 Environmental Protection Agency (“EPA”), EPA Region IX, the State Water Resources  
17 Control Board (“State Board”) and the Regional Water Quality Control Board (“Regional  
18 Board”), with a notice of intent to file suit for violations of the Federal Water Pollution  
19 Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”). The notice letter  
20 alleged violations of the Clean Water Act for Defendants’ discharges of pollutants into  
21 receiving waters in violation of National Pollution Discharge Elimination System  
22 (“NPDES”) General Permit No. CAS0000001 [State Board] Water Quality Order No.  
23 92-12-DWQ, as amended by Order No. 97-03-DWQ (“Industrial Permit”);

24           **WHEREAS**, on September 15, 2009, Coastkeeper filed a complaint against  
25 Defendants in the United States District Court, Central District of California (Civil Case  
26 No. SACV 09-1063-DOC (MLGx)) entitled *Orange County Coastkeeper v. DBW &*  
27 *Associates, Inc., and DBW & Associates, Inc. dba DBW Metals* (“Complaint”);

28           **WHEREAS**, Defendants deny all allegations of the Complaint;

1           **WHEREAS**, Plaintiff and Defendants (collectively referred to herein as the  
2 “Settling Parties” or “Parties”) have agreed that it is in the Parties' mutual interest to  
3 enter into a Consent Decree setting forth terms and conditions appropriate to resolving  
4 the allegations set forth in the Complaint without further proceedings;

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

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

11           1.     The Court has jurisdiction over the subject matter of this action pursuant to  
12 Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

13           2.     Venue is appropriate in the Central District Court pursuant to Section  
14 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility at which the alleged  
15 violations took place is located within this District;

16           3.     The Complaint states a claim upon which relief may be granted against  
17 Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

18           4.     Plaintiff has standing to bring this action;

19           5.     The Court shall retain jurisdiction over this matter for purposes of  
20 interpreting, modifying or enforcing the terms of this Consent Decree, or as long  
21 thereafter as is necessary for the Court to resolve any motion to enforce this Consent  
22 Decree.

23 **I.     OBJECTIVES**

24           6.     It is the express purpose of the Parties entering into this Consent Decree to  
25 further the objectives set forth in Section 101 *et seq.* of the CWA, 33 U.S.C. § 1251 *et*  
26 *seq.*, and to resolve those issues alleged by Coastkeeper in its Complaint. In light of  
27 these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply with  
28 the provisions of this Consent Decree and to comply with the requirements of the

1 Industrial Permit and all applicable provisions of the CWA at the Facility. Specifically,  
2 Receiving Water Limitation C(2) in the Industrial Permit requires that the Facility “not  
3 cause or contribute to the exceedance of an applicable water quality limit.” Effluent  
4 Limitation B(3) of the Industrial Permit requires that Best Management Practices  
5 (“BMPs”) be developed and implemented to achieve Best Available Technology  
6 (“BAT”) and the Best Conventional Pollutant Control Technology (“BCT”). Defendants  
7 are required to develop and implement BMPs necessary to comply with the Industrial  
8 Permit’s requirement to achieve compliance with Water Quality Standards and BAT/BCT  
9 standards. BMPs must be developed and implemented to prevent discharges or to reduce  
10 contamination in storm water discharged from the Facility sufficient to achieve the  
11 numeric limits detailed in paragraphs 12 and 13 below.

## 12 **II. COMMITMENTS OF THE PARTIES**

### 13 **A. Installation of Treatment Train Prior to Curb Discharge Point**

14 7. DBW Metals currently discharges through pipes in the curb between the two  
15 driveways on East Frontera Street leading into and out of the Facility. DBW Metals will  
16 add a treatment train including a filtration device prior to discharging. The treatment  
17 train will include primary filtration, a four stage clarifier, settling tanks and in-line  
18 plumbing. For at least the first hour of any discharge, water from the treatment train will  
19 be delivered to the adjacent facility to be recycled for use in the adjacent facility’s  
20 operations. Records of the volume and timing of any discharge to the adjacent facility  
21 shall be maintained by DBW Metals and made available to Coastkeeper within seven (7)  
22 days of receipt of a request for them. Discharges from the treatment train through the  
23 inline pipe(s) between the two DBW Metals driveways on East Frontera Street shall be  
24 sampled (subject to the requirements of this Consent Decree and the Industrial Permit).

### 25 **B. Industrial Storm Water Pollution Control Measures**

26 8. The storm water pollution control measures and contaminant reduction  
27 provisions of this Consent Decree shall only apply to rainfall events up to and including  
28 the 5-year, 24-hour return period rain event (“Compliance Storm Event”), as defined by

1 the County of Los Angeles Hydrology Manual (January, 2006) with an assumed dry  
2 antecedent condition, a total of 3.4 inches of rainfall over a 24-hour period and an  
3 assumed triangular runoff hydrograph. The Parties agree that any discharge of  
4 stormwater and/or stormwater pollutants from the Facility in connection with a rainfall  
5 event that exceeds a Compliance Storm Event is not a violation of this Consent Decree.

6 9. Defendants shall, by the Effective Date of this Consent Decree, develop a  
7 BMP Plan to capture, filter, evaporate, harvest, treat and/or store to prevent off-site  
8 discharge of industrial storm water generated during rain events up to and including the  
9 Compliance Storm Event at the Facility. The BMP Plan may contain the following  
10 measures listed herein, as appropriate, and Defendant shall develop and implement  
11 additional measures, if necessary, to reduce contamination in storm water discharged  
12 from the Facility to levels below the numeric limits set forth in Table 1 and Table 2  
13 below:

14 a. Materials Storage and Industrial Activities. Placing sources of  
15 contamination in covered containers or under cover with such areas contained by berming  
16 or other containment sufficient to prevent the exposure of pollutants to storm water and  
17 non-stormwater, and to therefore prevent the discharge of pollutants;

18 b. Coating. Coating structural sources of contamination (e.g. galvanized  
19 building roofs and siding);

20 c. Sweeping. Employing high efficiency sweeping in order to prevent  
21 the exposure of pollutants to storm water flows;

22 d. Harvesting and Storing Runoff. Constructing and maintaining on-site  
23 retention facilities (such as retention ponds or swales, baker tanks, sumps, cisterns, or dry  
24 wells/ injection wells) designed to hold and store all or a portion of the runoff generated  
25 by a 5 year return period storm event without any off-site discharge;

26 e. Treating Runoff. Treating runoff discharging from the site with  
27 devices such as sand filters evaluated in the Caltrans Retrofit Study (“CRS”) or  
28 equivalent treatment devices at appropriate locations;

1 f. Vehicle and Equipment Maintenance and Fueling.

2 i. Conducting all vehicle and equipment maintenance and fueling  
3 at the Facility on asphalt or another impermeable surface;

4 ii. Conducting all vehicle and equipment maintenance and fueling  
5 at the Facility under cover;

6 iii. Berming or otherwise containing the surface of the area where  
7 vehicle maintenance and fueling occurs in order to prevent the exposure of pollutants to  
8 storm water and non-storm water, and to therefore prevent the discharge of pollutants;

9 iv. Cleaning the maintenance and fueling area as necessary to  
10 control track-off of pollutants;

11 v. Dispensing with all petroleum products within the maintenance  
12 and fueling area only;

13 vi. Installing tire washing facilities at exit points from the Facility  
14 to prevent off-site tracking from vehicles;

15 vii. Constructing secondary containment adequate to capture all  
16 drips, spills, and leaks around the vehicle fueling area and for all other areas where 55-  
17 gallon drums are stored for on-site use;

18 g. While Defendants may employ some combination of the measures  
19 listed above to achieve compliance with the numeric limits in Table 2 by the end of the  
20 Consent Decree period, they agree to immediately install a separation (settling) tank and  
21 filtration system to manage storm water from a 5-year, 24-hour rainfall event. The  
22 Facility will also be bermed to divert stormwater onsite during Compliance Storm Events  
23 through the filtration system. These systems will be operational within thirty (30) days of  
24 the Effective Date of this Decree.

25 h. Discharge Elimination: Developing and implementing a plan to  
26 prevent the discharge of storm water to surface waters, including a recordkeeping  
27 program to track the destination of storm water that is transferred from the Facility, if  
28 any.

1           10. Defendants shall complete and provide the BMP Plan to Coastkeeper for  
2 review and comment within thirty (30) days of the Effective Date of this Consent Decree.  
3 Coastkeeper shall respond with comments within 30 days of receiving the BMP Plan.  
4 Within twenty-one (21) days of receiving Coastkeeper's comments, if any, Defendants  
5 shall submit a final BMP Plan to Coastkeeper, incorporating Coastkeeper's comments  
6 into the BMP Plan, or justifying in writing why any comment is not being incorporated.  
7 Defendants shall implement all BMPs in the BMP Plan at the Facility within 90 days of  
8 the Effective Date of this Consent Decree. Any disputes as to the adequacy of the BMP  
9 Plan shall be resolved pursuant to the dispute resolution procedures of this Consent  
10 Decree, set out at Section IV below.

11           **C.     Reduction of Pollutants in Discharges**

12           11. Numeric Limits and Contaminant Reduction. During the 2009/2010 Wet  
13 Season, Defendants' preparation and compliance with the BMP Plan and monitoring plan  
14 required under this Consent Decree and completing the system described in Paragraph  
15 9(g) shall constitute compliance with this Section II.C of the Consent Decree. Beginning  
16 in the 2010/2011 Wet Season, Defendants shall achieve compliance by demonstrating (a)  
17 that concentrations of the contaminants listed in Tables 1 and 2 discharged from the  
18 Facility are at or below the limits listed in Tables 1 and 2; or (b) the pollutant  
19 concentrations in such discharges are at or below the numeric limits set forth in Table 2,  
20 or the corresponding potential mass emission reductions described in paragraphs 16-18  
21 below are achieved. Non-stormwater discharges from the Facility not authorized by the  
22 Industrial Permit shall be considered a breach of this Consent Decree, subject to the  
23 Force Majeure provisions set forth in Paragraph 44 below.

12. BAT/BCT and Technology Based Limits:<sup>1</sup> Contaminants in discharges shall not exceed the limits (“BAT/BCT Levels”) in Table 1:

**Table 1: BAT/BCT and Technology Based Limits (BAT/BCT Levels)**

<b>Contaminant</b> (All metals are total recoverable)	<b>Limit</b> (All but pH expressed as mg/L)
Total suspended solids	100
Copper	0.0123
Lead	0.069
Zinc	0.11
Oil and grease	15
Aluminum	0.750
Arsenic	0.16854
Cadmium	0.0159
Iron	1
Mercury	0.0024
Nickel	1.417
Silver	0.0318
Chemical oxygen demand	120
pH	6.0-9.0 units

<sup>1</sup> The Best Available Technology (BAT) limits were derived from the International BMP Database assembled by EPA and others for contaminants measured at a variety of BMPs, accepted into the database, and subjected to statistical analysis. The proposed BAT limit is generally based on the maximum median pollutant discharge concentration among all reported BMP types, except hydrodynamic devices (which perform more poorly than land-based BMPs). In some cases the Caltrans Retrofit Pilot Study results for the same BMPs were also consulted to guide the selection. The BAT limit for oil and grease is equivalent to the widely accepted capability of a coalescing plate or equivalent oil/water separator. Other contaminants common in scrap yard discharges are not represented at all, or are not sufficiently represented, in the database to set BAT limits. In these cases the limits are the benchmarks in the EPA multi-sector industrial permit. Defendants are analyzing hardness when collecting samples and Defendants can adjust limits based on hardness where applicable.

1 13. Water Quality Standard (WQS) Based Limits. Contaminants in discharges  
2 shall not exceed the limits in Table 2. The chemical oxygen demand and pH limits are  
3 from the applicable Basin Plan, all other are the CTR CMC<sup>2</sup> limits:

4 **Table 2: WQS Based Limits**

5

<b>Contaminant</b>	<b>Limit</b> (All but pH expressed as mg/L)
Arsenic	0.340
Cadmium	0.0043
Copper	0.013
Lead	0.065
Nickel	0.470
Silver	0.0034
Zinc	0.120
Chemical oxygen demand	30
pH	6.5-8.5 units

6  
7  
8  
9  
10  
11  
12

13  
14 14. Action Plan for Table 1 or Table 2 Exceedances. When sampling  
15 demonstrates discharges of storm water containing concentration of pollutants exceeding  
16 a Table 1 or 2 limit, Defendants agree to submit an action plan according to, and in  
17 compliance with, the schedule and requirements below. The Parties agree to comply with  
18 the dispute resolution procedures set forth in Section IV below if there are any  
19 disagreements or disputes regarding any of the action plan(s) discussed below.

20 a. Action Plan for Exceedences of BAT/BCT Levels. If sample results from  
21 the first storm event sampled in a Wet Season exceed Table 1 limits, then Defendants  
22 shall provide Coastkeeper with a BAT/BCT Action Plan within fourteen (14) days of  
23 Defendants' receipt of such data. If sample results from a storm event within thirty (30)

24 \_\_\_\_\_  
25 <sup>2</sup> The CTR CMC limits are the California Toxics Rule (CTR) Criterion Maximum Concentrations  
26 (CMC) from the Federal Register, Vol. 65, No. 97, May 18, 2000. Defendant shall measure dissolved as  
27 well as total recoverable metals. In general, freshwater limits for metals depend on water hardness.  
28 Defendants are analyzing hardness when collecting samples and Defendants can adjust limits based on  
hardness where applicable.

1 days of submission of the first BAT/BCT Action Plan exceed Table 1 limits, Defendants  
2 are not obligated to submit a BAT/BCT Action Plan to address these exceedences, but  
3 must include measures to address these exceedences in a BAT/BCT Action Plan due by  
4 June 30 following the Wet Season. If sample results from the next storm event sampled  
5 in a Wet Season occurring before March 1 (not including those from an event occurring  
6 within thirty (30) days of submission of the first BAT/BCT Action Plan) exceed Table 1  
7 limits, Defendants shall provide a BAT/BCT Action Plan within fourteen (14) days of  
8 Defendants' receipt of such data. If any other sample results exceed a Table 1 limit  
9 Defendants shall submit a BAT/BCT Action Plan by June 30 following each Wet Season,  
10 which may be incorporated into the WQS Action Plan described below. Any BAT/BCT  
11 Action Plan submitted pursuant to this paragraph shall include at a minimum (1) the  
12 identification of the pollutant(s) discharged in excess of the BAT/BCT Levels, (2) an  
13 assessment of the source of each pollutant exceedance, (3) the identification of additional  
14 BMPs that will be implemented to achieve compliance with the BAT/BCT Levels set  
15 forth in Table 1, and (4) time schedules for implementation of the proposed BMPs.  
16 Coastkeeper shall have fourteen (14) days upon receipt of Defendants' BAT/BCT Action  
17 Plan to provide Defendants with comments. Defendants shall have twenty-one (21) days  
18 from the date Coastkeeper comments on Defendants' BAT/BCT Action Plan to  
19 implement any additional non-structural or structural BMPs recommended by  
20 Coastkeeper. Defendants shall provide a written explanation if Defendants refuse to  
21 develop and/or implement any of Coastkeeper's recommended additional BMPs. If any  
22 structural BMPs require any agency approval, then Defendants shall contact Coastkeeper  
23 to request an extension of the deadline to implement the structural BMPs requiring  
24 agency approval. Coastkeeper's consent to Defendants' requested extension shall not be  
25 unreasonably withheld. Defendants shall notify Coastkeeper in writing when the Action  
26 Plan has been implemented.

27           b. WQS Action Plan. Defendants shall provide Coastkeeper with a WQS  
28 Action Plan by June 30 following each Wet Season if storm water sampling data

1 demonstrating an exceedance of a WQS Level at the Facility. The objective of the WQS  
2 Action Plan is to set forth additional BMPs designed to achieve compliance with Table 2  
3 limits. The Action Plan shall include at a minimum (1) the identification of the  
4 pollutant(s) discharged in excess of the WQS; (2) an assessment of the source of the  
5 pollutant; (3) the identification of additional BMPs that will be implemented to achieve  
6 compliance with the applicable WQS; and (4) time schedules for implementation of the  
7 proposed structural and non-structural BMPs. Coastkeeper shall have twenty-one (21)  
8 days upon receipt of Defendants' WQS Action Plan to provide Defendants with  
9 comments. Defendants shall have twenty-one (21) days from the date Coastkeeper  
10 comments on Defendants' Action Plan to implement any additional non-structural or  
11 structural BMPs. Defendants shall provide a written explanation if Defendants refuse to  
12 develop and/or implement any of Coastkeeper's recommended additional BMPs. If any  
13 structural BMPs require any agency approval, then Defendants shall contact Coastkeeper  
14 to request an extension of the deadline to implement the structural BMPs requiring  
15 agency approval. Coastkeeper's consent to Defendants' requested extension shall not be  
16 unreasonably withheld. Defendants shall notify Coastkeeper in writing when the Action  
17 Plan has been implemented.

18 15. Action Plan for Year 4 Wet Season. If at the end of the 2011/2012 Wet  
19 Season, storm water sample results demonstrate that Defendants continue to discharge  
20 storm water and/or non-stormwater containing pollutants exceeding the limits set forth in  
21 Tables 1 and/or 2, the Parties shall meet and confer by July 1, 2012 to discuss the sample  
22 results, current BMPs, and to devise a mutually agreeable action plan ("Year 4 Action  
23 Plan"). Within thirty (30) days of meeting and conferring, Defendants will develop and  
24 submit the Year 4 Action Plan to Coastkeeper. Coastkeeper will provide comments on  
25 the Year 4 Action Pan within thirty (30) days of receipt of the plan. DBW Metals shall  
26 revise the Year 4 Action Plan to include Coastkeeper's comments.

27 16. Mass Emission Reduction for Contaminants with WQS Based Limits. If any  
28 sampling demonstrates discharges of stormwater containing a concentration of pollutants

1 exceeding the WQS Based Limits in Table 2, Defendants shall have the opportunity to  
 2 demonstrate within 180 days that the potential total mass emission of the contaminant has  
 3 been reduced through a combination of decreases in its concentrations and reductions of  
 4 the volume of the runoff discharged from industrial activities. Defendants agree to  
 5 submit a plan for additional mass emission contaminant reduction to Coastkeeper for  
 6 review and comment as soon as practicable and in any case within 30 days of receipt of  
 7 sampling data demonstrating an exceedance. Coastkeeper shall provide comments, if  
 8 any, to the Defendants within 30 days of receipt. Defendants shall incorporate  
 9 Coastkeeper’s comments in order to reduce the mass emission of the contaminant and  
 10 initiate implementation of the reduction within 30 days of receipt of Coastkeeper  
 11 comments and complete implementation within 60 days of receipt of Coastkeeper’s  
 12 comments, or as otherwise agreed between Coastkeeper and Defendants. If any of  
 13 Coastkeeper’s comments are not adopted and incorporated, Defendants shall justify in  
 14 writing why any comment is not being incorporated within 30 days of receiving the  
 15 comments. Any disputes as to the adequacy of the mass emission reduction plan shall be  
 16 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at  
 17 Section IV below.

18 17. The baseline for mass emissions reductions calculations, consisting of the  
 19 geometric mean of all concentrations of stormwater contaminants sampled by  
 20 Coastkeeper and sampled by Defendant prior to the Effective Date, is as follows:

21 **Table 3: Geometric Mean of Contaminants That Exceed Numeric Limits**

<b>Contaminant</b>	<b>Geometric Mean</b>
Copper	0.824 mg/L
Lead	0.331 mg/L
Zinc	0.783 mg/L
Oil and Grease	7.9 mg/L
Chemical Oxygen Demand	81 mg/L
Total Suspended Solids	26 mg/L

1 For the contaminants listed in Table 3, the demonstration that the potential total mass  
2 emission of a contaminant has been reduced shall be made as follows:

- 3 a. Determine the geometric mean of all concentrations of the  
4 contaminant measured before and after the Effective Date of the  
5 Consent Decree;
- 6 b. Determine the site surface area discharging runoff containing the  
7 contaminant before and after this Effective Date;
- 8 c. Multiply the geometric mean of concentrations and site surface area  
9 discharging before and after this Effective Date to obtain indicators of  
10 potential mass emission before and after this Effective Date; and
- 11 d. Show that the potential mass emission of the contaminant has  
12 decreased by the amount(s) specified in Table 4:

13 **Table 4: Mass Emission Decrease Requirements for Table 3 Contaminants**

14 If the concentration exceeds the WQS 15 Based Limit by:	Then the potential total mass emission shall be reduced by:
16 1-100% (i.e., up to 2 times the limit)	50%
17 101-200% (i.e., up to 3 times the limit)	75%
18 201-300% (i.e., up to 4 times the limit)	95%

19  
20 18. For the Contaminants listed in Table 5 below, for which inadequate baseline  
21 data is currently available for such Contaminants' inclusion in Table 3, or for which the  
22 geometric means are below the applicable WQS Based Limits set out in Table 2, the  
23 following method shall be used to assess compliance with the WQS Based Limits  
24 described above for any discharge point where storm water discharges occur during storm  
25 events smaller than the Compliance Storm Event.

- 26 a. Based on existing site conditions (100 percent impervious surfaces and no  
27 storm water infiltration or diversion) and the amount of rainfall that falls on  
28

1 the Facility during each of the monitored storm events described, the volume  
2 of water that would have discharged from the Facility prior to installation of  
3 the filtration and/or diversion measures shall be calculated;

- 4 b. Using the WQS Based Limits described above, the mass of “allowable”  
5 pollutants will be calculated (volume of water assuming no  
6 filtration/diversion multiplied by the WQS Based Limits) for each listed  
7 constituent;
- 8 c. The actual contaminant mass discharged for each of the pollutants listed  
9 above will be calculated (volume of water actually discharged multiplied by  
10 the analytical results for storm events where discharges occur);
- 11 d. For each of the monitored storm events, the calculated mass of actual  
12 contaminants discharged under subparagraph (c) above will be compared to  
13 the mass of allowable contaminants calculated under subparagraph (b)  
14 above.

15 **Table 5: Contaminants not in Table 3**

16 <b>Contaminant</b>	16 <b>Geometric Mean<sup>3</sup></b>
17 Arsenic	17 Insufficient Data
18 Cadmium	18 Less than Table 2
19 Silver	19 Insufficient Data
20 Nickel	20 Less than Table 2

21 **D. Sampling, Monitoring, Inspecting, and Reporting**

22 19. Sampling Program. Within thirty (30) days of the Effective Date,  
23 Defendants shall revise their monitoring and reporting plan (M&RP) to meet the

24 \_\_\_\_\_  
25 <sup>3</sup> The references in Table 5 to “Insufficient Data” indicate that the combined storm water  
26 discharge sampling data currently available to Coastkeeper lack at least three sample  
27 results that are above the reporting limit for that contaminant from which to calculate the  
28 geometric mean.

1 requirements of this Consent Decree. All storm water discharge locations shall be  
2 sampled at the Facility. Storm water samples collected must represent the discharge at  
3 the point it leaves the Facility. Additionally, sampling of stored or contained storm water  
4 shall occur at the time the stored or contained storm water is released. The M&RP shall  
5 be revised to include sampling at all new or additional discharge points created in the  
6 future.

7       20. Coastkeeper's Review of Revised M&RP. Defendants agree to submit the  
8 M&RP to Coastkeeper for review and comment as soon as it is completed but in any  
9 event no later than thirty (30) days from the Effective Date of this Consent Decree.  
10 Coastkeeper shall provide comments, if any, to the Defendants within thirty (30) days of  
11 receipt of the M&RP. Defendants shall incorporate Plaintiff's comments into the M&RP,  
12 or shall justify in writing why any comment is not incorporated within twenty-one (21)  
13 days of receiving comments. Any disputes as to the adequacy of the M&RP shall be  
14 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at  
15 Section IV below.

16       21. Sample Analysis and Sample Frequency. Beginning with the 2009/2010  
17 Wet Season (defined as October 1- May 31), Defendants shall collect storm water  
18 samples from each discharge location from each storm event at the Facility. In years 2-5  
19 of the Decree, DBW Metals agrees to sample every storm event up to five (5) storm  
20 events per Wet Season. Until every storm event up to five (5) storm events are sampled,  
21 any water from a storm event that is not transferred to the adjacent property shall be  
22 sampled prior to discharge, unless the storm event begins during after operating hours  
23 and the discharge becomes necessary before operating hours recommence. In the latter  
24 case, the discharge shall be sampled if it is still ongoing when operating hours  
25 recommence. Operating hours are defined as 7 a.m. to 5 p.m. Monday through Friday  
26 and 8 a.m. to 1:30 p.m. Saturday.

27       22. Defendants shall analyze the samples for the constituents identified in Table  
28 1 and Table 2. A California State certified laboratory shall perform all sample chemical

1 analyses. Defendants shall select laboratories and analytical limits such that, at a  
2 minimum, the method detection limits (“MDLs”) shall be below both the Table 1 and  
3 Table 2 Limits set forth herein. In addition, Defendants shall perform sampling as  
4 required by the Industrial Permit for the Facility.

5 **E. Storm Water Pollution Prevention Plan**

6 23. SWPPP Revisions. Within thirty (30) days of the Effective Date of this  
7 Consent Decree, Defendants agree to revise the SWPPP currently in effect at the Facility  
8 to incorporate all storm water pollution prevention measures and other requirements set  
9 forth in this Consent Decree and/or the Industrial Permit. Specifically, the SWPPP shall  
10 include a description of all industrial activities and corresponding potential pollution  
11 sources and, for each potential pollutant source, a description of the potential pollutants  
12 from the sources. The SWPPP shall also identify BMPs (and their implementation dates)  
13 designed to achieve compliance with Numeric Limits set forth in Table 1 and Table 2.  
14 Defendants shall revise the SWPPP as necessary to incorporate additional BMPs  
15 developed pursuant to this Consent Decree.

16 24. Coastkeeper’s Review of Revised SWPPP. Defendants shall submit the  
17 revised SWPPP to Coastkeeper for review and comment as soon as it is completed but in  
18 any event no later than thirty (30) days from the Effective Date of this Consent Decree.  
19 Within thirty (30) days of Coastkeeper’s receipt of the revised SWPPP, Coastkeeper shall  
20 provide Defendants with comments and suggestions, if any, concerning the revisions to  
21 the SWPPP. Defendants shall incorporate or shall justify in writing why any comment is  
22 not incorporated within twenty-one (21) days of Defendants’ receipt of Coastkeeper’s  
23 comments on the revised SWPPP and re-issue the SWPPP. Any disputes as to the  
24 adequacy of the SWPPP shall be resolved pursuant to the dispute resolution provisions of  
25 this Consent Decree, set out in Section IV below.

26 **F. Employee Training**

27 25. Within thirty (30) days of the Effective Date, Defendants shall develop a  
28 training program, including any materials needed for effectiveness, and shall provide

1 training for employees as follows:

2 a. Non-Storm Water Discharge Training. Defendants shall conduct training  
3 on the Industrial Permit's prohibition of non-storm water discharges so that employees  
4 know what non-storm water discharges are and how to avoid them. Such training shall  
5 be specified in the SWPPP;

6 b. BMP Training. Defendants shall provide training to all employees  
7 responsible for BMP implementation and maintenance. Training shall be provided by a  
8 private consultant or representative of Defendants familiar with the Industrial Permit  
9 requirements and shall be repeated as necessary to ensure that all such employees are  
10 familiar with the Industrial Permit and SWPPP requirements. Defendants shall maintain  
11 training records to document compliance with this paragraph, and shall provide  
12 Coastkeeper with a copy of these records within fourteen (14) days of receipt of a written  
13 request;

14 c. Sampling Training. Defendants shall provide training to all individuals  
15 performing sampling pursuant to the Industrial Permit at the Facility. All employees  
16 shall thereafter be trained prior to becoming responsible for conducting sampling  
17 activities. The training shall be provided by a private consultant or representative of  
18 Defendants familiar with the Industrial Permit requirements and shall be repeated as  
19 necessary to ensure Industrial Permit compliance. Defendants shall maintain training  
20 records to document compliance with this paragraph, and shall provide Coastkeeper with  
21 a copy of these records within fourteen (14) days of receipt of a written request.

22 d. Visual Observation Training. Defendants shall provide additional training  
23 to all individuals performing visual observations pursuant to the Industrial Permit at the  
24 Facility. The training will be provided by a private consultant or representative of  
25 Defendants and shall be repeated as necessary to ensure Industrial Permit compliance.  
26 All new staff will receive this training before assuming responsibilities for implementing  
27 the SWPPP. Defendants shall maintain training records to document compliance with  
28

1 this paragraph, and shall provide Coastkeeper with a copy of these records within  
2 fourteen (14) days of a written request.

3 **G. Compliance Monitoring**

4 26. Site Inspections. Coastkeeper, Dr. Richard Horner, or an alternative water  
5 quality engineer identified by Coastkeeper, accompanied by Coastkeeper's attorney or  
6 other representative, may conduct up to two (2) site inspections at the Facility during the  
7 first year following the Effective Date of the this Consent Decree. The number and  
8 frequency of site inspections in the following years will be based on whether Defendants  
9 have achieved and remain in compliance with the Consent Decree. The Parties agree to  
10 negotiate in good faith to schedule inspections in following years, with the understanding  
11 that inspections are a necessary part of evaluating compliance and that Orange County  
12 Coastkeeper is entitled to reasonable compensation for these activities. Site inspections  
13 shall occur during normal business hours. Coastkeeper shall provide Defendants' with as  
14 much notice as possible, but at least twenty-four (24) hours notice during the Wet  
15 Weather season and forty-eight (48) hours notice during the dry season prior to each  
16 inspection. Notice will be provided by phone and electronic mail to the individuals listed  
17 in paragraph 48 below. During site inspections, Coastkeeper and/or its representatives  
18 shall be allowed access to the Facility's SWPPP and monitoring records and to all  
19 monitoring reports and data for the Facility. During site inspections, Coastkeeper and/or  
20 its representatives may collect samples of storm water discharges at the Facility.

21 27. Compliance Monitoring and Oversight. Defendants agree to help defray  
22 Coastkeeper's reasonable costs incurred in conducting site inspections and compliance  
23 monitoring for the first year following the Effective Date of this Consent Decree by  
24 making a payment of Five Thousand Dollars (\$5,000.00). This payment shall be made  
25 within sixty (60) days of the Effective Date of this Decree. This payment shall be made  
26 payable to:

27 **Lawyers for Clean Water Attorney Client Trust Account**

1 and shall be sent certified mail or overnight delivery and mailed to Lawyers for Clean  
2 Water, Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129. The Parties  
3 agree to negotiate in good faith the funding for compliance monitoring, including  
4 additional site inspections, in following years, with the understanding that such  
5 monitoring is a necessary part of evaluating Defendants' compliance with this Consent  
6 Decree. Defendants specifically agree that Orange County Coastkeeper is entitled to  
7 reasonable compensation for compliance monitoring. Coastkeeper shall provide copies  
8 of any invoicing for site inspections and compliance oversight within thirty (30) days of  
9 receiving a written request by Defendants.

10 28. Reporting. During the life of this Consent Decree, on a monthly basis,  
11 Defendants shall provide Coastkeeper with a copy of all compliance and monitoring data,  
12 including inspection reports, related to the Facility. During the life of this Consent  
13 Decree, Defendants shall provide Coastkeeper with all laboratory analyses related to the  
14 Facility within seven (7) days of Defendants' receipt of such information.

15 29. Document Provision. During the life of this Consent Decree, Defendants  
16 shall copy Coastkeeper on all documents related to water quality at the Facility that are  
17 submitted to the Regional Board, the State Board, and/or any State or local agency or  
18 municipality. Such reports and documents shall be provided to Coastkeeper concurrently  
19 as they are sent to the agencies and/or municipalities. Any correspondence related to  
20 water quality received by DBW Metals from any regulatory agency shall be provided  
21 within three (3) business days of receipt by DBW Metals.

#### 22 **H. Environmental Projects and Fees and Costs**

23 30. Environmental Mitigation Project. Defendants agree make a payment of  
24 Fifteen Thousand Dollars (\$15,000) to the Public Interest Green Fund at the Orange  
25 County Community Foundation, 30 Corporate Park, Suite 410, Irvine, California 92606,  
26 www.oc-cf.org. The Public Interest Green Fund is a non-profit organization that uses its  
27 funds to support environmental advocacy by area law students on behalf of non-profit  
28 organizations, either via stipends or scholarships. This mitigation payment shall be used

1 to support student advocacy in projects that reduce or mitigate the impacts of storm water  
2 pollution in Orange County. Defendants shall make the mitigation payment within sixty  
3 (60) days of the Effective Date and mail the payment via certified mail or overnight  
4 delivery to the Public Interest Green Fund. Defendants shall provide Coastkeeper with a  
5 copy of such payment.

6 31. Coastkeeper's Fees and Costs. Defendants agree to partially reimburse  
7 Coastkeeper for their investigation fees and costs, consultant fees and costs, reasonable  
8 attorneys' fees, and other costs incurred as a result of investigating and filing the lawsuit,  
9 and negotiating a resolution of this matter in the amount of Fifty-One Thousand Five  
10 Hundred Dollars (\$51,500.00). Defendants shall make this payment within sixty (60)  
11 days of the Effective Date. All such payments shall be made payable to:

12 **Lawyers for Clean Water Attorney-Client Trust Account**

13 and delivered by certified mail or overnight delivery to: Lawyers for Clean Water, Inc.,  
14 1004 A O'Reilly Avenue, San Francisco, California 94129.

15 32. Stipulated Payment. Defendants shall make a remediation payment of One  
16 Thousand Dollars (\$1,000) for each missed deadline included in or contemplated by this  
17 Consent Decree, unless the missed deadline results from a Force Majeure Event.  
18 Payments for a missed deadline shall be made for the restoration and/or improvement of  
19 the watershed in the area affected by Defendants' discharges and shall be awarded to the  
20 Environmental Mitigation Project recipient identified in paragraph 30 above. Defendants  
21 agree to make the stipulated payment within thirty (30) days of a missed deadline and  
22 mail the payment via certified mail or overnight delivery. Defendants shall provide  
23 Coastkeeper with a copy of each such payment.

24 **I. Commitments of Plaintiff**

25 33. Plaintiff shall submit this Consent Decree to the United States  
26 Environmental Protection Agency and the United States Department of Justice ("DOJ")  
27 within three (3) days of the final signature of the Parties for agency review consistent  
28 with 40 C.F.R. §135.5. The agency review period expires forty-five (45) days after

1 receipt by both agencies, as evidenced by the certified return receipts, copies of which  
2 shall be provided to Defendants if requested. In the event that EPA or DOJ object to  
3 entry of this Consent Decree the Parties agree to meet and confer to attempt to resolve the  
4 issue(s) raised by EPA or DOJ.

5 34. Plaintiff shall file this Consent Decree with the District Court within three  
6 (3) days of the Effective Date. Coastkeeper is responsible for notifying Defendants of the  
7 District Court's entry of the Order dismissing these claims with prejudice. Such  
8 notification can be satisfied by the Central District of California's Case  
9 Management/Electronic Case Filing ("CM/ECF") notification to the Parties that the  
10 Order was executed and entered by the District Court.

### 11 **III. EFFECTIVE DATE AND TERMINATION DATE**

12 35. The term "Effective Date," as used in this Consent Decree, shall mean the  
13 last date for the United States Department of Justice and the United States Environmental  
14 Protection Agency ("Federal Agencies") to comment on the Consent Decree, i.e., the  
15 45th day following the United States Department of Justice and United States  
16 Environmental Protection Agency's receipt of the Consent Decree, or the date on which  
17 the Federal Agencies provide notice that they require no further review and the Court  
18 enters the final Consent Decree, whichever occurs earlier.

19 36. This Consent Decree will terminate on its own terms five (5) years from the  
20 Effective Date.

### 21 **IV. DISPUTE RESOLUTION**

22 37. This Court shall retain jurisdiction over this matter for the purposes of  
23 adjudicating all disputes among the parties that may arise under the provisions of this  
24 Consent Decree. The Court shall have the power to enforce this Consent Decree with all  
25 available legal and equitable remedies, including contempt.

26 38. Meet and Confer. A party to this Consent Decree shall invoke the dispute  
27 resolution procedures of this Section by notifying all other Parties in writing of the  
28 matter(s) in dispute and of the party's proposal to resolve the dispute under this Section.

1 The Parties shall then meet and confer in an attempt to resolve the dispute no later than  
2 ten (10) calendar days from the date of the notice.

3 39. If the Parties cannot resolve a dispute by the end of the meet and confer  
4 process, the party invoking the dispute resolution provision may invoke formal dispute  
5 resolution by filing a motion before the United States District Court for the Central  
6 District of California. The Parties shall jointly apply to the Court for an expedited  
7 hearing schedule on the motion.

8 40. If Coastkeeper initiates a motion or proceeding before the Court to enforce  
9 the terms and conditions of this Consent Decree, Coastkeeper shall be entitled to recover  
10 reasonable fees incurred to enforce the terms of this Consent Decree consistent with the  
11 provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §§ 1365, 1319.

12 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

13 41. In consideration of the above, upon the Effective Date of this Consent  
14 Decree, the Parties hereby fully release, except for claims for the Defendants' failure to  
15 comply with this Consent Decree and as expressly provided below, each other and their  
16 respective successors, assigns, officers, agents, employees, and all persons, firms and  
17 corporations having an interest in them, from any and all alleged CWA violations  
18 claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

19 42. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to  
20 address or take any position that it deems necessary or appropriate in any formal or  
21 informal proceeding before the Regional Board, EPA, or any other judicial or  
22 administrative body on any other matter relating to Defendants.

23 43. Neither the Consent Decree nor any payment pursuant to the Consent Decree  
24 shall constitute or be construed as a finding, adjudication, or acknowledgement of any  
25 fact, law or liability, nor shall it be construed as an admission of violation of any law,  
26 rule, or regulation. Defendants maintain and reserve all defenses they may have to any  
27 alleged violations that may be raised in the future.

1           44. Force Majeure. Defendants shall notify Coastkeeper pursuant to the terms of  
2 this paragraph, when implementation of the requirements set forth in this Consent  
3 Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite  
4 the timely good-faith efforts of Defendants, due to circumstances beyond the reasonable  
5 control of Defendants or its agents, and which could not have been reasonably foreseen  
6 and prevented by the exercise of due diligence by Defendants. Any delays due to  
7 Defendants' failure to make timely and bona fide applications and to exercise diligent  
8 efforts to obtain any necessary permits, or due to normal inclement weather shall not, in  
9 any event, be considered to be circumstances beyond DBW Metals' control.

10           a. If Defendants claim impossibility, they shall notify Coastkeeper in writing  
11 within twenty-one (21) days of the date that DBW Metals first knew of the event or  
12 circumstance that caused or would cause a violation of this Consent Decree or the date  
13 DBW Metals should have known of the event or circumstance by the exercise of due  
14 diligence. The notice shall describe the reason for the nonperformance and specifically  
15 refer to this Section. It shall describe the anticipated length of time the delay may persist,  
16 the cause or causes of the delay, the measures taken or to be taken by DBW Metals to  
17 prevent or minimize the delay, the schedule by which the measures will be implemented,  
18 and the anticipated date of compliance. DBW Metals shall adopt all reasonable measures  
19 to avoid and minimize such delays.

20           b. The Parties shall meet and confer in good-faith concerning the non-  
21 performance and, where the Parties concur that performance was or is impossible, despite  
22 the timely good faith efforts of DBW Metals, due to circumstances beyond the control of  
23 DBW Metals that could not have been reasonably foreseen and prevented by the exercise  
24 of due diligence by DBW Metals, new deadlines shall be established.

25           c. If Coastkeeper disagrees with DBW Metals' notice, or in the event that the  
26 Parties cannot timely agree on the terms of new performance deadlines or requirements,  
27 either party shall have the right to invoke the Dispute Resolution Procedure pursuant to  
28 Section IV. In such proceeding, DBW Metals shall bear the burden of proving that any

1 delay in performance of any requirement of this Consent Decree was caused or will be  
2 caused by force majeure and the extent of any delay attributable to such circumstances.

3 **VI. MISCELLANEOUS PROVISIONS**

4 45. Construction. The language in all parts of this Consent Decree shall be  
5 construed according to its plain and ordinary meaning, except as to those terms defined in  
6 the Industrial Permit, the Clean Water Act, or specifically herein.

7 46. Choice of Law. The laws of the United States shall govern this Consent  
8 Decree.

9 47. Severability. In the event that any provision, paragraph, section, or sentence  
10 of this Consent Decree is held by a court to be unenforceable, the validity of the  
11 enforceable provisions shall not be adversely affected.

12 48. Correspondence. Except as otherwise specifically stated herein, all notices  
13 required herein or any other correspondence pertaining to this Consent Decree shall be  
14 sent by first-class mail and electronic mail as follows:

15 If to Plaintiff:

16 Daniel Cooper  
17 Drevet Hunt  
18 Lawyers for Clean Water  
19 1004 A O'Reilly Ave  
20 San Francisco, CA 94129  
21 daniel@lawyersforcleanwater.com  
22 drev@lawyersforcleanwater.com

23 With copies to:

24 Orange County Coastkeeper  
25 Garry Brown  
26 3151 Airway Ave # F110  
27 Costa Mesa, CA 92626-4621  
28 garry@coastkeeper.org

If to Defendant:

1 William W. Funderburk, Jr.  
2 Ruben A. Castellon, Esq.  
3 Stanzler Funderburk & Castellon LLP  
4 811 Wilshire Blvd. Suite 1025  
5 Los Angeles, CA 90017  
6 wfunderburk@sfcfirm.com  
7 rcastellon@sfcfirm.com@sfcfirm.com

8 With copies to:

9 DBW & Associates, Inc.  
10 Attn: David Williams  
11 3250 East Frontera Street  
12 Anaheim, CA 92806  
13 [david@dbwmetals.com](mailto:david@dbwmetals.com)

14 Notifications of communications shall be deemed submitted three (3) days after the  
15 date that they are postmarked and sent by first-class mail. Any change of address or  
16 addresses shall be communicated in the manner described above for giving notices.

17 49. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent  
18 Decree, warrant or aver in any manner that the Defendants' compliance with this Consent  
19 Decree will constitute or result in compliance with any federal or state law or regulation.  
20 Nothing in this Consent Decree shall be construed to affect or limit in any way the  
21 obligation of the Defendants to comply with all federal, state, and local laws and  
22 regulations governing any activity required by this Consent Decree.

23 50. Counterparts. This Consent Decree may be executed in any number of  
24 counterparts, all of which together shall constitute one original document. Telecopy  
25 and/or facsimile copies of original signature shall be deemed to be originally executed  
26 counterparts of this Consent Decree.

27 51. Modification of the Consent Decree. This Consent Decree, and any  
28 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
written instrument, signed by the Parties.

1           52. Full Settlement. This Consent Decree constitutes a full and final settlement  
2 of this matter.

3           53. Integration Clause. This is an integrated Consent Decree. This Consent  
4 Decree is intended to be a full and complete statement of the terms of the agreement  
5 between the parties and expressly supersedes any and all prior oral or written agreements  
6 covenants, representations, and warranties (express or implied) concerning the subject  
7 matter of this Consent Decree.

8           54. Authority. The undersigned representatives for Plaintiff and Defendants  
9 each certify that he/she is fully authorized by the party whom he/she represents to enter  
10 into the terms and conditions of this Consent Decree.

11           55. The provisions of this Consent Decree apply to and bind the Parties,  
12 including any successors or assigns. The Parties certify that their undersigned  
13 representatives are fully authorized to enter into this Consent Decree, to execute it on  
14 behalf of the Parties, and to legally bind the Parties to its terms.

15           56. The Parties agree to be bound by this Consent Decree and not to contest its  
16 validity in any subsequent proceeding to implement or enforce its terms. By entering into  
17 this Consent Decree, the Defendants do not admit liability for any purpose as to any  
18 allegation or matter arising out of this Action.

19           The undersigned representatives for Coastkeeper and Defendants each certify that  
20 he/she is fully authorized by the party whom he/she represents to enter into the terms  
21 and conditions of this Consent Decree and that this Consent Decree binds that party.

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as  
2 of the date first set forth above.

3  
4 LAWYERS FOR CLEAN WATER, INC.

5  
6 Dated: December \_\_\_\_\_, 2009 \_\_\_\_\_

7 Daniel Cooper  
8 Drevet Hunt  
9 Lawyers for Clean Water, Inc.  
Attorneys for Plaintiff

10 ORANGE COUNTY COASTKEEPER

11  
12 Dated: December \_\_\_\_\_, 2009 \_\_\_\_\_

13 Garry Brown  
14 Orange County Coastkeeper

15 STANZLER FUNDERBURK CASTELLON LLP

16  
17  
18 Dated: December \_\_\_\_\_, 2009 \_\_\_\_\_

19 Ruben A. Castellon  
20 Attorney for Defendants

21 DBW & ASSOCIATES, INC.

22  
23  
24 Dated: December \_\_\_\_\_, 2009 \_\_\_\_\_

25 David B. Williams, Owner  
26 DBW & Associates, Inc.

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**IT IS SO ORDERED:**

Date:

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Honorable David O. Carter  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## **SETTLEMENT AGREEMENT**

### **NORTHERN CALIFORNIA RIVER WATCH vs. GINA GALLO/ DRY CREEK GENERAL STORE**

#### **Recitals**

Northern California River Watch, a California nonprofit organization sent to Gina Gallo, individually and as the owner and operator of Dry Creek General Store, LLC, (hereafter, "Gallo" or "Dry Creek Store") a Notice of Violations dated October 23, 2009, claiming alleged violations of the Federal Clean Water Act, 33 U.S.C. § 1365(a), and an intent to bring an action in the U.S. District Court. On May 10, 2010, Northern California River Watch filed a Complaint for Injunctive Relief and Damages against Gallo in the Northern District of California, Case No. 3:10-CV-01999 SC. Attached hereto as Exhibit A is a true and correct copy of the case filed, which includes a copy of the October 23, 2009 letter, which matters combined involve the action referred to herein. The parties have come to the terms of a complete settlement of all of the claims raised, against Gina Gallo, the Dry Creek General Store, LLC, and any other owner of the Dry Creek Store.

#### **Remedial Measures**

Before December 31, 2011, the Dry Creek General Store LLC shall complete the implementation of one of the following three (3) remedial measures:

1. The relocation and/or installation of a new septic system and/or leach lines in compliance with all Sonoma County Regulations, or as approved by the County.
2. The installation of a mound/sand filtration system.
3. The installation of The White Knight Microbial Inoculator Generator (MIG), which provides rehabilitation of failed septic systems using a patented in-tank device and a proprietary blend of organic-consuming bacteria, or a similar treatment system.

#### **Payment of Fees and Costs**

Within fifteen (15) days of the date all parties to this Settlement Agreement have executed this Agreement, which date shall constitute the effective date of this Settlement Agreement, Gallo or the Dry Creek Store shall reimburse Northern California River Watch the sum of \$10,000.00 for its costs including without limitation expert, paralegal and investigator fees and attorney fees, with the exception of fees incurred to enforce this agreement in court. Payment shall be made payable to 'Northern California River Watch' and mailed to Jerry Bernhaut, Esquire, 100 E Street, Suite 318,

Santa Rosa, CA 95404. If either party files a breach of contract action to enforce this Agreement, the court shall have the authority to award attorney fees to the prevailing party. To the extent that there are multiple issues with a different party prevailing on one or more issue, the court may take those facts into account in awarding fees and costs.

### **Settlement and Release of Claims**

Upon the effective date of this Settlement Agreement, Northern California River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter, agrees that it releases and forever discharges Gallo and the Dry Creek Store, the property owners, their members, officers, employees, agents, successors and assigns, and any other person acting on Gallo or the Dry Creek Store's behalf, from all claims, liabilities, or causes of action, known or unknown, arising from or connected with the wastewater collection activities referred to, or which could have been referred to, in the Notice of Violations and the Complaint (see, Exhibit A attached hereto), including without limitation, any and all claims for violations of 33 U.S.C. §1365, or of administrative orders or directives of the Regional Water Quality Control Board, the Clean Water Act, the Porter Cologne Act, or any other federal or state law, or of any local law, ordinance or regulation governing such activities, which occurred at any time up to and including the effective date of this Settlement Agreement, and that may occur within the period of five (5) years thereafter.

### **Enforcement**

Northern California River Watch agrees that its exclusive remedy for a breach of this Settlement Agreement by Gallo shall be a breach of contract action in which Gallo shall not be liable for consequential or punitive damages.

As a further consideration for the making of said settlement and payment, it is expressly agreed that:

1. All claims, past, present or future, are disputed and this full and final settlement thereof shall never be treated as an admission of liability or responsibility at any time or in any manner whatsoever.
2. This release is expressly intended to cover and include all claims, several or otherwise, past, present or five (5) years in the future.
3. The releases set forth in this Settlement Agreement extend to unknown as well as known claims. Northern California River Watch hereby waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Northern California River Watch further covenants and agrees that, at least sixty (60) days before filing any such action to enforce this Settlement Agreement, it shall notify Gallo in writing of what actions or inactions by Gallo it deems to be in violation of this Settlement Agreement. Thereafter, the parties shall meet and confer in a good faith attempt to resolve their dispute. If the parties cannot informally resolve the dispute, they will make a good faith effort to mediate the dispute prior to the filing of any action to enforce this Settlement Agreement.

**Dismissal of Complaint**

Within seven (7) court days of the payment of fees and costs by Gallo, Northern California River Watch shall cause to be dismissed with prejudice, its Complaint filed on May 10, 2010, U.S. District Court Case No. 3:10-CV-01999-SC.

Dated: Northern California River Watch  
By: \_\_\_\_\_

Dated: Dry Creek General Store, LLC  
By: \_\_\_\_\_

Dated: \_\_\_\_\_  
Gina Gallo

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_  
Jerry Bernhaut  
Attorney for Northern California River Watch

Dated: \_\_\_\_\_  
Timothy Byrd  
Attorney for Gina Gallo and Dry Creek General Store, LLC

EXHIBIT A

LAWYERS FOR CLEAN WATER, INC.

Daniel Cooper (Bar No. 153576)

Layne Friedrich (Bar No. 195431)

Martin McCarthy (Bar No. 194915)

1004A O'Reilly Avenue

San Francisco, California 94129

Telephone: (415) 440-6520

Facsimile: (415) 440-4155

Email: cleanwater@sfo.com

LAW OFFICES OF ANDREW L. PACKARD

Andrew L. Packard (Bar No. 168690)

319 Pleasant Street

Petaluma, California 94952

Tel. (707) 763-7227

Fax. (707) 763-9227

Email: andrew@packardlawoffices.com

Attorneys for Plaintiff

SANTA MONICA BAYKEEPER

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SANTA MONICA BAYKEEPER,  
a non-profit corporation,

Plaintiff,

v.

KRAMER METALS, Inc., *et al.*,

Defendants.

Case No. CV-07-03849 DDP (FMOx)

Hon. Dean D. Pregerson

**[Proposed]  
CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 *et seq.*)**

1           **WHEREAS**, Santa Monica Baykeeper (“Baykeeper” or “Plaintiff”) is a non-  
2 profit corporation dedicated to the preservation, protection and defense of the  
3 environment, the wildlife, and the natural resources of the Santa Monica Bay watershed  
4 and area receiving waters in Los Angeles County;

5           **WHEREAS**, Kramer Metals, Inc. (“Kramer Inc.” or “Defendant”) is an Owner  
6 and/or Operator of the Kramer Inc. scrap metal recycling facility located at 1760 E.  
7 Slauson Avenue, Los Angeles, California (hereinafter “Kramer 1760 Facility”) and was  
8 an Owner and/or Operator of the Kramer Inc. facility located at 1000 E. Slauson  
9 Avenue (hereinafter “Kramer 1000 Facility”) (collectively referred to as the “Kramer  
10 Facilities” or the “Sites”);

11           **WHEREAS**, Baykeeper contends that the Kramer Inc.’s operations at the Kramer  
12 Facilities result in discharges of pollutants to storm drains, Compton Creek, the Los  
13 Angeles River, and ultimately San Pedro Bay and the Pacific Ocean (collectively  
14 referred to as the “Receiving Waters”) and Kramer Inc.’s discharges are regulated by  
15 the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“CWA” or “Act”),  
16 Sections 301(a) and 402, 33 U.S.C §§ 1311(a), 1342;

17           **WHEREAS**, on 10 March 2007, Baykeeper served Kramer Inc., Spectrum Alloys,  
18 Inc., Continental Truck and Towing Co., LLC, and R & P Renovators, LLC,  
19 Kramer/Spirtas, LLC, Rail Prop, LLC, the United States Environmental Protection  
20 Agency (“EPA”), EPA Region IX, the State Water Resources Control Board (“State  
21 Board”) and the Regional Water Quality Control Board (“Regional Board”), with a notice  
22 of intent to file suit ("60-Day Notice") under Sections 505(a) and (b) of the CWA, 33  
23 U.S.C. § 1365(a) and (b). The 60-Day Notice alleged that the recipients had in the past  
24 and in fact continue to violate Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a)  
25 and 1342, by discharging pollutants into Receiving Waters in violation of National  
26 Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS0000001  
27  
28

1 [State Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-  
2 DWQ (“Industrial Permit”) and the Act;

3       **WHEREAS**, on 13 June 2007, Baykeeper filed a complaint against Kramer Inc.,  
4 *Spectrum Alloys, Inc., Continental Truck and Towing Co., LLC, and R & P Renovators,*  
5 *LLC, Kramer/Spirtas, LLC, and Rail Prop, LLC*, in the United States District Court,  
6 Central District of California (Civil Case No. CV 07-03849 VBF (FFMx)) entitled  
7 *Santa Monica Baykeeper v. Kramer Metals, Inc., Spectrum Alloys, Inc., Continental*  
8 *Truck and Towing Co., LLC, and R & P Renovators, LLC, Kramer/Spirtas, LLC, and*  
9 *Rail Prop, LLC* ("Complaint");

10       **WHEREAS**, on December 12, 2008, Plaintiff filed a Notice of Motion and  
11 Motion for Partial Summary Judgment (“Motion”) to establish Kramer Inc.’s liability  
12 for violations of the Industrial Permit and the Act at the Kramer Facilities;

13       **WHEREAS**, on February 27, 2009, the Court issued an order granting in part  
14 Plaintiff’s Motion;

15       **WHEREAS**, Baykeeper and Kramer Inc. (collectively referred to herein as the  
16 "Settling Parties" or “Parties”) have agreed that it is in the Parties' mutual interest to  
17 enter into a Consent Decree setting forth terms and conditions appropriate to resolving  
18 the allegations set forth in the Complaint without further proceedings;

19       **WHEREAS**, this Consent Decree shall be submitted to the United States  
20 Department of Justice and the United States Environmental Protection Agency for the  
21 statutory review period pursuant to 33 U.S.C. § 1365(c) and 40 C.F.R. § 135.5;

22       **WHEREAS**, all actions taken by Kramer Inc. pursuant to this Consent Decree  
23 shall be made in compliance with all applicable federal, state and local rules and  
24 regulations;

25 ///  
26  
27  
28

1           **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
2           **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**  
3           **FOLLOWS:**

4           1.     The Court has jurisdiction over the subject matter of this action pursuant to  
5           Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A);

6           2.     Venue is appropriate in the Central District Court pursuant to Section  
7           505(c)(1) of the Act, 33 U.S.C. §1365(c)(1), because the Kramer Facilities at which the  
8           alleged violations took place are located within this District;

9           3.     The Complaint states a claim upon which relief may be granted against  
10          Kramer Inc. pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

11          4.     Baykeeper has standing to bring this action.

12   **I.     OBJECTIVES**

13          5.     It is the express purpose of the Parties entering into this Consent Decree to  
14          further the objectives set forth in Section 101 *et seq.* of the CWA, 33 U.S.C. § 1251 *et*  
15          *seq.*, and to resolve those issues alleged by Baykeeper in its Complaint. In light of these  
16          objectives and as set forth fully below, Kramer Inc. agrees, *inter alia*, to comply with the  
17          provisions of this Consent Decree and to comply with the requirements of the Industrial  
18          Permit and all applicable provisions of the CWA at the Kramer 1760 Facility.  
19          Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the  
20          Kramer 1760 Facility “not cause or contribute to the exceedance of an applicable water  
21          quality standard.” Effluent Limitation B(3) of the Industrial Permit requires that Best  
22          Management Practices (“BMPs”) be developed and implemented to achieve Best  
23          Available Technology (“BAT”) and the Best Conventional Pollutant Control Technology  
24          (“BCT”). Kramer Inc. is required to develop and implement BMPs necessary to comply  
25  
26  
27  
28

1 with the Industrial Permit’s requirement to achieve compliance with BAT/BCT standards  
2 and with Water Quality Standards.<sup>1</sup>

3 **II. COMMITMENTS OF THE PARTIES**

4 **A. Industrial Storm Water Pollution Control Measures**

5 6. Kramer Inc. shall comply with the industrial storm water pollution control  
6 requirements of this Consent Decree by implementing the Discharge Minimization and  
7 Interim Discharge Minimization provisions of this Consent Decree as set forth below.

8 7. Interim Discharge Minimization. In the 2009-2010 wet season (defined as  
9 October 1 – May 31), Kramer Inc. shall eliminate storm water discharges from the  
10 Kramer 1760 Facility for all storms up to and including the 5 year, 24 hour storm event  
11 (“Interim Qualifying Storm Event”), as defined by the National Oceanographic and  
12 Atmospheric Administration (“NOAA”) Atlas 2, Vol. XI, Figure 39 (1973) with an  
13 assumed dry antecedent condition and 4 total inches of rainfall over a 24-hour period.

14 The Parties agree that any discharge of stormwater and/or stormwater pollutants from the  
15 Kramer 1760 Facility in connection with a rainfall event that exceeds an Interim  
16 Qualifying Storm Event during the 2009-2010 wet season is not a violation of this  
17 consent decree.

18 8. Kramer Inc. shall, within 30 days of the Effective Date of this Consent  
19 Decree, develop an Interim Discharge Minimization BMP Plan (“Interim BMP Plan”) to  
20 detain, capture, infiltrate, evaporate, harvest treat, or store industrial storm water  
21 generated at the Kramer 1760 Facility during storm events up to and including the  
22 Interim Qualifying Storm Event. The Interim BMP Plan may contain the following  
23 measures listed herein:

24 (a) Materials Storage and Industrial Activities. Placing sources of  
25 contamination in covered containers or under cover with such areas contained by

26 \_\_\_\_\_  
27 <sup>1</sup> Water Quality Standards means water quality criteria contained in the Regional Water Quality Control  
28 Plan, Los Angeles Region (“Basin Plan”), the California Ocean Plan, the National Toxics Rule, the  
California Toxics Rule, and other state or federally approved surface water quality plans.

1 berming or other containment sufficient to prevent the exposure of pollutants to storm  
2 water or rainwater and the runoff or discharge of pollutants;

3 (b) Coating. Coating structural sources of contamination (e.g. galvanized  
4 building roofs and siding);

5 (c) Sweeping. Employing high efficiency sweeping in order to prevent  
6 the discharge of pollutants;

7 (d) Harvesting and Storing Runoff. Constructing and maintaining on-site  
8 retention facilities (such as retention ponds or swales, infiltration basins, baker tanks,  
9 sumps, cisterns, or dry wells/ injection wells) designed to hold and store the runoff  
10 generated by a 5 year 24 hour return period storm event without any off-site discharge;

11 (e) Infiltrating Runoff. Creating a pervious site such that infiltration  
12 happens passively through the site;

13 (f) Infiltration Structure. Collecting and routing storm water to a  
14 structure that is designed to be an infiltration structure (such as an infiltration basin or  
15 dry well/ injection well);

16 (g) Treating Runoff. Treating runoff discharging from the site.

17 (h) Sand Filters. The Interim BMP Plan may include the installation of  
18 the advanced sand filters evaluated in the Caltrans Retrofit Study (“CRS”) at appropriate  
19 locations.

20 (i) Routing Discharge to the Publicly Owned Treatment Works. Routing  
21 discharge to the publicly owned treatment works (“POTW”)/ sanitary sewers, in  
22 combination with on-site retention such that flows are discharged off-peak in the POTW  
23 so as not to risk exacerbating wet weather Sanitary Sewer Overflow risks from the  
24 POTW.

25 (j) Vehicle and Equipment Maintenance and Fueling.

26 i. Conducting all vehicle and equipment maintenance and fueling  
27 at the Kramer 1760 Facility on asphalt or another impermeable surface;  
28

1           ii.     Conducting all vehicle and equipment maintenance and fueling  
2 at the Kramer 1760 Facility under cover;

3           iii.    Berミング of otherwise containing the surface of the area where  
4 vehicle maintenance and fueling occurs (hereinafter “Maintenance and Fueling Area”) in  
5 order to prevent the exposure of pollutants to storm water or rainwater and the runoff or  
6 discharge of pollutants;

7           iv.     Cleaning the Maintenance and Fueling Area as necessary to  
8 control track-off of pollutants;

9           v.      Dispensing all petroleum products within the Maintenance and  
10 Fueling Area(s);

11          vi.     Installing tire washing facilities at exit points from the Kramer  
12 1760 Facility to prevent off-site tracking from vehicles;

13          vii.    Annually power washing the entire paved part of the Kramer  
14 1760 Facility, including areas not reachable by mechanical sweepers, and dispose of the  
15 contaminated water consistent with all federal, state and local requirements, and not to  
16 area storm drains.

17        9.      Defendant shall complete and provide the Interim BMP Plan to Baykeeper  
18 for review and comment no later than 30 days from the Effective Date of this Consent  
19 Decree. Baykeeper shall respond with comments within 16 days of receiving the Interim  
20 BMP Plan. Within 12 days of receiving Baykeeper’s comments, if any, Defendant shall  
21 submit a final Interim BMP Plan to Baykeeper, incorporating Baykeeper’s comments into  
22 the Interim BMP Plan, or justifying in writing why any comment is not being  
23 incorporated. Defendant shall implement the Interim BMP Plan within 30 days of  
24 submitting the final Interim BMP Plan to Baykeeper. All BMPs in the Interim BMP Plan  
25 shall be implemented and functioning at the Kramer 1760 Facility on or before October  
26 1, 2009 (the start of the 2009-2010 wet season). Any disputes as to the Interim BMP  
27 Plan shall be resolved in accordance with the dispute resolution provisions of paragraphs  
28

1 24 through 27 below.

2 10. In the 2009-2010 wet season, stormwater discharges from the Kramer 1760  
3 Facility Containment Area (as defined in Exhibit A) occurring during rain events less  
4 than the Interim Qualifying Storm Event shall be considered a breach of this Consent  
5 Decree except where force majeure is demonstrated pursuant to paragraph 33 of this  
6 Consent Decree. Non-stormwater discharges from the Containment Area not authorized  
7 by the Industrial Permit, shall also be considered a breach of this Consent Decree.  
8 Permitted Discharges to the POTW/sanitary sewer shall not be considered a discharge  
9 from the Containment Area , and shall not be considered a breach of this Consent Decree.

10 11. Discharge Minimization. In the 2010-2011 wet season (defined as October  
11 1 – May 31), Kramer Inc. shall eliminate storm water discharges from the Kramer 1760  
12 Facility’s Containment Area (as defined in Exhibit A) for all storms up to and including  
13 the 25 year, 24 hour storm event (“Discharge Minimization Qualifying Storm Event”), as  
14 defined by the National Oceanographic and Atmospheric Administration (“NOAA”)  
15 Atlas 2, Vol. XI, Figure 41 (1973) with an assumed dry antecedent condition and 6 total  
16 inches of rainfall over a 24-hour period. The Parties agree that any discharge of  
17 stormwater and/or stormwater pollutants from the Kramer 1760 Facility in connection  
18 with a rainfall event that exceeds a Discharge Minimization Qualifying Storm Event is  
19 not a violation of this consent decree.

20 12. Kramer Inc. shall, within 60 days of the Effective Date of this Consent  
21 Decree, develop a Discharge Minimization BMP Plan (“DM BMP Plan”) detailing  
22 Kramer Inc.’s proposal to roof all areas of the Kramer 1760 Facility where industrial  
23 activity takes place. Defendant shall complete and provide the DM BMP Plan to  
24 Baykeeper for review and comment no later than 60 days from the Effective Date of this  
25 Consent Decree. Baykeeper shall respond with comments within 30 days of receiving the  
26 DM BMP Plan. Within 20 days of receiving Baykeeper’s comments, if any, Defendant  
27 shall submit a final DM BMP Plan to Baykeeper, incorporating Baykeeper’s comments  
28

1 into the DM BMP Plan, or justifying in writing why any comment is not being  
2 incorporated. All roofing and any additional BMPs in the DM BMP Plan shall be  
3 completed, installed, and functioning at the Kramer 1760 Facility on or before October 1,  
4 2010 (the start of the 2010-2011 wet season).

5 **B. STORM WATER POLLUTION PREVENTION PLAN**

6 13. SWPPP Revisions. Within 45 days of the Effective Date of this Consent  
7 Decree, Kramer Inc. agrees to revise the SWPPP currently in effect at the Kramer 1760  
8 Facility to incorporate all storm water pollution prevention measures and other applicable  
9 requirements set forth in this Consent Decree and/or the Industrial Permit. Specifically,  
10 the SWPPP shall include a description of all industrial activities and corresponding  
11 potential pollution sources and, for each potential pollutant source, a description of the  
12 potential pollutants from the sources. The SWPPP shall also identify BMPs (and their  
13 implementation dates) designed to achieve compliance with the provisions of this  
14 Consent Decree. Kramer Inc. shall revise the SWPPP as necessary to incorporate  
15 additional BMPs developed pursuant to this Consent Decree.

16 14. Baykeeper's Review of Revised SWPPP. Kramer Inc. shall submit one  
17 copy of the revised SWPPP to Baykeeper within seven days of completion of the  
18 revisions.

19 a. Within twenty (20) days of Baykeeper's receipt of the revised  
20 SWPPP, Baykeeper shall provide Kramer Inc. with comments and suggestions, if any,  
21 concerning the revisions to the SWPPP.

22 b. Within ten (10) days of Kramer Inc.'s receipt of Baykeeper's  
23 comments on the revised SWPPP, Kramer Inc. shall incorporate Baykeeper's comments  
24 and re-issue the SWPPP.

25 c. If Baykeeper is dissatisfied with the SWPPP after its re-issuance  
26 pursuant to paragraph 14(b) above, Baykeeper may, within sixty (60) days of  
27

1 Baykeeper's receipt of the SWPPP, elect to invoke the dispute resolution procedures  
2 outlined in paragraphs 24 through 27 below.

3 **C. MONITORING AND REPORTING**

4 15. Site Inspections. During the life of this Consent Decree, Baykeeper's  
5 Water Quality Engineer, accompanied by Baykeeper's attorney or other representative,  
6 may conduct up to two Site Inspections each calendar year at the Kramer 1760 Facility .  
7 The Site Inspections shall occur during normal business hours and Baykeeper shall  
8 provide Kramer Inc. with forty-eight (48) hours notice prior to each inspection. If an  
9 inspection is to take place on a Monday, Baykeeper shall provide written notice not later  
10 than 10:00 a.m. on the preceding Friday during normal business hours. During the Site  
11 Inspections, Baykeeper and/or its representatives shall be allowed access to the Kramer  
12 1760 Facility's SWPPP and monitoring records and to all monitoring reports and data for  
13 the Kramer 1760 Facility. During the Site Inspections, Baykeeper and/or its  
14 representatives may collect samples of storm water discharges at the Kramer 1760  
15 Facility. A certified California laboratory shall analyze storm water samples collected by  
16 Baykeeper. Baykeeper shall make every reasonable effort to ensure that its inspections  
17 are scheduled in such a manner as to allow Kramer Inc.'s compliance officer to be  
18 present at all inspections.

19 16. Compliance Monitoring and Oversight. Kramer Inc. agrees to help defray  
20 Baykeeper's reasonable costs incurred in conducting Site Inspections and compliance  
21 monitoring by reimbursing Baykeeper Ten Thousand Dollars (\$10,000) for these costs.  
22 Five-Thousand (\$5,000.00) dollars of this amount shall be paid within ten (10) days of  
23 the Effective Date of this Consent Decree. The remaining Five Thousand (\$5,000.00)  
24 dollars shall be paid within one hundred fifty (150) days of the Effective Date. Kramer  
25 Inc. agrees to make compliance monitoring and oversight funds payable to "Lawyers for  
26 Clean Water Attorney Client Trust Account" and delivered by certified mail or overnight  
27

1 delivery to Lawyers for Clean Water, Inc., 1004A O'Reilly Avenue, San Francisco,  
2 California 94129, attention Layne Friedrich.

3 17. Reporting. During the life of this Consent Decree, on a monthly basis,  
4 Kramer Inc. shall provide Baykeeper with a copy of all compliance and monitoring data,  
5 including inspection reports, related to the Kramer 1760 Facility. During the life of this  
6 Consent Decree, Kramer Inc. shall provide Baykeeper with all laboratory analyses or  
7 stormwater discharge information related to the Kramer 1760 Facility within seven days  
8 of Kramer Inc.'s receipt of such information.

9 18. Document Provision. During the life of this Consent Decree, Kramer Inc.  
10 shall copy Baykeeper on all documents related to water quality at the Kramer 1760  
11 Facility that are submitted to the Regional Board, the State Board, and/or any State or  
12 local agency or municipality. Such reports and documents shall be provided to  
13 Baykeeper concurrently as they are sent to the agencies and/or municipalities.

14 **D. ENVIRONMENTAL PROJECTS AND FEES**

15 19. Environmental Mitigation Project. Kramer Inc. agrees to pay Ninety-Five  
16 Thousand Dollars (\$95,000.00) to the Rose Foundation for use in a supplemental  
17 environmental project to eliminate or mitigate the impacts of storm water pollution to the  
18 Compton Creek and/or Los Angeles River watersheds receiving discharges from the  
19 Kramer 1760 Facility and Kramer 1000 Facility. Kramer Inc. shall make the mitigation  
20 payment within one hundred fifty (150) days of the Effective Date of this Consent  
21 Decree and mail via certified mail or overnight delivery to the Rose Foundation, 6008  
22 College Avenue, Suite 10, Oakland, CA 94618. Kramer Inc. shall provide Baykeeper  
23 with a copy of such payment.

24 20. Baykeeper's Fees and Costs. Kramer Inc. agrees to reimburse Baykeeper  
25 for Baykeeper's investigation fees and costs, expert fees and costs, reasonable attorneys'  
26 fees, and other costs incurred as a result of investigating and preparing the lawsuit, and  
27 negotiating a resolution of this matter, totaling Three-Hundred Forty-Five Thousand  
28

1 (\$345,000.00) Dollars. The first payment of Forty-Five Thousand (\$45,000.00) Dollars  
2 shall be made within ten days of the Effective Date, payable to “Lawyers for Clean  
3 Water Attorney Client Trust Account” and delivered by certified mail or overnight  
4 delivery to: Lawyers for Clean Water, Inc., 1004A O’Reilly Avenue, San Francisco,  
5 California 94129 attention Layne Friedrich. The remaining sum of Three Hundred  
6 Thousand (\$300,000.00) dollars shall be made in the manner above within one-hundred  
7 fifty (150) days of the Effective Date.

8  
9 **E. STIPULATED PAYMENT**

10 21. Kramer Inc. shall make a remediation payment of One Thousand Dollars  
11 (\$1,000) for each missed deadline included in or contemplated by this Consent Decree,  
12 unless the missed deadline results from a Force Majeure Event. Payments for missed  
13 deadlines shall be made to Santa Monica Bay Restoration Commission for the restoration  
14 and/or improvement of the watershed in the area affected by the missed deadline.  
15 Kramer Inc. agrees to make the stipulated payment within thirty (30) days of a missed  
16 deadline and mail via certified mail or overnight delivery to Santa Monica Bay  
17 Restoration Commission, 320 West 4th Street, Suite 200, Los Angeles, CA 90013.  
18 Kramer Inc. shall provide Baykeeper with a copy of each such payment.

19  
20 **F. COMMITMENTS OF PLAINTIFF**

21 22. Stipulated Dismissal. Within three (3) days of execution of this Consent  
22 Decree by the Parties, Baykeeper shall file this Consent Decree with the United States  
23 District Court for the Central District of California (“District Court”).

24 23. Review by Federal Agencies. Baykeeper shall submit this Consent Decree  
25 to EPA and the U.S. Department of Justice (“DOJ”) within three days of the execution of  
26 this Consent Decree for review consistent with 40 C.F.R. § 135.5. In the event that EPA  
27

1 or DOJ comments negatively on the provisions of this Consent Decree, the Parties agree  
2 to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

3 **G. DISPUTE RESOLUTION**

4 24. This Court shall retain jurisdiction over this matter for the purposes of  
5 implementing and enforcing the terms and conditions of this Consent Decree, and  
6 adjudicating all disputes among the parties that may arise under the provisions of this  
7 Consent Decree. The Court shall have the power to enforce this Consent Decree with all  
8 available legal and equitable remedies, including contempt.

9 25. Meet and Confer. A party to this Consent Decree shall invoke the dispute  
10 resolution procedures of this Section by notifying all other Parties in writing of the  
11 matter(s) in dispute and of the party's intention to resolve the dispute under this Section.  
12 The Parties shall then meet and confer in an attempt to resolve the dispute informally  
13 over a period of fourteen (14) calendar days from the date of the notice.

14 26. If the Parties cannot resolve a dispute by the end of meet and confer  
15 informal negotiations, the party invoking the dispute resolution provision shall provide  
16 notice to the other party that it intends to invoke formal dispute resolution by filing a  
17 motion before the United States District Court for the Central District of California. The  
18 Parties shall jointly apply to the Court for an expedited hearing schedule on the motion.

19 27. If a party initiates a motion or proceeding before the Court relating to  
20 enforcement of the terms and conditions of this Consent Decree, the party shall be  
21 entitled to recover fees incurred to enforce the terms of this Consent Decree consistent  
22 with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §1365 and § 1319.

23 **III. RETENTION OF JURISDICTION AND TERMINATION**

24 28. Within ten (10) days of execution of this Consent Decree, Baykeeper will  
25 dismiss with prejudice all defendants to this action except for Kramer Metals, Inc. The  
26 Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or  
27 enforcing the terms of this Consent Decree executed by the Parties, or as long thereafter  
28

1 as is necessary for the Court to resolve any motion to enforce this Consent Decree filed  
2 within sixty (60) days after completion of the obligations set forth in the Consent Decree.  
3 This Consent Decree shall terminate in accordance with paragraph 29 below after  
4 Kramer Inc. completes the roofing of the Kramer 1760 Facility required under this  
5 Consent Decree and after Baykeeper has conducted an inspection of the completed  
6 roofing at the Kramer 1760 Facility.

7 29. If Kramer Inc. believes it has complied with the terms of this Consent  
8 Decree, Kramer Inc. shall submit a written notice of compliance and request to terminate  
9 this Consent Decree to Baykeeper setting forth the information justifying Kramer Inc.'s  
10 request for termination. Upon receipt of this written request, Baykeeper shall have  
11 twenty-one (21) days to conduct an inspection of the Kramer 1760 Facility in accordance  
12 with the provisions of paragraph 15 above. If upon inspection Baykeeper does not agree  
13 to terminate coverage under the Consent Decree, the Parties shall resolve the matter via  
14 the dispute resolution provisions of paragraphs 24 through 27. If Baykeeper has not  
15 invoked the dispute resolution provisions within 21 days of Baykeeper's receipt of the  
16 written notice and request to terminate the Consent Decree, Kramer Inc. may move the  
17 Court to terminate the Consent Decree and Baykeeper shall not oppose the motion.

18 **IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

19  
20 30. In consideration of the above, upon termination of this Consent Decree, the  
21 Parties hereby fully release, except for claims for Kramer Inc.'s failure to comply with  
22 this Consent Decree and as expressly provided below, each other and their respective  
23 successors, assigns, officers, agents, employees, landlords/property owners, and all  
24 persons, firms and corporations having an interest in them, from any and all alleged  
25 CWA violations claimed in the Complaint, up to and including the Effective Date of this  
26 Consent Decree.  
27  
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1 31. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to  
2 address or take any position that it deems necessary or appropriate in any formal or  
3 informal proceeding before the Regional Board, EPA, or any other judicial or  
4 administrative body on any other matter relating to Kramer Inc.

5 **V. MISCELLANEOUS PROVISIONS**

6 32. The Parties enter into this Consent Decree to avoid prolonged and costly  
7 litigation. Neither the Consent Decree, nor any payment pursuant to the Consent Decree,  
8 nor any implementation of BMPs or any other compliance with this Consent Decree,  
9 shall constitute or be construed as – and Kramer Inc. expressly does not intend to  
10 imply—any admission to any finding, adjudication, or acknowledgment of any fact, law,  
11 or liability, nor shall it be construed as an admission of violation of any law, rule, or  
12 regulation. Kramer Inc. maintains and reserves all defenses it may have to any alleged  
13 violations that may be raised in the future.

14 33. Force Majeure. Force Majeure includes any act of God, war, fire, earthquake,  
15 windstorm, flood or natural catastrophe; unexpected and unintended accidents not caused  
16 by Kramer Inc.'s or its employees' negligence; civil disturbance, vandalism, sabotage or  
17 terrorism; restraint by court order or public authority or agency; or action or non-action  
18 by, or inability to obtain the necessary authorizations or approvals from any  
19 governmental agency. Force Majeure shall not include normal inclement weather,  
20 economic hardship or inability to pay. Any party seeking to rely upon this paragraph to  
21 excuse or postpone performance, shall have the burden of establishing that it could not  
22 reasonably have been expected to avoid the event or circumstance, and which by exercise  
23 of due diligence has been unable to overcome the failure of performance. Kramer Inc.  
24 shall exercise due diligence to resolve and remove any force majeure event.

25 34. Construction. The language in all parts of this Consent Decree shall be  
26 construed according to its plain and ordinary meaning, except as to those terms defined in  
27 the Industrial Permit, the Clean Water Act, or specifically herein.  
28

1 35. Choice of Law. The laws of the United States shall govern this Consent  
2 Decree.

3 36. Severability. In the event that any provision, paragraph, section, or sentence  
4 of this Consent Decree is held by a court to be unenforceable, the validity of the  
5 enforceable provisions shall not be adversely affected.

6 37. Correspondence. All notices required herein or any other correspondence  
7 pertaining to this Consent Decree shall be sent by regular, certified, or overnight mail as  
8 follows:

9 If to Plaintiff:

10 Daniel G. Cooper, Esq.  
11 Lawyers for Clean Water, Inc.  
12 1004 O'Reilly Ave.  
13 San Francisco, CA 94129

14 With copies to:

15 Santa Monica Baykeeper  
16 120 W. Broadway, Suite 105  
17 Santa Monica, CA 90401

18 If to Kramer Inc.:

19 Jason M. Booth  
20 Dongell Lawrence Finney LLP  
21 707 Wilshire Blvd., 45<sup>th</sup> Floor  
22 Los Angeles, CA 90017

23 With copies to:

24 Douglas Kramer  
25 Kramer Metals, Inc.  
26 1760 E Slauson Avenue  
27 Los Angeles, CA 90058-3827  
28

1 Notifications of communications shall be deemed submitted three days after the  
2 date that they are postmarked and sent by first-class mail or deposited with an overnight  
3 mail/delivery service. Any change of address or addresses shall be communicated in the  
4 manner described above for giving notices. In addition, the Parties may agree to transmit  
5 documents electronically or by facsimile.

6 38. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent  
7 Decree, warrant or aver in any manner that the Kramer Inc.'s compliance with this  
8 Consent Decree will constitute or result in compliance with any federal or state law or  
9 regulation. Nothing in this Consent Decree shall be construed to affect or limit in any  
10 way the obligation of the Kramer Inc. to comply with all federal, state, and local laws and  
11 regulations governing any activity required by this Consent Decree.

12 39. Counterparts. This Consent Decree may be executed in any number of  
13 counterparts, all of which together shall constitute one original document. Telecopy  
14 and/or facsimile copies of original signature shall be deemed to be originally executed  
15 counterparts of this Consent Decree.

16 40. Modification of the Consent Decree. This Consent Decree, and any  
17 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
18 written instrument, signed by the Parties.

19 41. Full Settlement. This Consent Decree constitutes a full and final settlement  
20 of this matter.

21 42. Integration Clause. This is an integrated Consent Decree. This Consent  
22 Decree is intended to be a full and complete statement of the terms of the agreement  
23 between the parties and expressly supersedes any and all prior oral or written agreements  
24 covenants, representations, and warranties (express or implied) concerning the subject  
25 matter of this Consent Decree.  
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Attorneys for Plaintiff  
Santa Monica Baykeeper

SANTA MONICA BAYKEEPER



Dated: 20 July 2009

by: \_\_\_\_\_

Tom Ford  
Santa Monica Baykeeper

DONGELL LAWRENCE FINNEY, LLP

Dated: \_\_\_\_\_ July 2009

\_\_\_\_\_  
Jason M. Booth  
Attorney for Kramer Metals, Inc.

KRAMER METALS, INC

Dated: \_\_\_\_\_ July 2009

by: \_\_\_\_\_

Stanley Kramer  
Kramer Metals, Inc.

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Attorneys for Plaintiff  
Santa Monica Baykeeper

SANTA MONICA BAYKEEPER

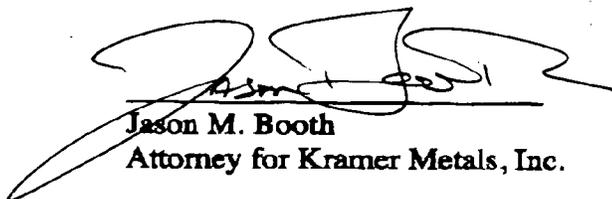


Dated: 20 July 2009

by: \_\_\_\_\_

Tom Ford  
Santa Monica Baykeeper

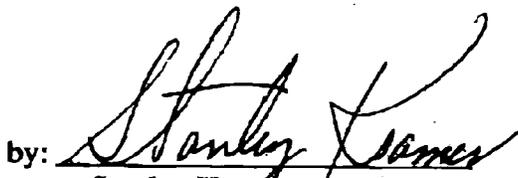
DONGELL LAWRENCE FINNEY, LLP



Dated: 28 July 2009

Jason M. Booth  
Attorney for Kramer Metals, Inc.

KRAMER METALS, INC



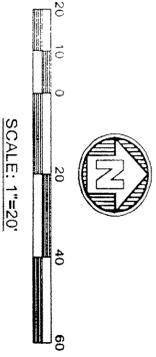
Dated: 27<sup>th</sup> July 2009

Stanley Kramer  
Kramer Metals, Inc.

**Exhibit A**

2/4/2009 9:18:35 AM

**DISCLAIMER:**  
 UTILITIES SHOWN HEREON ARE COMPILED FROM DATA OBTAINED FROM OTHERS AND BELIEVED TO BE CORRECT BUT NO LIABILITY IS ASSUMED FOR DAMAGES, COSTS OR CLAIMS IF FACILITIES ARE ENCOUNTERED DURING CONSTRUCTION WHICH ARE NOT CORRECTLY IDENTIFIED ON THE PLANS OR ANY INFORMATION SUPPLIED IS NOT ACCURATE AND/OR COMPLETE. PLEASE CALL UNDERGROUND SERVICE ALERT BEFORE DIGGING. TEL.: (800) 424-4133.



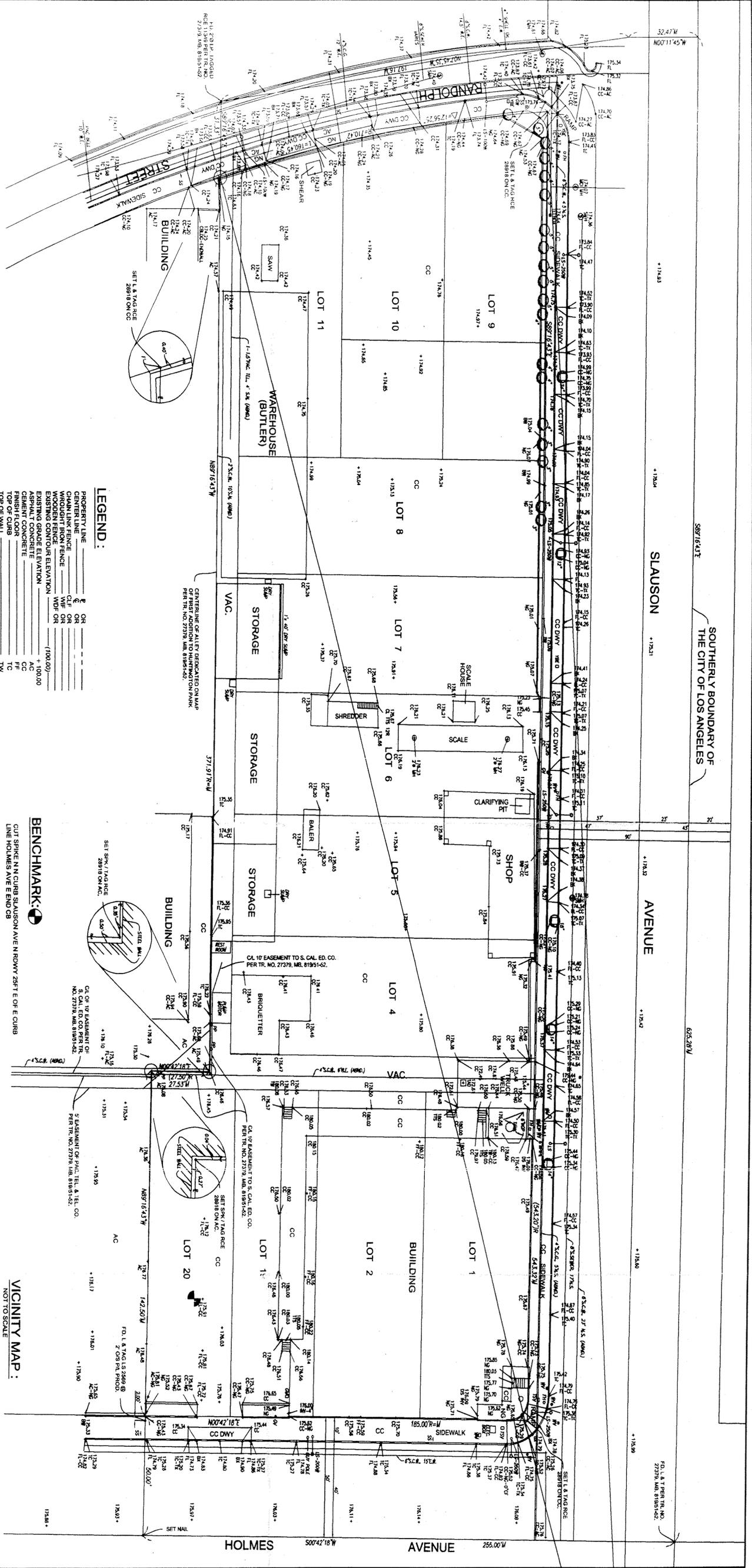
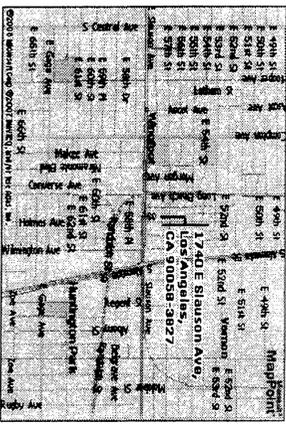
**LEGEND:**

PROPERTY LINE	—	OR
CADASTRAL	—	OR
CHAIN LINK FENCE	—	OR
WOODEN FENCE	—	OR
EXISTING GRADE ELEVATION	—	(100.00)
ASPHALT CONCRETE	—	AC
FINISH FLOOR	—	FF
TOP OF CURB	—	TC
TOP OF WALL	—	TW
WATER METER	—	WM
CONCRETE BLOCK WALL	—	CBW
FLOWLINE	—	FL
DRY DRAINAGE	—	DD
DRY DRAINAGE 'X'	—	BW
BACK OF SIDEWALK	—	BK
BOTTOM OF DRIVEWAY 'X'	—	BP
POWER POLE	—	PP
LIGHT POST	—	LP
HOSE BIB	—	HB
LIGHT STANDOFF	—	LS
WIRE FORMAN	—	WF
WIRE FORMAN	—	WF
STREET SIGN	—	SS

**BENCHMARK:**  
 CUT SPIKE IN CURB SLAUSON AVE N RDWAY 28 FT E OF E CURB  
 LINE HOLMES AVE E END CB  
 ELEVATION = 178.24 (1989)

**LEGAL DESCRIPTION:**  
 LOTS 1, 2, 4 THRU 11, 19.4 20 OF TR. NO. 27379, MB. 8194-52.

**BASIS OF BEARING:**  
 ALL BEARINGS SHOWN HEREON ARE BASED ON THE BEARING  
 S89°14'53"W ON THE CENTERLINE OF SLAUSON AVENUE AS SHOWN  
 ON TR. NO. 27379, MB. 8194-52.



DATE: 10/22/08		PROJECT: BOUNDARY AND TOPOGRAPHIC SURVEY 1740 E. SLAUSON AVENUE LOS ANGELES, CA 90058	OWNER/CIENT: STANLEY & SUSAN KRAMER 1760 E. SLAUSON AVENUE LOS ANGELES, CA 90058	REVISIONS:	DATE BY	
SCALE: AS SHOWN						
DRAWN: C.R.A.						
CHECKED: P.A.A.						
JOB NO.: AEI-06-0606						

KRAMER 000002133

1 ANDREW L. PACKARD (State Bar No. 168690)  
2 ERIK M. ROPER (State Bar No. 259756)  
3 HALLIE B. ALBERT (State Bar No. 258737)  
4 Law Offices of Andrew L. Packard  
5 100 Petaluma Blvd. N., Suite 301  
6 Petaluma, CA 94952  
7 Tel: (707) 763-7227  
8 Fax: (707) 763-9227  
9 E-mail: Andrew@packardlawoffices.com  
10 Erik@packardlawoffices.com  
11 Hallie@packardlawoffices.com

12 ROBERT J. TUERCK (State Bar No. 255741)  
13 Jackson & Tuerck  
14 P. O. Box 148  
15 429 W. Main Street, Suite C  
16 Quincy, CA 95971  
17 Tel: (530) 283-0406  
18 E-mail: bob@jacksontuerck.com

19 Attorneys for Plaintiff  
20 CALIFORNIA SPORTFISHING  
21 PROTECTION ALLIANCE

22 **UNITED STATES DISTRICT COURT**  
23 **EASTERN DISTRICT OF CALIFORNIA**

24 CALIFORNIA SPORTFISHING  
25 PROTECTION ALLIANCE, a non-profit  
26 corporation,

27 Plaintiff,

28 vs.

29 CITY OF REDDING, COUNTY OF  
30 SHASTA, and KURT STARMAN, an  
31 individual,

32 Defendants.

Case No. 2:10-CV-01389-WBS-CMK

**[PROPOSED] CONSENT AGREEMENT**

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

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

37 **WHEREAS**, Defendant the County of Shasta (“**COUNTY**”) owns the property located

1 at 14095 Clear Creek Road, in the unincorporated area of Shasta County known as Igo, in the  
2 State of California upon which the West Central Landfill is sited (the “**Facility**”), Defendant  
3 the City of Redding (“**CITY**”) operates the Facility, and Defendant Mr. Kurt Starman  
4 (“**STARMAN**”)<sup>1</sup> was only named as a defendant in this matter in his capacity as the City  
5 Manager for the CITY;

6 **WHEREAS**, the Facility is an approximately 230-acre landfill facility within a larger  
7 1000-acre site;

8 **WHEREAS**, unless otherwise noted, CITY, COUNTY and STARMAN shall be  
9 referred to herein collectively as DEFENDANTS;

10 **WHEREAS**, DEFENDANTS entered into an agreement effective July 26, 1990  
11 concerning the use and operation of the Facility and nothing in this Consent Agreement  
12 (“**Agreement**”) shall affect, alter, or amend any rights or obligations of the COUNTY or CITY  
13 arising out of agreements between DEFENDANTS relating to ownership or operation of the  
14 Facility;

15 **WHEREAS**, CSPA and DEFENDANTS collectively shall be referred to as the  
16 “**Parties**.”

17 **WHEREAS**, the Facility collects and discharges storm water to Dry Creek and Dry  
18 Creek flows into Cottonwood Creek, which then ultimately flows into the Sacramento River,  
19 and the Sacramento-San Joaquin Delta (a map of the Facility is attached hereto as **Exhibit A**  
20 and incorporated herein by this reference);

21 **WHEREAS**, storm water discharges associated with industrial activity are regulated  
22 pursuant to the National Pollutant Discharge Elimination System (“**NPDES**”), General Permit  
23 No. CAS000001 Water Quality Order No. 91-13-DWQ (as amended by Water Quality  
24 Order 92-12 DWQ and 97-03-DWQ), issued by the State Water Resources Control Board

25 \_\_\_\_\_  
26 <sup>1</sup> STARMAN was only named as a defendant in this matter in his capacity as City Manager for the CITY.  
27 Accordingly, the parties agree that STARMAN’s obligations, if any, arising under this Consent Agreement,  
28 shall terminate prior to the Termination Date reflected in the parties’ Consent Agreement, if he ceases to serve  
the CITY as its City Manager.

1 pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter “**General**  
2 **Permit**”);

3 **WHEREAS**, on or about April 8, 2010, and again on or about May 24, 2010,  
4 PLAINTIFF provided notice of DEFENDANTS’ violations of the Act, and of its intention to  
5 file suit against DEFENDANTS, to the Administrator of the United States Environmental  
6 Protection Agency (“**EPA**”); the Administrator of EPA Region IX; the Executive Director of  
7 the State Water Resources Control Board (“**State Board**”); the Executive Officer of the  
8 Regional Water Quality Control Board, Central Valley Region (“**Regional Board**”); and to  
9 DEFENDANTS, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of  
10 CSPA’s notice letters (“**Notices**”) are attached as **Exhibit B** and incorporated herein by  
11 reference);

12 **WHEREAS**, DEFENDANTS deny the occurrence of the violations alleged in the  
13 Notices and maintain that they have complied at all times with the provisions of the General  
14 Permit;

15 **WHEREAS**, CSPA filed a complaint (*California Sportfishing Protection Alliance v.*  
16 *City of Redding, et al.*, Case No. 2:10-CV-01389-WBS-CMK) (the “**Action**”) against CITY  
17 and STARMAN in the United States District Court, Eastern District of California, on June 7,  
18 2010, and, upon the expiration of PLAINTIFF’s May 24, 2010 notice letter to COUNTY, filed  
19 a First Amended Complaint adding COUNTY as a defendant on July 23, 2010;

20 **WHEREAS**, for purposes of this Agreement, the Parties stipulate that venue is proper  
21 in this Court, and that DEFENDANTS do not contest the exercise of jurisdiction by this Court  
22 to enter this Consent Agreement;

23 **WHEREAS**, this Agreement shall be submitted to the United States Department of  
24 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall  
25 thereafter be submitted for approval by the Court, the date of which approval shall be referred  
26 to herein as the “**Court Approval Date**;”

27 **WHEREAS**, at the time the Agreement is submitted for approval to the United States  
28

1 District Court, CSPA shall request a dismissal of the First Amended Complaint with prejudice  
2 and the Parties shall stipulate and request that the Court retain jurisdiction for the enforcement  
3 of this Agreement as provided herein;

4 **AND WHEREAS**, the Parties, through their authorized representatives and without  
5 either adjudication of CSPA's claims or admission by DEFENDANTS of any alleged violation  
6 or other wrongdoing, have chosen to resolve this matter through settlement to avoid the cost  
7 and uncertainties of further litigation;

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

11 **I. COMMITMENT OF DEFENDANTS**

12 **1. Compliance With General Permit & Clean Water Act.** Beginning  
13 immediately, DEFENDANTS shall operate the Facility in full compliance with the  
14 requirements of the General Permit and the Clean Water Act, subject to any defenses available  
15 under the law.

16 **2. DEFENDANTS' Implementation of Specific Storm Water Best**  
17 **Management Practices.** DEFENDANTS shall complete the implementations of the  
18 following storm water control measures/best management practices ("**BMPs**") in the time  
19 frames provided:

20 (a) DEFENDANTS shall install aggregate-based berms with an asphalt  
21 bitumen (liquid asphalt) surface layer around the Facility's "**Self-Haul Transfer Area**"  
22 within sixty (60) days of the completed mutual execution of this Agreement to the  
23 extent necessary to direct storm water north to a newly established and designated storm  
24 water discharge point and sampling location;

25 (b) DEFENDANTS shall install asphalt berms for the 2011 to 2015 Wet  
26 Seasons on or before July 1, 2011, around the Facility's Self-Haul Transfer Area to the  
27 extent necessary to direct storm water north to a newly established and designated storm  
28

1 water discharge point and sampling location;

2 (c) DEFENDANTS shall install a litter filter and an oil-water separator at the  
3 newly established storm water discharge point/sampling location described in Clause  
4 2(a), above, within ninety (90) days of the completed mutual execution of this  
5 Agreement;

6 (d) DEFENDANTS shall create a new, comprehensive erosion control plan  
7 for the Facility and integrate it into the Facility SWPPP within sixty (60) days of the  
8 completed mutual execution of this Agreement;

9 (e) DEFENDANTS shall remediate the main drainage through the southern  
10 canyon by re-grading the drainage's existing slopes and installing rock to prevent future  
11 erosion of the drainage within thirty (30) days of the completed mutual execution of this  
12 Agreement;

13 (f) DEFENDANTS shall remediate the drainage issues on the access road  
14 down to Dry Creek by re-grading the road, installing a rock lined drainage ditch and  
15 installing cross drains to deter erosion of the road surface within thirty (30) days of the  
16 completed mutual execution of this Agreement;

17 (g) DEFENDANTS shall hydro-seed the barren areas on the existing waste  
18 pile within thirty (30) days of the completed mutual execution of this Agreement;

19 (h) DEFENDANTS shall strive to minimize the amount of windblown debris  
20 at the Facility to the greatest extent feasible by continuing to remove windblown trash  
21 from the Facility no less than twice per week;

22 (i) During each Wet Season throughout the life of this Agreement,  
23 DEFENDANTS shall weekly monitor and maintain all of the Facility's storm water  
24 conveyances (e.g., drainage trenches, pipes, dams), discharge points and BMP  
25 structures in a manner that ensures they are kept free of debris and materials not related  
26 to the control or treatment of storm water;

27 (j) DEFENDANTS shall develop and implement a training program for all  
28

1 new employees and a yearly refresher course for employees to train the employees in  
2 storm water management and pollution prevention practices at the Facility, on or before  
3 February 1, 2011. Further, throughout the life of this Agreement, DEFENDANTS shall  
4 maintain records at the Facility of the monitoring and maintenance required by Clause  
5 2(h), above, and of any employee training related to storm water management; and,

6 (k) Within sixty (60) days of the completed mutual execution of this  
7 Agreement, DEFENDANTS shall create a visual inspection checklist that must be used  
8 by trained Facility personnel when conducting the visual observations and monitoring  
9 of storm water required under the General Permit, and such visual inspection checklists  
10 shall be incorporated into the Facility SWPPP.

11 **3. SWPPP Amendments/Additional BMPs.** Within sixty (60) days of the  
12 completed mutual execution of this Agreement, DEFENDANTS shall formally amend the  
13 Storm Water Pollution Prevention Plan (“**SWPPP**”) and the Storm Water Monitoring Plan  
14 (“**SWMP**”) for the Facility to incorporate all of the relevant requirements of this Consent  
15 Agreement, as well as the revised Facility map attached hereto as **Exhibit A**. DEFENDANTS  
16 shall provide a copy of the revised SWPPP and SWMP to CSPA upon their completion.

17 **4. Sampling Frequency.** DEFENDANTS shall collect and analyze samples from  
18 four (4) storm events, as qualified in the General Permit<sup>2</sup> for sampling purposes, in each of the  
19 five (5) Wet Seasons occurring during the term of this Agreement (2010-2011, 2011-2012,  
20 2012-2013, 2013-2014 and 2014-2015). The storm water sample results shall be compared  
21 with the values contained in Clause 5 below.

22 **5. Sampling Parameters.** The COUNTY shall analyze each storm water sample  
23 taken in accordance with the provisions of the General Permit. Accordingly, all samples shall  
24 be analyzed for each of the constituents listed in the below table by a laboratory accredited by  
25

26 <sup>2</sup> “**Qualifying Storm Events**” under the General Permit are those events in which (i) the samples taken are  
27 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
28 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 the State of California. All samples collected from the Facility shall be delivered to the  
2 laboratory as soon as possible to ensure that sample hold time is not exceeded. Analytical  
3 methods used by the laboratory shall be adequate to detect the individual constituents at or  
4 below the values specified in the below table.

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Iron, Total	1.0 mg/L
Aluminum, Total	0.75 mg/L
Arsenic, Total	0.16854 mg/L
Cadmium, Total	0.0159 mg/L
Copper, Total	0.0636 mg/L
Magnesium, Total	0.0636 mg/L
Mercury, Total	0.0024 mg/L
Nitrate + Nitrite (“N+N”)	0.68 mg/L

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20         6.         Sampling results shall be provided to CSPA within thirty (30) days of  
21 DEFENDANTS’ receipt of the laboratory report from each sampling event pursuant to the  
22 Notice provisions below. If the results of any samples exceed the parameter values set forth  
23 above, DEFENDANTS shall comply with the “**Action Memorandum**” requirements set forth  
24 in Clause 7 of this Agreement.

25         7.         “**Action Memorandum**” **Trigger.** If any sample taken during the five (5) Wet  
26 Seasons referenced in Clause 4 above exceeds the evaluation levels set forth in the table in  
27 Clause 5, or if DEFENDANTS fail to collect and analyze samples from four (4) storm events,  
28

1 as required in the General Permit, DEFENDANTS shall prepare a written statement discussing  
2 (1) the exceedance(s) and /or failure to collect and analyze samples from four (4) storm events,  
3 (2) the possible cause and/or source of the exceedance(s), and (3) additional feasible measures  
4 that will be taken to address and eliminate the problem and future exceedances (“**Action**  
5 **Memorandum**”). The Action Memorandum shall be provided to CSPA not later than July  
6 30<sup>th</sup> following the conclusion of each Wet Season. Recognizing that a SWPPP is an ongoing  
7 iterative process meant to encourage innovative BMPs, such additional measures may include,  
8 but are not limited to, material improvements to the storm water collection and discharge  
9 system, reviewing the frequency of Facility sweeping, changing the type and extent of storm  
10 water filtration media or modifying other industrial activities or management practices at the  
11 Facility. Such additional measures, to the extent feasible, shall be implemented immediately  
12 and in no event later than sixty (60) days after the due date of the Action Memorandum, except  
13 where 1) structural changes require longer than sixty (60) days to complete; 2) weather-related  
14 conditions render immediate implementation infeasible; or 3) the Parties agree in writing to  
15 defer implementation of specific measures in order to effectively meet and confer as discussed  
16 in this section below. Within thirty (30) days of implementation, the Facility SWPPP shall be  
17 amended to include all additional BMP measures designated in the Action Memorandum.

18 **8. CSPA Review Of “Action Memorandum”; Meet-and-Confer.** CSPA may  
19 review and comment on an Action Memorandum and suggest any additional pollution  
20 prevention measures it believes are appropriate. CSPA shall make good faith efforts to  
21 provide DEFENDANTS any comments and suggestions within thirty (30) days of its receipt of  
22 the Action Memorandum; however, CSPA’s failure to do so shall not be deemed to constitute  
23 agreement with the proposal(s) set forth in the Action Memorandum. Upon request by CSPA,  
24 DEFENDANTS agree to meet and confer in good faith (at the Facility, if requested by  
25 PLAINTIFF) regarding the contents and sufficiency of the Action Memorandum. If, after  
26 meeting and conferring on the Action Memorandum, the Parties fail to reach agreement on  
27 additional measures, either of the Parties may bring a motion before the Magistrate Judge  
28

1 consistent with the Agreement's dispute resolution procedures described below. If CSPA  
2 failed to provide DEFENDANTS its objections or comments to the contents and sufficiency of  
3 the Action Memorandum within thirty (30) days of its receipt thereof and CSPA subsequently  
4 brings a motion before the Magistrate Judge challenging the sufficiency of DEFENDANTS'  
5 storm water management measures implemented prior to CSPA's filing of such motion, the  
6 Court may consider CSPA's failure to provide DEFENDANTS feedback on the Action  
7 Memorandum within thirty (30) days as one of many factors in its analysis of the sufficiency of  
8 storm water management measures implemented by DEFENDANTS prior to filing of the  
9 motion.

10 **9. Inspections During The Term Of This Agreement.** In addition to any site  
11 inspections conducted as part of the meet-and-confer process concerning an Action  
12 Memorandum as set forth above, DEFENDANTS shall permit representatives of CSPA to  
13 perform up to three (3) physical inspections of the Facility during the term of this Consent  
14 Agreement. These inspections shall be performed by CSPA's counsel and consultants and may  
15 include sampling, photographing, and/or videotaping and CSPA shall provide DEFENDANTS  
16 with a copy of all sampling reports, photographs and/or video. CSPA shall provide at least  
17 forty-eight (48) hours advance notice of such physical inspection, except that DEFENDANTS  
18 shall have the right to deny access if circumstances would make the inspection unduly  
19 burdensome and pose significant interference with business operations or any party/attorney, or  
20 the safety of individuals. In such case, DEFENDANTS shall specify at least three (3) dates  
21 within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed.  
22 DEFENDANTS shall not make any alterations to Facility conditions during the period between  
23 receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's  
24 inspection that DEFENDANTS would not otherwise have made but for receiving notice of  
25 CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in  
26 compliance with any applicable laws or regulations. Nothing herein shall be construed to  
27 prevent DEFENDANTS from continuing to implement any BMPs identified in the SWPPP  
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1 during the period prior to an inspection by CSPA or at any time.

2 **10. Defendants' Communications with Regional and State Boards.** During the  
3 term of this Agreement, DEFENDANTS shall provide CSPA with copies of all documents  
4 submitted to the Regional Board or the State Board concerning storm water discharges from  
5 the Facility, including, but not limited to, all documents and reports submitted to the Regional  
6 Board and/or State Board as required by the General Permit. Such documents and reports shall  
7 be provided to CSPA pursuant to the Notice provisions in Clause 24 and contemporaneously  
8 with DEFENDANTS' submission to such agencies.

9 **11. SWPPP Amendments.** DEFENDANTS shall provide CSPA with a copy of any  
10 amendments to the Facility SWPPP and SWMP (e.g., any additional storm water discharge  
11 points/sampling locations developed in response to erosion control efforts at the Facility and/or  
12 changed operational areas) made after the execution of this Agreement by the Parties within  
13 thirty (30) days of such amendment.

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

15 **12. Mitigation Payment.** In recognition of the good faith efforts by  
16 DEFENDANTS to comply with all aspects of the General Permit and the Clean Water Act,  
17 and in lieu of payment by DEFENDANTS of any civil penalties which may have been assessed  
18 in this action if the matter had proceeded to trial, and as mitigation of the Clean Water Act  
19 violations alleged in CSPA's First Amended Complaint, the Parties agree that DEFENDANTS  
20 will pay the sum of thirty thousand dollars (\$30,000) within fifteen (15) days after the Court  
21 Approval Date to the Rose Foundation for Communities and the Environment (6008 College  
22 Avenue, Oakland, CA 94618, Attn: Tim Little) for projects to improve water quality in Dry  
23 Creek, Cottonwood Creek, the Sacramento River and/or the Sacramento-San Joaquin River  
24 Delta Estuary. If the mitigation payment is not dispersed by the Rose Foundation as agreed  
25 above within two year(s) of the completed mutual execution of this Agreement, the funds shall  
26 be returned to DEFENDANTS to implement the mitigation.

27 **13. CSPA's Attorneys' Fees and Costs.** DEFENDANTS agree to reimburse CSPA  
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1 in the amount of thirty-two thousand five hundred dollars (\$32,500) to defray CSPA's  
2 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs  
3 incurred as a result of investigating the activities at the Facility, bringing the action, and  
4 negotiating a resolution in the public interest. Such payment shall be made to the Law Offices  
5 of Andrew L. Packard Attorney-Client Trust Account and remitted within fifteen (15) days after  
6 the Court Approval Date.

7 **14. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
8 expert, consultant and attorneys' fees and costs associated with monitoring DEFENDANTS'  
9 compliance with this Consent Agreement over its five-year term, DEFENDANTS agree to  
10 contribute seventeen thousand five hundred dollars (\$17,500) to a compliance monitoring fund  
11 maintained by CSPA's counsel. Compliance monitoring activities may include, but shall not  
12 be limited to, site inspections, review of water quality sampling reports, review of annual  
13 reports, discussions with representatives of DEFENDANTS concerning the Action  
14 Memoranda referenced above, and potential changes to compliance requirements herein,  
15 preparation for and participation in meet-and-confer sessions, water quality sampling and  
16 analysis, and compliance-related activities. Such payment shall be made payable to the Law  
17 Offices of Andrew L. Packard Attorney-Client Trust Account and remitted within fifteen (15)  
18 days of the Court Approval Date. Any unused portion of these funds remaining on the  
19 Termination Date shall be refunded to DEFENDANTS within fifteen (15) days of the  
20 Termination Date of this Agreement.

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

22 **15. Meet and Confer Regarding Breach.** With the exception of the timelines set  
23 forth above for addressing exceedances of values specified in Clause 6 and Action Memoranda  
24 specified in Clause 8, if a dispute under this Agreement arises, or any Party under this  
25 Agreement believes that a breach of this Agreement has occurred, the Parties shall meet and  
26 confer within seven (7) days of receiving written notification from the other Party of a request  
27 for a meeting to determine whether a violation has occurred and to develop a mutually agreed  
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1 upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet  
2 and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) days have  
3 passed after the meet-and-confer occurred or should have occurred, either Party shall be  
4 entitled to all rights and remedies under the law, including filing a motion before the  
5 Magistrate Judge in the District Court of California, Eastern District, which shall retain  
6 jurisdiction over the Action for the limited purposes of enforcement of the terms of this  
7 Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in any such  
8 motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in  
9 Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law  
10 interpreting such provision.

11 **16. CSPA Waiver and Release.** Upon Court approval and entry of this Agreement,  
12 CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
13 directors, officers, agents, attorneys, representatives, and employees, releases DEFENDANTS  
14 and their elected officials, officers, directors, employees, shareholders, parents, subsidiaries,  
15 and affiliates, and each of their predecessors, successors and assigns, and each of their agents,  
16 attorneys, consultants, and other representatives (each a “**Released Defendant Party**”) from,  
17 and waives all claims which arise from or pertain to the Action, including, without limitation,  
18 all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including  
19 fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
20 which could have been claimed in this Action, for the alleged failure of DEFENDANTS to  
21 comply with the Clean Water Act at the Facility.

22 **17. DEFENDANTS’ Waiver and Release.** DEFENDANTS, on their own behalf  
23 and on behalf of those Released Defendant Parties under their control, release CSPA (and its  
24 officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their  
25 successors and assigns, and its agents, attorneys, and other representative) from, and waive all  
26 claims which arise from or pertain to the Action, including all claims for fees (including fees  
27 of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
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1 which could have been claimed for matters associated with or related to the Action.

2 **18. Stipulation for Dismissal.** Upon the Court Approval Date, the Parties shall file  
3 with the Court a Stipulation and Order which shall provide that:

4 a. The First Amended Complaint and all claims therein shall be dismissed  
5 with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2); and

6 b. The Court shall retain and have jurisdiction over the Parties with respect  
7 to disputes arising under this Agreement. Nothing in this Agreement shall be construed  
8 as a waiver of any Party's right to appeal from an order that arises from an action to  
9 enforce the terms of this Agreement.

10 **IV. MISCELLANEOUS PROVISIONS**

11 **19. No Admission of Liability or Fault.** The Parties enter into this Agreement for  
12 the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be  
13 construed as, and DEFENDANTS expressly do not intend to imply, an admission as to any  
14 fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement  
15 constitute or be construed as an admission by DEFENDANTS of any fact, finding, conclusion,  
16 issue of law, or violation of law. However, this paragraph shall not diminish or otherwise  
17 affect the obligation, responsibilities, and duties of the Parties under this Agreement.

18 **20. Completed Mutual Execution.** The term "**completed mutual execution**," as  
19 used in this Agreement, shall mean the last date on which the signature of a Party to this  
20 Agreement is executed.

21 **21. Termination Date.** This Agreement shall terminate on September 30, 2015.

22 **22. Counterparts.** This Agreement may be executed in one or more counterparts  
23 which, taken together, shall be deemed to constitute one and the same document. An executed  
24 copy of this Consent Agreement shall be valid as an original.

25 **23. Severability.** In the event that any one of the provisions of this Agreement is  
26 held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
27 adversely affected.

1           **24. Construction; Governing Law.** The language in all parts of this Agreement,  
2 unless otherwise stated, shall be construed according to its plain and ordinary meaning. This  
3 Agreement shall be construed pursuant to California law, without regarding to conflict of law  
4 principles.

5           **25. Authority.** The undersigned are authorized to execute this Agreement on behalf  
6 of their respective parties and have read, understood and agreed to be bound by all of the terms  
7 and conditions of this Agreement.

8           **26. Entire Agreement.** All agreements, covenants, representations and warranties,  
9 express or implied, oral or written, of the Parties concerning the subject matter of this  
10 Agreement are contained herein. This Agreement and its attachments are made for the sole  
11 benefit of the Parties, and no other person or entity shall have any rights or remedies under or  
12 by reason of this Stipulated Judgment, unless otherwise expressly provided for therein.

13           **27. Notices.** Any notices or documents required or provided for by this Agreement  
14 or related thereto that are to be provided to CSPA pursuant to this Agreement shall be  
15 hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
16 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

17           Bill Jennings, Executive Director  
18           California Sportfishing Protection Alliance  
19           3536 Rainier Avenue  
20           Stockton, CA 95204  
21           E-mail: [DeltaKeep@aol.com](mailto:DeltaKeep@aol.com)

22           With copies sent to:

23           Andrew L. Packard  
24           Erik M. Roper  
25           Law Offices of Andrew L. Packard  
26           100 Petaluma Boulevard North, Suite 301  
27           Petaluma, CA 94952  
28           Tel: (707) 763-7227  
29           E-mail: [Andrew@packardlawoffices.com](mailto:Andrew@packardlawoffices.com)  
30                        [Erik@packardlawoffices.com](mailto:Erik@packardlawoffices.com)

31           And to:

32           Robert J. Tuerck, Esq.  
33           Jackson & Tuerck  
34           P.O. Box 148

1 429 W. Main Street, Suite C  
2 Quincy, CA 95971  
3 Tel: 530-283-0406  
4 Fax: 530-283-0416  
5 E-mail: Bob@JacksonTuerck.com

6 Any notices or documents required or provided for by this Agreement or related thereto that  
7 are to be provided to DEFENDANTS pursuant to this Agreement shall be sent by U.S. Mail,  
8 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
9 transmission to the email addresses listed below:

10 Rick Duvernay, City Attorney  
11 City of Redding  
12 City Attorney's Office  
13 777 Cypress Avenue  
14 Redding, CA 96049-6071  
15 Tel.: (530) 225-4050  
16 Fax.: (530) 225-4362  
17 E-mail: rduvernay@ci.redding.ca.us

18 Rubin Cruse, County Counsel  
19 James R. Ross, Assistant County Counsel  
20 Shasta County  
21 1450 Court Street, Room 332  
22 Redding, CA 96001-1675  
23 Tel.: (530) 225-5711  
24 Fax.: (530) 225-5817  
25 E-mail: rcruse@co.shasta.ca.us  
26 jross@co.shasta.ca.us

27 With copies sent to:

28 Katherine J. Hart  
29 Leslie Z. Walker  
30 Abbott & Kindermann, LLP  
31 2100 21<sup>st</sup> Street  
32 Sacramento, CA 95818  
33 Tel: (916) 456-9595  
34 Fax.: (916) 456-9599  
35 E-mail: khart@aklandlaw.com  
36 lwalker@aklandlaw.com

37 Each Party shall promptly notify the other of any change in the above-listed contact  
38 information.

39 **28.** Signatures of the Parties transmitted by facsimile or email shall be deemed  
40 binding.

41 **29. Force Majeure.** No Party shall be considered to be in default in the

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1 performance of any of its obligations when a failure to perform is due to a “**Force Majeure.**”  
2 A Force Majeure event is any circumstances beyond the Party’s control, including, without  
3 limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public  
4 authority. A Force Majeure event does not include normal inclement weather or inability to  
5 pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it  
6 could not reasonably have been expected to avoid, and which by exercise of due diligence has  
7 been unable to overcome, the Force Majeure.

8         **30. Non-Approval of Agreement.** If for any reason the United States Department  
9 of Justice, the United States Environmental Protection Agency or the Court should decline to  
10 approve this Agreement in the form presented, the Parties shall use their best efforts to work  
11 together to modify the Agreement within thirty (30) days so that it is acceptable to the United  
12 States Department of Justice, the United States Environmental Protection Agency or the Court.  
13 If the Parties are unable to modify this Agreement in a mutually acceptable manner, this  
14 Agreement shall become null and void.

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

17         **32. Entire Agreement.** This Agreement and the attachments contain all of the terms  
18 and conditions agreed upon by the Parties relating to the matters covered by the Agreement,  
19 and supersede any and all prior and contemporaneous agreements, negotiations,  
20 correspondence, understandings, and communications of the Parties, whether oral or written,  
21 respecting the matters covered by this Agreement.

22         **33. Modification.** This Agreement may be amended or modified only by a writing  
23 signed by the Parties or their authorized representatives, and then by order of the Court.

24         **34. Breach of Agreement.** Except in case of an emergency but subject to the  
25 regulatory authority of any applicable governmental authority, any breach of or default under  
26 this Agreement capable of being cured shall be deemed cured if, within five (5) days of first  
27 receiving notice of the alleged breach or default, or within such other period approved in  
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1 writing by the Party making such allegation, which approval shall not be unreasonably  
2 withheld, the party allegedly in breach or default has completed such cure or, if the breach or  
3 default can be cured but is not capable of being cured within such five (5) day period, has  
4 commenced and is diligently pursuing to completion such cure.

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

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8 **[SIGNATURES ON FOLLOWING PAGE]**  
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Dated: 23 Nov 2010

California Sportfishing Protection Alliance

By: Bill Jennings  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_

City of Redding

By: \_\_\_\_\_  
Kurt Starman, City Manager

Dated: \_\_\_\_\_

County of Shasta

By: \_\_\_\_\_  
Rubin E. Cruse, Jr., County Counsel

Dated: \_\_\_\_\_

Kurt Starman

By: \_\_\_\_\_  
Kurt Starman

**APPROVED AS TO FORM:**

FOR DEFENDANT COUNTY:  
ABBOTT & KINDERMANN, LLP

Dated: November \_\_, 2010

By: \_\_\_\_\_  
Katherine J. Hart

FOR DEFENDANTS CITY AND STARMAN:  
CITY OF REDDING, CITY ATTORNEY

Dated: November \_\_, 2010

By: \_\_\_\_\_  
Rick Duvernay

1 Dated: \_\_\_\_\_

California Sportfishing Protection Alliance

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By: \_\_\_\_\_

Bill Jennings, Executive Director

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Dated: 11/23/10

City of Redding

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By:  \_\_\_\_\_

Kurt Starman, City Manager

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Dated: \_\_\_\_\_

County of Shasta

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By: \_\_\_\_\_

Rubin E. Cruse, Jr., County Counsel

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Dated: 11/23/10

Kurt Starman

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By:  \_\_\_\_\_

Kurt Starman

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**APPROVED AS TO FORM:**

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FOR DEFENDANT COUNTY:

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ABBOTT & KINDERMANN, LLP

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Dated: November \_\_, 2010

By: \_\_\_\_\_

Katherine J. Hart

23

FOR DEFENDANTS CITY AND STARMAN:

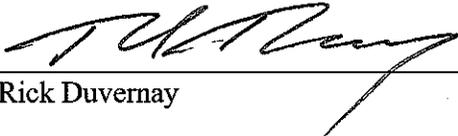
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CITY OF REDDING, CITY ATTORNEY

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Dated: November 23, 2010

By:  \_\_\_\_\_

Rick Duvernay

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California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

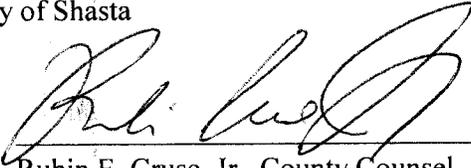
Dated: \_\_\_\_\_

City of Redding

By: \_\_\_\_\_  
Kurt Starman, City Manager

Dated: 11/23/10

County of Shasta

By:   
Rubin E. Cruse, Jr., County Counsel

Dated: \_\_\_\_\_

Kurt Starman

By: \_\_\_\_\_  
Kurt Starman

**APPROVED AS TO FORM:**

FOR DEFENDANT COUNTY:  
ABBOTT & KINDERMANN, LLP

Dated: November \_\_\_\_, 2010

By: \_\_\_\_\_  
Katherine J. Hart

FOR DEFENDANTS CITY AND STARMAN:  
CITY OF REDDING, CITY ATTORNEY

Dated: November \_\_\_\_, 2010

By: \_\_\_\_\_  
Rick Duvernay

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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_ City of Redding

By: \_\_\_\_\_  
Kurt Starman, City Manager

Dated: \_\_\_\_\_ County of Shasta

By: \_\_\_\_\_  
Rubin E. Cruse, Jr., County Counsel

Dated: \_\_\_\_\_ Kurt Starman

By: \_\_\_\_\_  
Kurt Starman

**APPROVED AS TO FORM:**

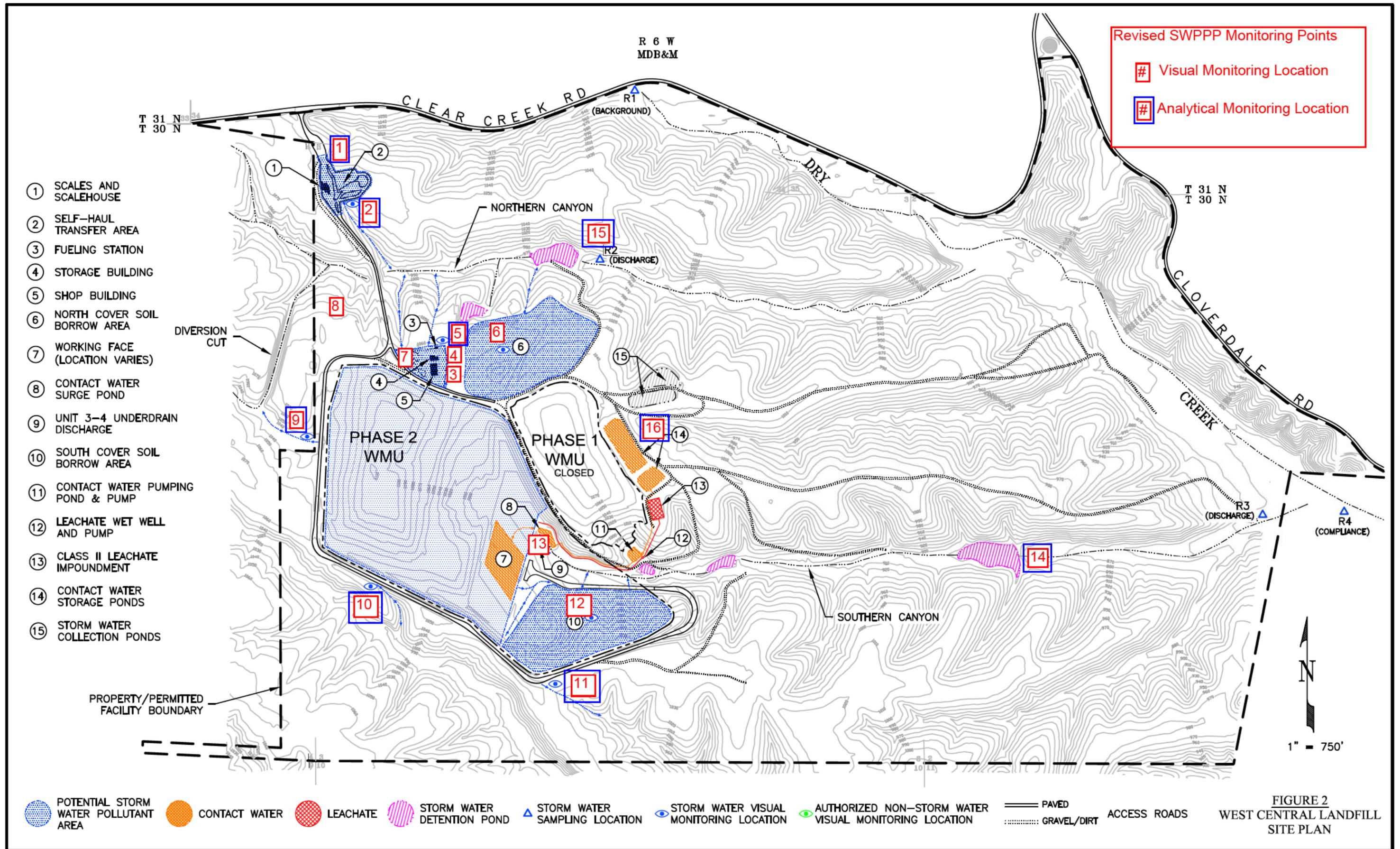
FOR DEFENDANT COUNTY:  
ABBOTT & KINDERMANN, LLP

Dated: November 23, 2010 By:   
Katherine J. Hart

FOR DEFENDANTS CITY AND STARMAN:  
CITY OF REDDING, CITY ATTORNEY

Dated: November \_\_\_\_, 2010 By: \_\_\_\_\_  
Rick Duvernay

**EXHIBIT A – Facility Site Map**



**EXHIBIT B – Notices of Violation**



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

April 8, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. John Heath, Associate Engineer  
Mr. Casey R. Scott, Supervising Engineer  
West Central Landfill  
14095 Clear Creek Rd.  
Igo, CA 96047

Mr. Andy Clemens  
City of Redding  
777 Cypress Ave.  
Redding, CA 96001

Mr. Kurt Starman, City Manager  
City of Redding  
777 Cypress Ave.  
Redding, CA 96001

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

---

Dear Messrs. Starman, Heath, Scott and Clemens:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the West Central Landfill (hereafter, "WCL") facility located at 14095 Clear Creek Road in Igo, California ("the Facility"). The WDID identification number for the Facility is 5R45I002913. The City of Redding ("the City") is the operator of the Facility. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Dry Creek, Cottonwood Creek, the Sacramento River and other California

Notice of Violation and Intent To File Suit

April 8, 2010

Page 2 of 12

waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility.

This letter addresses the City's unlawful discharges of pollutants from the Facility to Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit"). Although the City discharges pollutants from the Facility into Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Delta, the City has not obtained a National Pollutant Discharge Elimination System ("NPDES") permit authorizing these discharges. The City's ongoing discharges of pollutants from the Facility to these waters of the United States violate Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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

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, the City of Redding is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the City of Redding, and Messrs. Heath, Scott and Clemens under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

The City owns and/or operates the Facility as a landfill facility approximately 12 miles southwest of Redding, California, near the unincorporated town of Igo, California. The Facility is primarily used to dispose of municipal solid waste; other current activities at the Facility include the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to, from and within the Facility.

On April 2, 1992, the County of Shasta (i.e., the former operator of the Facility) submitted its notice of intent ("NOI") to operate the Facility in compliance with the terms of the General Industrial Storm Water Permit ("the General Permit"). Based on its review of publicly available documents CSPA is informed and believes that the City of

Redding (i.e., the current operator of the Facility) has never filed a NOI indicating its intent to operate the Facility in compliance with the terms of the General Permit.

The Facility collects and discharges storm water from its 1,058-acre industrial site through at least four discharge points indirectly to Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface

waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional parameters for pollutants that CSPA believes are being discharged from the Facility are: aluminum – 0.75 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

## **II. The City is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States Without a NPDES Permit.**

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological

materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). A landfill that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. See *Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

Dry Creek and Cottonwood Creek are waters of the United States, which flow into the Sacramento River and ultimately to the Sacramento-San Joaquin Delta. Accordingly, the Facility’s discharges of storm water containing pollutants to Dry Creek are discharges to waters of the United States.

CSPA anticipates the City will assert it is lawfully operating the Facility under the General Permit because the former operator of the Facility, the County of Shasta, filed a NOI to operate the Facility in compliance with the terms of the General Permit on April 2, 1992. However, the plain language of the General Permit compels the opposite conclusion. Attachment 3 to the General Permit (**NOTICE OF INTENT (NOI) INSTRUCTIONS**) states, in relevant part:

### **Change of Information**

If the information provided on the NOI or site map changes, you should report the changes to the State Water Board using an NOI form. Section I of the line-by-line instructions includes information regarding changes to the NOI.

### **NOI LINE-BY-LINE INSTRUCTIONS**

#### **Section I – NOI STATUS**

Check box “B” if you are reporting changes to the NOI (e.g., new contact person, phone number, mailing address). Include the facility WDID #.  
Highlight all the information that has been changed.

Please note that a change of information **does not** apply to a change of facility operator or a change in the location of the facility. These changes require a Notice of Termination (NOT) and submittal of a new NOI and annual fee.

#### **Section II – Facility Operator Information**

Part A: The facility operator is the legal entity that is responsible for all permit related compliance activities at the facility. In most cases, the facility operator is the owner of the business or operation where the industrial activity occurs. Give the legal name and the address of the person, firm, public organization, or any other entity that is responsible for complying with the General Permit. (Emphasis in original).

Based on the above-cited portion of the General Permit and its review of publicly available documents, CSPA is informed and believes that: (1) the County of Shasta filed the only NOI ever filed for the Facility in 1992; (2) the County of Shasta has never filed a Notice of Termination (NOT) for the Facility; (3) the City has never filed a NOI for the Facility since it began operating the Facility; and, (4) the City has operated the Facility unlawfully without a permit every day for the last five years.

For at least the last five years, the City has discharged pollutants from the Facility into Dry Creek and, ultimately, the Sacramento River and Delta without a NPDES permit. CSPA is informed and believes, and thereupon alleges, that the City has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City is subject to penalties for violations of the Act since April 8, 2005.

### **III. Pollutant Discharges in Violation of the NPDES Permit.**

The City has violated and continues to violate the terms and conditions of the General 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 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.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an

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

Based on its review of publicly available documents, CSPA is informed and believes that the Facility continues to operate the Facility in violation of the General Permit. The City's ongoing violations are discussed further below.

**A. The Facility Has Likely Discharged Storm Water Containing Pollutants in Violation of the Permit.**

CSPA is informed and believes that the Facility has likely discharged and likely continues to discharge stormwater with unacceptable levels of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb) in violation of the General Permit. CSPA notes that every Annual Report on file for the Facility at the office of the Regional Board reports that the Facility is purportedly exempt from the General Permit requirement to collect and analyze samples of storm water from at least two storm events annually. The asserted exemption is based on a letter dated July 8, 1996, from the Regional Board's Carole Crowe to the Shasta County Department of Public Works ("the Exemption Letter"). The Exemption Letter purports to approve the Shasta County Department of Public Works' requested exemption from the sampling requirements of the General Permit. However, the Regional Board has never approved any requested exemption from the General Permit's storm water sampling requirements made by the City, the current operator of the Facility. CSPA is further informed and believes that Ms. Crowe lacked the legal authority to approve the storm water sampling exemption for the Facility requested by the Shasta County Department of Public Works in 1996. Alternatively, CSPA is informed and believes that even if Ms. Crowe did have legal authority to grant the exemption requested, the current operator of the Facility, the City, lacks the legal authority to rely on any exemption granted to the former operator of the Facility, the Shasta County Department of Public Works.

In any event, the purported exemption is facially invalid. Accordingly, the City may not rely on the Exemption Letter as the basis for having violated and continuing to violate the General Permit requirement to annually collect and analyze samples of storm water from each of the Facility's four discharge points from at least two storm events between the months of October through May. Based on its failure to sample its storm water discharges of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb), CSPA is informed and believes that the Facility is discharging storm water containing pollutants in violation of the General Permit.

CSPA is informed and believes that the City has known that the Facility's storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 8, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event

that has occurred since April 8, 2005, 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 CSPA alleges that the Facility discharged storm water containing impermissible levels of TSS, O&G, Iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City is subject to penalties for violations of the General Permit and the Act since April 8, 2005.

**B. The City Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon.

The Facility’s NOI designates the Facility as conforming to SIC Code 4953 – an SIC which requires the sampling and analysis of additional parameters found in Table D of the General Permit. Under Table D, facilities designated as SIC Code 4953 must analyze samples of storm water for Iron (Fe) and Total Suspended Solids (TSS). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that the City has failed to develop and implement an adequate Monitoring & Reporting Plan at the Facility. First, the City has failed to collect storm water samples from each discharge point at the Facility during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, the City has failed to analyze the Facility’s

storm water samples for all additional analytical parameters required for facilities designated under SIC 4953 (i.e., iron and TSS) during each of the past five years. Finally, CSPA is informed and believes that the City has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City is subject to penalties for violations of the General Permit and the Act since April 8, 2005. These violations are set forth in greater detail below.

**1. The City Has Failed to Collect Storm Water Samples from Each of the Facility's Discharge Points During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that the City has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that for each Annual Report filed with the Regional Board for the Facility from the 2004-2005 wet season through the 2008-2009 wet season, the City has completely failed to collect any storm water samples from any of the Facility's discharge points. Each storm season the City failed to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by the City. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Permit and the Clean Water Act.

**2. The City Has Failed to Analyze the Facility's Storm Water for All Pollutants Required by the General Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that the City has failed to monitor for pollutants likely to be present in storm water discharges in significant quantities. The City's failure to monitor for such pollutants extends back at least until April 8, 2005. The City's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. The City Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 8, 2005.**

CSPA is informed and believes that available documents demonstrate the City's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in

violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City is subject to penalties for these violations of the General Permit and the Act since April 8, 2005.

**C. The City Has Failed to Implement BAT and BCT at the Facility.**

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). CSPA's investigation indicates that the City has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, the City must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the information available regarding the internal structure of the Facility, CSPA believes that at a minimum, the City must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters, treatment boxes or oil/water separator units), and/or prevent storm water discharge altogether. The City has failed to implement such measures adequately.

The City was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the City has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that the City fails to implement BAT and BCT. The City is subject to penalties for violations of the Order and the Act occurring since April 8, 2005.

**D. The City Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan for the Facility.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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 also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to 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)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that the City has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The City has therefore been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that the City fails to develop and implement an adequate SWPPP. The City is subject to penalties for violations of the Order and the Act occurring since April 8, 2005.

**E. The City Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

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

As indicated above, CSPA is informed and believes the Facility is likely discharging elevated levels of total suspended solids, Iron (Fe), O&G, Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD) and Lead (Pb) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, the City was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the City was aware of high levels of these pollutants prior to April 8, 2005. Likewise, the City has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). the City has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since April 8, 2005, and will continue to be in violation every day that the City fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The City is subject to penalties for violations of the General Permit and the Act occurring since April 8, 2005.

**F. The City Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General 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).

CSPA's investigation indicates that the City has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. As indicated above, the City has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, the City has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time the City submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. The City's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The City is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 8, 2005.

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

CSPA hereby puts the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens 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, CSPA puts the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens on notice that it intends to include those persons in this action.

#### **V. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

#### **VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard, Esq.  
Erik Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, California 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck, Esq.

Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

## **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 the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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

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

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

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

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

Rick Duvernay, City Attorney  
City of Redding  
City Hall, 3<sup>rd</sup> Floor  
777 Cypress Ave.  
Redding, CA 96001

**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* April 8, 2005-April 8, 2010**

April 08 2005	Jan. 29 2006	Nov. 03 2006	Nov. 01 2007
April 09 2005	Jan. 30 2006	Nov. 04 2006	Nov. 03 2007
April 23 2005	Jan. 31 2006	Nov. 11 2006	Nov. 05 2007
April 24 2005	Feb. 02 2006	Nov. 13 2006	Nov. 06 2007
April 25 2005	Feb. 04 2006	Nov. 14 2006	Nov. 07 2007
May 05 2005	Feb. 27 2006	Nov. 16 2006	Nov. 08 2007
May 06 2005	Feb. 28 2006	Nov. 22 2006	Nov. 09 2007
May 07 2005	Mar. 01 2006	Nov. 23 2006	Nov. 10 2007
May 08 2005	Mar. 02 2006	Nov. 26 2006	Nov. 11 2007
May 09 2005	Mar. 03 2006	Nov. 27 2006	Nov. 12 2007
May 16 2005	Mar. 05 2006	Dec. 09 2006	Nov. 13 2007
May 18 2005	Mar. 06 2006	Dec. 10 2006	Nov. 14 2007
May 19 2005	Mar. 07 2006	Dec. 11 2006	Nov. 15 2007
Oct. 26 2005	Mar. 11 2006	Dec. 12 2006	Nov. 16 2007
Oct. 28 2005	Mar. 14 2006	Dec. 13 2006	Nov. 17 2007
Nov. 04 2005	Mar. 15 2006	Dec. 14 2006	Nov. 18 2007
Nov. 07 2005	Mar. 16 2006	Dec. 15 2006	Nov. 19 2007
Nov. 08 2005	Mar. 17 2006	Dec. 21 2006	Nov. 20 2007
Nov. 25 2005	Mar. 21 2006	Dec. 27 2006	Nov. 21 2007
Nov. 28 2005	Mar. 22 2006	Jan. 04 2007	Nov. 22 2007
Nov. 29 2005	Mar. 24 2006	Feb. 07 2007	Nov. 23 2007
Dec. 01 2005	Mar. 25 2006	Feb. 08 2007	Nov. 24 2007
Dec. 02 2005	Mar. 28 2006	Feb. 09 2007	Nov. 25 2007
Dec. 08 2005	Mar. 29 2006	Feb. 10 2007	Nov. 26 2007
Dec. 18 2005	Mar. 30 2006	Feb. 11 2007	Nov. 27 2007
Dec. 19 2005	Mar. 31 2006	Feb. 13 2007	Nov. 28 2007
Dec. 20 2005	April 01 2006	Feb. 21 2007	Nov. 29 2007
Dec. 21 2005	April 02 2006	Feb. 22 2007	Nov. 30 2007
Dec. 22 2005	April 04 2006	Feb. 23 2007	Dec. 02 2007
Dec. 23 2005	April 05 2006	Feb. 25 2007	Dec. 03 2007
Dec. 25 2005	April 06 2006	Feb. 27 2007	Dec. 04 2007
Dec. 26 2005	April 08 2006	Feb. 28 2007	Dec. 07 2007
Dec. 27 2005	April 09 2006	Mar. 27 2007	Dec. 17 2007
Dec. 28 2005	April 10 2006	April 14 2007	Dec. 18 2007
Dec. 29 2005	April 11 2006	April 15 2007	Dec. 19 2007
Dec. 30 2005	April 12 2006	April 22 2007	Dec. 20 2007
Dec. 31 2005	April 13 2006	April 23 2007	Dec. 28 2007
Jan. 01 2006	April 15 2006	May 02 2007	Dec. 30 2007
Jan. 03 2006	April 16 2006	May 04 2007	Jan. 04 2008
Jan. 04 2006	April 17 2006	Oct. 01 2007	Jan. 05 2008
Jan. 11 2006	May 20 2006	Oct. 10 2007	Jan. 06 2008
Jan. 13 2006	May 21 2006	Oct. 12 2007	Jan. 08 2008
Jan. 14 2006	May 22 2006	Oct. 13 2007	Jan. 09 2008
Jan. 18 2006	Oct. 05 2006	Oct. 16 2007	Jan. 10 2008
Jan. 21 2006	Oct. 06 2006	Oct. 17 2007	Jan. 12 2008
Jan. 27 2006	Nov. 01 2006	Oct. 19 2007	Jan. 13 2008
Jan. 28 2006	Nov. 02 2006	Oct. 20 2007	Jan. 23 2008

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* April 8, 2005-April 8, 2010**

Jan. 25 2008	Mar. 02 2009	Dec. 27 2009	Feb. 13 2010
Jan. 26 2008	Mar. 03 2009	Dec. 28 2009	Feb. 14 2010
Jan. 27 2008	Mar. 04 2009	Dec. 29 2009	Feb. 15 2010
Jan. 28 2008	Mar. 05 2009	Dec. 30 2009	Feb. 16 2010
Jan. 30 2008	Mar. 15 2009	Dec. 31 2009	Feb. 17 2010
Jan. 31 2008	Mar. 16 2009	Jan. 01 2010	Feb. 18 2010
Feb. 01 2008	Mar. 17 2009	Jan. 02 2010	Feb. 19 2010
Feb. 02 2008	Mar. 22 2009	Jan. 03 2010	Feb. 20 2010
Feb. 03 2008	April 08 2009	Jan. 04 2010	Feb. 21 2010
Feb. 16 2008	April 09 2009	Jan. 05 2010	Feb. 21 2010
Feb. 17 2008	April 10 2009	Jan. 06 2010	Feb. 22 2010
Feb. 18 2008	May 02 2009	Jan. 07 2010	Feb. 23 2010
Feb. 19 2008	May 03 2009	Jan. 08 2010	Feb. 24 2010
Feb. 20 2008	May 04 2009	Jan. 09 2010	Feb. 25 2010
Mar. 29 2008	May 05 2009	Jan. 10 2010	Feb. 26 2010
April 23 2008	Oct. 13 2009	Jan. 11 2010	Feb. 27 2010
May 24 2008	Oct. 14 2009	Jan. 12 2010	Feb. 28 2010
May 25 2008	Oct. 15 2009	Jan. 13 2010	Mar. 01 2010
Oct. 04 2008	Oct. 19 2009	Jan. 14 2010	Mar. 02 2010
Oct. 31 2008	Oct. 20 2009	Jan. 15 2010	Mar. 03 2010
Nov. 01 2008	Nov. 06 2009	Jan. 16 2010	Mar. 04 2010
Nov. 02 2008	Nov. 18 2009	Jan. 17 2010	Mar. 05 2010
Nov. 03 2008	Nov. 21 2009	Jan. 18 2010	Mar. 06 2010
Nov. 04 2008	Dec. 01 2009	Jan. 19 2010	Mar. 07 2010
Dec. 15 2008	Dec. 02 2009	Jan. 20 2010	Mar. 08 2010
Dec. 19 2008	Dec. 03 2009	Jan. 21 2010	Mar. 09 2010
Dec. 22 2008	Dec. 04 2009	Jan. 22 2010	Mar. 10 2010
Dec. 24 2008	Dec. 05 2009	Jan. 23 2010	Mar. 11 2010
Dec. 28 2008	Dec. 06 2009	Jan. 24 2010	Mar. 12 2010
Dec. 30 2008	Dec. 07 2009	Jan. 25 2010	Mar. 13 2010
Jan. 02 2009	Dec. 08 2009	Jan. 26 2010	Mar. 14 2010
Jan. 22 2009	Dec. 09 2009	Jan. 27 2010	Mar. 15 2010
Jan. 23 2009	Dec. 10 2009	Jan. 28 2010	Mar. 16 2010
Feb. 06 2009	Dec. 11 2009	Jan. 29 2010	Mar. 17 2010
Feb. 09 2009	Dec. 12 2009	Jan. 30 2010	Mar. 18 2010
Feb. 11 2009	Dec. 13 2009	Jan. 31 2010	Mar. 19 2010
Feb. 12 2009	Dec. 14 2009	Feb. 01 2010	Mar. 20 2010
Feb. 13 2009	Dec. 15 2009	Feb. 02 2010	Mar. 21 2010
Feb. 14 2009	Dec. 16 2009	Feb. 03 2010	Mar. 22 2010
Feb. 15 2009	Dec. 17 2009	Feb. 04 2010	Mar. 23 2010
Feb. 16 2009	Dec. 19 2009	Feb. 05 2010	Mar. 24 2010
Feb. 17 2009	Dec. 20 2009	Feb. 06 2010	Mar. 25 2010
Feb. 18 2009	Dec. 21 2009	Feb. 07 2010	Mar. 26 2010
Feb. 22 2009	Dec. 22 2009	Feb. 08 2010	Mar. 27 2010
Feb. 23 2009	Dec. 23 2009	Feb. 09 2010	Mar. 28 2010
Feb. 24 2009	Dec. 24 2009	Feb. 10 2010	Mar. 29 2010
Feb. 26 2009	Dec. 25 2009	Feb. 11 2010	Mar. 30 2010
Mar. 01 2009	Dec. 26 2009	Feb. 12 2010	Mar. 31 2010

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* April 8, 2005-April 8, 2010**

April	01	2010	April	03	2010
April	02	2010			

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

May 24, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Patrick Minturn, Director  
Department of Public Works  
Shasta County  
1855 Placer Street  
Redding, CA 96001

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

Dear Mr. Minturn:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the West Central Landfill facility ("WCL") facility located at 14095 Clear Creek Road in Igo, California ("the Facility"). The WQID identification number for the Facility is 5R45I002913. The City of Redding ("the City") and County of Shasta ("the County") are joint operators of the Facility. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Dry Creek, Cottonwood Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility.

This letter addresses the County's unlawful discharges of pollutants from the Facility to Dry Creek, Cottonwood Creek, the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General

Permit”). The County’s ongoing discharges of pollutants from the Facility to these waters of the United States violate Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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

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, the County of Shasta is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the County of Shasta and Mr. Patrick Minturn under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

The County owns and/or operates the Facility as a landfill facility approximately 12 miles southwest of Redding, California in the unincorporated town of Igo, California. The Facility is primarily used to dispose of municipal solid waste; other current activities at the Facility include the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to, from and within the Facility.

On May 27, 1992 the County submitted its notice of intent (“NOI”) to operate the Facility in compliance with the terms of the General Industrial Storm Water Permit (“the General Permit”). The Facility collects and discharges storm water from its 100-acre industrial site through at least four discharge points indirectly to Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as

domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial

storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and, iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional parameters for pollutants that CSPA believes are being discharged from the Facility are: aluminum – 0.75 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and, zinc – 0.117 mg/L.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

The County has violated and continues to violate the terms and conditions of the General 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 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.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

Based on its review of publicly available documents, CSPA is informed and believes that the County continues to operate the Facility in violation of the General Permit. The County’s ongoing violations are discussed further below.

### **A. The Facility Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

CSPA is informed and believes that the Facility has discharged and likely continues to discharge storm water with unacceptable levels of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), lead (Pb), chemical oxygen demand (COD) and zinc (Zn) in violation of the General Permit.

CSPA notes that every Annual Report on file for the Facility at the office of the Regional Board reports that the Facility is purportedly exempt from the General Permit requirement to collect and analyze samples of storm water from at least two storm events annually. The asserted exemption is based on a letter dated July 8, 1996, from the Regional Board's Carole Crowe to the Shasta County Department of Public Works ("the Exemption Letter"). The Exemption Letter purports to approve the Shasta County Department of Public Works' requested exemption from the sampling requirements of the General Permit.

CSPA is informed and believes that Ms. Crowe lacked the legal authority to approve the storm water sampling exemption for the Facility requested by the Shasta County Department of Public Works in 1996. As such, the purported exemption is facially invalid. Accordingly, the County may not rely on the Exemption Letter as the basis for having violated and continuing to violate the General Permit requirement to annually collect and analyze samples of storm water from each of the Facility's four discharge points from at least two storm events between the months of October through May. Based on its failure to sample its storm water discharges of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb), CSPA is informed and believes that the Facility is discharging storm water containing pollutants in violation of the General Permit.

CSPA is informed and believes that the County has known that the Facility's storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least May 24, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since May 24, 2005, 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 CSPA alleges that the Facility discharged storm water containing impermissible levels of TSS, O&G, Iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

Based on its failure to sample its storm water discharges of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb), CSPA is informed and believes that the Facility is discharging storm water containing pollutants in violation of the General Permit. These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since May 24, 2005.

**B. The County Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon.

The Facility’s NOI designates the Facility as conforming to SIC Code 4953 – an SIC which requires the sampling and analysis of additional parameters found in Table D of the General Permit. Under Table D, facilities designated as SIC Code 4953 must analyze samples of storm water for Iron (Fe) and Total Suspended Solids (TSS). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that the County has failed to develop and implement an adequate Monitoring & Reporting Plan at the Facility. First, the County has failed to collect storm water samples from each discharge point at the Facility during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, the County has failed to analyze the Facility’s storm water samples for all additional analytical parameters required for facilities designated under SIC 4953 (i.e., iron and TSS) during each of the past five years. Finally, CSPA is informed and believes that the County has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for violations of the General Permit and the Act since May 24, 2005. These violations are set forth in greater detail below.

**1. The County Has Failed to Collect Storm Water Samples from Each of the Facility's Discharge Points During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that for each Annual Report filed with the Regional Board for the Facility from the 2004-2005 wet season through the 2008-2009 wet season, the County has completely failed to collect any storm water samples from any of the Facility's discharge points. Each storm season the County failed to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by the County. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Permit and the Clean Water Act.

**2. The County Has Failed to Analyze the Facility's Storm Water for All Pollutants Required by the General Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that the County has failed to monitor for pollutants likely to be present in storm water discharges in significant quantities. The County's failure to monitor for such pollutants extends back at least until May 24, 2005. The County's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. The County Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since May 24, 2005.**

CSPA is informed and believes that available documents demonstrate the County's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for these violations of the General Permit and the Act since May 24, 2005.

**C. The County Has Failed to Implement BAT and BCT at the Facility.**

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). CSPA's investigation indicates that the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, the County must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the information available regarding the internal structure of the Facility, CSPA believes that at a minimum, the County must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters, treatment boxes or oil/water separator units), and/or prevent storm water discharge altogether. The County has failed to implement such measures adequately.

The County was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the County has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that the County fails to implement BAT and BCT. The County is subject to penalties for violations of the Order and the Act occurring since May 24, 2005.

**D. The County Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan for the Facility.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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 also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to 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)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that the County has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The County has therefore been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that the County fails to develop and implement an adequate SWPPP. The County is subject to penalties for violations of the Order and the Act occurring since May 24, 2005.

**E. The County Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from

the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, CSPA is informed and believes the Facility is likely discharging elevated levels of total suspended solids, Iron (Fe), O&G, Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD) and Lead (Pb) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, the County was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the County was aware of high levels of these pollutants prior to May 24, 2005. Likewise, the County has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). the County has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since May 24, 2005, and will continue to be in violation every day that the County fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The County is subject to penalties for violations of the General Permit and the Act occurring since May 24, 2005.

**F. The County Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General 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).

CSPA's investigation indicates that the County has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. As indicated above, the County has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, the County has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time the County submitted an incomplete or incorrect annual report that falsely certified

compliance with the Act in the past years. The County's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The County is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since May 24, 2005.

**IV. Persons Responsible for the Violations.**

CSPA hereby puts the County of Shasta and Mr. Patrick Minturn 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, CSPA puts the County of Shasta and Mr. Patrick Minturn on notice that it intends to include those persons in this action.

**V. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

**VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard, Esq.  
Erik Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, California 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: [Andrew@PackardLawOffices.com](mailto:Andrew@PackardLawOffices.com)  
[Erik@PackardLawOffices.com](mailto:Erik@PackardLawOffices.com)

And to:

Robert J. Tuerck, Esq.  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: [Bob@JacksonTuerck.com](mailto:Bob@JacksonTuerck.com)

**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 the County of Shasta and Mr. Patrick Minturn to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the County of Shasta and Mr. Patrick Minturn for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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

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

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

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

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

Rick Duvernay, City Attorney  
City of Redding  
City Hall, 3<sup>rd</sup> Floor  
777 Cypress Ave.  
Redding, CA 96001

Rubin E. Cruse, Jr., County Counsel  
County of Shasta  
1450 Court Street, Suite 332  
Redding, CA 96001-1675

**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* May 24, 2005-May 24, 2010**

Oct. 26 2005	Mar. 11 2006	Dec. 12 2006	Nov. 16 2007
Oct. 28 2005	Mar. 14 2006	Dec. 13 2006	Nov. 17 2007
Nov. 04 2005	Mar. 15 2006	Dec. 14 2006	Nov. 18 2007
Nov. 07 2005	Mar. 16 2006	Dec. 15 2006	Nov. 19 2007
Nov. 08 2005	Mar. 17 2006	Dec. 21 2006	Nov. 20 2007
Nov. 25 2005	Mar. 21 2006	Dec. 27 2006	Nov. 21 2007
Nov. 28 2005	Mar. 22 2006	Jan. 04 2007	Nov. 22 2007
Nov. 29 2005	Mar. 24 2006	Feb. 07 2007	Nov. 23 2007
Dec. 01 2005	Mar. 25 2006	Feb. 08 2007	Nov. 24 2007
Dec. 02 2005	Mar. 28 2006	Feb. 09 2007	Nov. 25 2007
Dec. 08 2005	Mar. 29 2006	Feb. 10 2007	Nov. 26 2007
Dec. 18 2005	Mar. 30 2006	Feb. 11 2007	Nov. 27 2007
Dec. 19 2005	Mar. 31 2006	Feb. 13 2007	Nov. 28 2007
Dec. 20 2005	April 01 2006	Feb. 21 2007	Nov. 29 2007
Dec. 21 2005	April 02 2006	Feb. 22 2007	Nov. 30 2007
Dec. 22 2005	April 04 2006	Feb. 23 2007	Dec. 02 2007
Dec. 23 2005	April 05 2006	Feb. 25 2007	Dec. 03 2007
Dec. 25 2005	April 06 2006	Feb. 27 2007	Dec. 04 2007
Dec. 26 2005	April 08 2006	Feb. 28 2007	Dec. 07 2007
Dec. 27 2005	April 09 2006	Mar. 27 2007	Dec. 17 2007
Dec. 28 2005	April 10 2006	April 14 2007	Dec. 18 2007
Dec. 29 2005	April 11 2006	April 15 2007	Dec. 19 2007
Dec. 30 2005	April 12 2006	April 22 2007	Dec. 20 2007
Dec. 31 2005	April 13 2006	April 23 2007	Dec. 28 2007
Jan. 01 2006	April 15 2006	May 02 2007	Dec. 30 2007
Jan. 03 2006	April 16 2006	May 04 2007	Jan. 04 2008
Jan. 04 2006	April 17 2006	Oct. 01 2007	Jan. 05 2008
Jan. 11 2006	May 20 2006	Oct. 10 2007	Jan. 06 2008
Jan. 13 2006	May 21 2006	Oct. 12 2007	Jan. 08 2008
Jan. 14 2006	May 22 2006	Oct. 13 2007	Jan. 09 2008
Jan. 18 2006	Oct. 05 2006	Oct. 16 2007	Jan. 10 2008
Jan. 21 2006	Oct. 06 2006	Oct. 17 2007	Jan. 12 2008
Jan. 27 2006	Nov. 01 2006	Oct. 19 2007	Jan. 13 2008
Jan. 28 2006	Nov. 02 2006	Oct. 20 2007	Jan. 23 2008
Jan. 29 2006	Nov. 03 2006	Nov. 01 2007	Jan. 25 2008
Jan. 30 2006	Nov. 04 2006	Nov. 03 2007	Jan. 26 2008
Jan. 31 2006	Nov. 11 2006	Nov. 05 2007	Jan. 27 2008
Feb. 02 2006	Nov. 13 2006	Nov. 06 2007	Jan. 28 2008
Feb. 04 2006	Nov. 14 2006	Nov. 07 2007	Jan. 30 2008
Feb. 27 2006	Nov. 16 2006	Nov. 08 2007	Jan. 31 2008
Feb. 28 2006	Nov. 22 2006	Nov. 09 2007	Feb. 01 2008
Mar. 01 2006	Nov. 23 2006	Nov. 10 2007	Feb. 02 2008
Mar. 02 2006	Nov. 26 2006	Nov. 11 2007	Feb. 03 2008
Mar. 03 2006	Nov. 27 2006	Nov. 12 2007	Feb. 16 2008
Mar. 05 2006	Dec. 09 2006	Nov. 13 2007	Feb. 17 2008
Mar. 06 2006	Dec. 10 2006	Nov. 14 2007	Feb. 18 2008
Mar. 07 2006	Dec. 11 2006	Nov. 15 2007	Feb. 19 2008

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* May 24, 2005-May 24, 2010**

Feb. 20 2008	May 04 2009	Jan. 09 2010	Feb. 25 2010
Mar. 29 2008	May 05 2009	Jan. 10 2010	Feb. 26 2010
April 23 2008	Oct. 13 2009	Jan. 11 2010	Feb. 27 2010
May 24 2008	Oct. 14 2009	Jan. 12 2010	Feb. 28 2010
May 25 2008	Oct. 15 2009	Jan. 13 2010	Mar. 01 2010
Oct. 04 2008	Oct. 19 2009	Jan. 14 2010	Mar. 02 2010
Oct. 31 2008	Oct. 20 2009	Jan. 15 2010	Mar. 03 2010
Nov. 01 2008	Nov. 06 2009	Jan. 16 2010	Mar. 04 2010
Nov. 02 2008	Nov. 18 2009	Jan. 17 2010	Mar. 05 2010
Nov. 03 2008	Nov. 21 2009	Jan. 18 2010	Mar. 06 2010
Nov. 04 2008	Dec. 01 2009	Jan. 19 2010	Mar. 07 2010
Dec. 15 2008	Dec. 02 2009	Jan. 20 2010	Mar. 08 2010
Dec. 19 2008	Dec. 03 2009	Jan. 21 2010	Mar. 09 2010
Dec. 22 2008	Dec. 04 2009	Jan. 22 2010	Mar. 10 2010
Dec. 24 2008	Dec. 05 2009	Jan. 23 2010	Mar. 11 2010
Dec. 28 2008	Dec. 06 2009	Jan. 24 2010	Mar. 12 2010
Dec. 30 2008	Dec. 07 2009	Jan. 25 2010	Mar. 13 2010
Jan. 02 2009	Dec. 08 2009	Jan. 26 2010	Mar. 14 2010
Jan. 22 2009	Dec. 09 2009	Jan. 27 2010	Mar. 15 2010
Jan. 23 2009	Dec. 10 2009	Jan. 28 2010	Mar. 16 2010
Feb. 06 2009	Dec. 11 2009	Jan. 29 2010	Mar. 17 2010
Feb. 09 2009	Dec. 12 2009	Jan. 30 2010	Mar. 18 2010
Feb. 11 2009	Dec. 13 2009	Jan. 31 2010	Mar. 19 2010
Feb. 12 2009	Dec. 14 2009	Feb. 01 2010	Mar. 20 2010
Feb. 13 2009	Dec. 15 2009	Feb. 02 2010	Mar. 21 2010
Feb. 14 2009	Dec. 16 2009	Feb. 03 2010	Mar. 22 2010
Feb. 15 2009	Dec. 17 2009	Feb. 04 2010	Mar. 23 2010
Feb. 16 2009	Dec. 19 2009	Feb. 05 2010	Mar. 24 2010
Feb. 17 2009	Dec. 20 2009	Feb. 06 2010	Mar. 25 2010
Feb. 18 2009	Dec. 21 2009	Feb. 07 2010	Mar. 26 2010
Feb. 22 2009	Dec. 22 2009	Feb. 08 2010	Mar. 27 2010
Feb. 23 2009	Dec. 23 2009	Feb. 09 2010	Mar. 28 2010
Feb. 24 2009	Dec. 24 2009	Feb. 10 2010	Mar. 29 2010
Feb. 26 2009	Dec. 25 2009	Feb. 11 2010	Mar. 30 2010
Mar. 01 2009	Dec. 26 2009	Feb. 12 2010	Mar. 31 2010
Mar. 02 2009	Dec. 27 2009	Feb. 13 2010	April 01 2010
Mar. 03 2009	Dec. 28 2009	Feb. 14 2010	April 02 2010
Mar. 04 2009	Dec. 29 2009	Feb. 15 2010	April 03 2010
Mar. 05 2009	Dec. 30 2009	Feb. 16 2010	April 05 2010
Mar. 15 2009	Dec. 31 2009	Feb. 17 2010	April 06 2010
Mar. 16 2009	Jan. 01 2010	Feb. 18 2010	April 07 2010
Mar. 17 2009	Jan. 02 2010	Feb. 19 2010	April 08 2010
Mar. 22 2009	Jan. 03 2010	Feb. 20 2010	April 09 2010
April 08 2009	Jan. 04 2010	Feb. 21 2010	April 10 2010
April 09 2009	Jan. 05 2010	Feb. 21 2010	April 11 2010
April 10 2009	Jan. 06 2010	Feb. 22 2010	April 12 2010
May 02 2009	Jan. 07 2010	Feb. 23 2010	April 13 2010
May 03 2009	Jan. 08 2010	Feb. 24 2010	April 14 2010

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* May 24, 2005-May 24, 2010**

April	16	2010	April	23	2010	May	01	2010	May	20	2010
April	17	2010	April	24	2010	May	02	2010	May	21	2010
April	18	2010	April	25	2010	May	10	2010	May	23	2010
April	19	2010	April	26	2010	May	17	2010			
April	20	2010	April	29	2010	May	19	2010			

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

JS-6

1 Layne Friedrich (Bar No. 195431)  
2 layne@lawyersforcleanwater.com  
3 Elizabeth Crosson (Bar No. 262178)  
4 liz@lawyersforcleanwater.com  
5 LAWYERS FOR CLEAN WATER, INC.  
6 1004 A O'Reilly Avenue  
7 San Francisco, California 94129  
8 Telephone: (415) 440-6520 ext. 200  
9 Fax: (415) 440-4155

10 Attorneys for Plaintiffs,  
11 Inland Empire Waterkeeper, a program of Orange County Coastkeeper,  
12 And Orange County Coastkeeper

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 INLAND EMPIRE WATERKEEPER,  
16 a program of ORANGE COUNTY  
17 COASTKEEPER, and ORANGE  
18 COUNTY COASTKEEPER,  
19 a non-profit corporation,

20 Plaintiffs,

21 v.

22 RUBY METALS, INC., and GOLD  
23 COAST METALS TRADING, INC., a  
24 California Corporation,

25 Defendants.

Case No. CV-09-6558-AHM (OPx)

Hon. A. Howard Matz

**CONSENT DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 et seq.)**

1           **WHEREAS**, Inland Empire Waterkeeper, a program of Orange County  
2 Coastkeeper is a non-profit corporation dedicated to the protection and enhancement of  
3 the Upper Santa Ana River Watershed through programs of advocacy, education,  
4 research, restoration, and enforcement;

5           **WHEREAS**, Orange County Coastkeeper is a non-profit corporation dedicated to  
6 the preservation, protection and defense of the environment, the wildlife, and the natural  
7 resources of Orange County area waters, including the Santa Ana River Watershed and  
8 its receiving waters;

9           **WHEREAS**, Inland Empire Waterkeeper and Orange County Coastkeeper are  
10 collectively referred to herein as (“Waterkeeper” or “Plaintiffs”);

11           **WHEREAS**, Ruby Metals, Inc. is an owner and/or operator of the scrap metal  
12 recycling facilities located at 2805 South Industrial Drive (“2805 Facility”) and 2820  
13 South Industrial Drive (“2820 Facility”), Bloomington, California (collectively the  
14 “2805/2820 Facilities”);

15           **WHEREAS**, Gold Coast Metals Trading, Inc. is an owner and/or operator of the  
16 scrap metal recycling facilities located at 2805 South Industrial Drive and 2820 South  
17 Industrial Drive, Bloomington, California;

18           **WHEREAS**, Ruby Metals, Inc., and Gold Coast Metals Trading, Inc. are  
19 collectively referred to herein as “Defendants” or “Ruby Metals”;

20           **WHEREAS**, on June 10, 2009 and June 23, 2009, Waterkeeper served Defendants,  
21 the United States Environmental Protection Agency (“EPA”), EPA Region IX, the State  
22 Water Resources Control Board (“State Board”) and the Regional Water Quality Control  
23 Board (“Regional Board”), with a notice of intent to file suit for violations of the Federal  
24 Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”).  
25 The notice letter alleged violations of the Clean Water Act for Defendants’ discharges of  
26 pollutants into receiving waters in violation of National Pollution Discharge Elimination  
27

1 System (“NPDES”) General Permit No. CAS0000001 [State Board] Water Quality Order  
2 No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“Industrial Permit”);

3 **WHEREAS**, on September 9, 2009, Waterkeeper filed a complaint against  
4 Defendants in the United States District Court, Central District of California (Civil Case  
5 No. CV 09-6558-AHM (OPx)) entitled *Inland Empire Waterkeeper, et. al. v. Ruby*  
6 *Metals, Inc., and Gold Coast Metals Trading, Inc.* (“Complaint”);

7 **WHEREAS**, Defendants deny all allegations of the Complaint;

8 **WHEREAS**, Plaintiffs and Defendants (collectively referred to herein as the  
9 “Parties”) have agreed that it is in the Parties' mutual interest to enter into a Consent  
10 Decree setting forth terms and conditions appropriate to resolving the allegations set  
11 forth in the Complaint without further proceedings;

12 **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree  
13 shall be made in compliance with all applicable federal, state and local rules and  
14 regulations;

15 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
16 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**  
17 **FOLLOWS:**

18 1. The Court has jurisdiction over the subject matter of this action pursuant to  
19 Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

20 2. Venue is appropriate in the Central District Court pursuant to Section  
21 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the 2805/2820 Facilities at which  
22 the alleged violations took place is located within this District;

23 3. The Complaint states a claim upon which relief may be granted against  
24 Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

25 4. Plaintiffs have standing to bring this action.

26 5. The Court shall retain jurisdiction over this matter for purposes of  
27 interpreting, modifying or enforcing the terms of this Consent Decree, or as long

1 thereafter as is necessary for the Court to resolve any motion to enforce this Consent  
2 Decree.

3 **I. OBJECTIVES**

4 6. It is the express purpose of the Parties entering into this Consent Decree to  
5 further the objectives set forth in Sections 101 *et seq.* of the CWA, 33 U.S.C. §§ 1251 *et*  
6 *seq.*, and to resolve those issues alleged by Waterkeeper in its Complaint. In light of  
7 these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply with  
8 the provisions of this Consent Decree and to comply with the requirements of the  
9 Industrial Permit and all applicable provisions of the CWA at the 2805/2820 Facilities.  
10 Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the  
11 2805/2820 Facilities “not cause or contribute to the exceedance of an applicable water  
12 quality limit.” Effluent Limitation B(3) of the Industrial Permit requires that Best  
13 Management Practices (“BMPs”) be developed and implemented to achieve Best  
14 Available Technology (“BAT”) and the Best Conventional Pollutant Control Technology  
15 (“BCT”). Defendants are required to develop and implement BMPs necessary to comply  
16 with the Industrial Permit’s requirement to achieve compliance with Water Quality  
17 Standards and BAT/BCT standards. BMPs must be developed and implemented to  
18 prevent discharges or to reduce contamination in storm water discharged from the  
19 2805/2820 Facilities sufficient to achieve the numeric limits detailed in paragraphs 19  
20 and 20 below.

21 **II. COMMITMENTS OF THE PARTIES**

22 **A. Eliminating Discharge Points**

23 7. 2820 Facility. The 2820 Facility currently discharges at the driveway at the  
24 north entrance to the facility, the driveway at the south entrance to the facility, and out  
25 the southwest corner of the facility. Ruby Metals will eliminate the southwest corner  
26 discharge point by plugging, blocking, closing, or otherwise preventing storm water from  
27

1 discharging from that location. Instead, water will be routed to the truck dock as  
2 explained in Section II.B. below.

3 8. 2805 Facility. The 2805 Facility discharges from the driveway at the north  
4 entrance to the facility, the driveway at the south entrance to the facility (which  
5 comingles with the discharge draining the southern portion of the facility to the southern  
6 driveway), and the northwest corner of the facility adjacent to the neighboring Atlas  
7 Pacific facility. Ruby Metals will plug, block, close or otherwise prevent storm water  
8 from discharging from the northwest discharge point at the 2805 Facility. Ruby Metals  
9 will install curbing along the northern wall leading to the discharge point to prevent any  
10 water from discharging from this area. Instead, water will be routed to the truck dock as  
11 explained in Section II.B. below.

12 **B. Immediate BMP Plan**

13 9. Water Drainage and Capture System. Ruby Metals is in the process of  
14 developing a drainage control and storm water capture system in an effort to prevent  
15 storm water from discharging at the 2805/2820 Facilities. Implementation will include  
16 installing curbing, drainage channels, and trench gates across the south driveway at the  
17 2805 Facility and across the south and north driveways at the 2820 Facility. The intent is  
18 to direct all storm water at each of the facilities to the truck dock at each of the respective  
19 facilities. The water in the truck docks will be pumped to two (2) 10,000-gallon holding  
20 tanks located at the 2820 Facility, and to holding tanks that will be installed at the 2805  
21 Facility. Ruby Metals agrees to purchase additional holding tanks as part of their efforts  
22 to prevent storm water from discharging at the site. The system will include float-  
23 controlled submersible pumps and electrical controls. However, for the first year of this  
24 Consent Decree, Ruby Metals agrees to manually operate the system during storm events  
25 to reduce water levels in the truck docks and maximize capacity. The system will be  
26 operational within 120 days of the Effective Date of this Consent Decree.

1           10. Additional BMPs. Within thirty (30) days of the Effective Date of this  
2 Consent Decree Ruby Metals agrees to develop, implement and/or continue to maintain  
3 the following BMPs:

4           a. Conducting all vehicle and equipment fueling at the 2805/2820 Facilities  
5 on asphalt or other impermeable surface and under cover;

6           b. Conducting all vehicle and equipment maintenance at the 2805/2820  
7 Facilities on asphalt or other impermeable surface and under cover. If Ruby must  
8 maintain and/or repair stationary equipment identified as the baler and large grappling  
9 crane Ruby shall develop and implement BMPs to prevent the exposure of pollutants  
10 associated with repair and maintenance to water, such as using a drip pan and straw  
11 wattle berming, and shall carry a spill response kit at all times maintenance and repair of  
12 stationary equipment occurs. Under no circumstances will Ruby conduct maintenance or  
13 repair that is not under cover and on impermeable surface during a rain event;

14           c. Berming or otherwise containing the surface of the area where vehicle  
15 maintenance, repair and/or fueling occurs in order to prevent the exposure and/or  
16 discharge of pollutants from this area;

17           d. Cleaning the maintenance and fueling area as necessary to control track-  
18 off of pollutants;

19           e. Dispensing with all petroleum products within the maintenance and  
20 fueling area only; and

21           f. Constructing secondary containment adequate to capture all drips, spills,  
22 and leaks around the vehicle fueling area and for all other areas where 55-gallon drums  
23 are stored for on-site use.

24           11. BMPs for S. Industrial Drive. Within thirty (30) days of the Effective Date  
25 of this Consent Decree, Ruby Metals agrees to develop and implement BMPs on S.  
26 Industrial Drive between the 2805 Facility and the 2820 Facility to prevent the exposure  
27 of storm water and/or non-storm water to pollutants associated with Ruby Metals'

1 industrial activities until and unless Defendants cease use of S. Industrial Drive. BMPs  
2 include but are not limited to:

3 a. Using and/or parking vehicles on S. Industrial Drive only when necessary  
4 to carry out Defendants' industrial operations at the 2805/2820 Facilities to minimize the  
5 transport or distribution of pollutants associated with Ruby Metals' industrial activities.

6 b. Sweeping adequate to prevent the exposure of pollutants to storm water  
7 flows;

8 c. Installing tire washing facilities at all driveways for the 2805/2820  
9 Facilities in order to prevent off-site tracking from vehicles using S. Industrial Drive for  
10 Ruby Metals' industrial activities;

11 d. Power washing the portion of S. Industrial Drive between the 2805  
12 Facility and the 2820 Facility, including areas not reachable by mechanical sweepers, on  
13 an annual basis. Ruby Metals shall ensure BMPs are in place to prevent any discharge  
14 from the S. Industrial Drive to area storm drains resulting from the power washing.

15 **C. Long-Term BMP Plan**

16 12. Within ninety (90) days of the Effective Date of this Consent Decree, Ruby  
17 Metals agrees to begin considering additional measures to capture storm water and  
18 prevent the discharge of storm water at the 2805/2820 Facilities and/or to reduce the  
19 levels of pollutants in storm water discharges at the 2805/2820 Facilities and incorporate  
20 them into a long-term plan. The purpose of the long-term plan shall be to retain storm  
21 water generated from a 25-year, 24-hour rainfall event without surface water discharge at  
22 both the 2820 Facility and the 2805 Facility. If this cannot be fully achieved Ruby  
23 Metals shall provide a high level of treatment to the differential between the retained and  
24 25-year, 24-hour runoff volumes such that storm water discharges do not contain  
25 pollutants above Table 1 or Table 2 levels. Additional BMPs that must be analyzed as  
26 part of the long-term plan include but are not limited to:  
27  
28

1 a. Source control to eliminate contact between industrial activity and  
2 associated pollutants with storm water, and/or non-storm water;

3 b. Infiltration including investigating both on-site and off-site (e.g., on lands  
4 east of the 2805 Facility) opportunities for collecting and routing storm water to a  
5 structure that is designed to be an infiltration facility (such as an infiltration basin or  
6 trench). The analysis shall include gathering data on the feasibility such as soils analysis  
7 and drilling wells to determine the infiltration possibilities;

8 c. Rain harvesting including transfer to an off-site user;

9 d. Materials storage including placing sources of contamination in covered  
10 containers or under cover with such areas contained by berming or other containment  
11 sufficient to prevent the exposure of pollutants to storm water and non-storm water, and  
12 to therefore prevent the discharge of pollutants;

13 e. Coating structural sources of contamination (e.g., galvanized building  
14 roofs and siding);

15 f. Sweeping including employing high efficiency sweeping in order to  
16 prevent the exposure of pollutants to storm water flows;

17 g. Storing storm water and/or non-stormwater including constructing and  
18 maintaining on-site retention facilities (such as retention ponds or swales, infiltration  
19 basins, baker tanks, sumps, and/or cisterns) designed to hold and store the runoff  
20 generated by a 25-year, 24-hour rain event without any off-site discharge;

21 h. Treating runoff discharging from the site with devices such as sand filters  
22 evaluated in the Caltrans Retrofit Study (“CRS”) or equivalent treatment devices at  
23 appropriate locations;

24 i. Installing tire washing facilities at exit points from the 2805/2820  
25 Facilities to prevent off-site tracking from vehicles;

26 j. Power washing the entire paved part of the 2805/2820 Facilities,  
27 including areas not reachable by mechanical sweepers, as necessary but at least annually.

1 Ruby Metals shall ensure BMPs are in place to prevent any discharge from the 2805/2820  
2 Facilities resulting from the power washing.

3 13. By June 1, 2010 Ruby Metals shall complete its consideration and analysis  
4 of the long-term BMPs and submit a report describing the analysis for each proposed  
5 BMP and if the BMP is not selected the reason(s) why the BMP was rejected (referred to  
6 as “Long-Term BMP Plan”). Financial hardship is not in and of itself an adequate  
7 justification to reject a BMP. The Long-Term BMP Plan shall also include  
8 implementation dates for the proposed BMPs that are selected. Defendants shall submit  
9 the Long-Term BMP Plan to Waterkeeper for review and comment. Waterkeeper shall  
10 respond with comments within thirty (30) days of receiving the Long-Term BMP Plan.  
11 Defendants shall incorporate Plaintiffs’ comments into the Plan, or shall justify in writing  
12 why any comment is not being incorporated within thirty (30) days of receiving  
13 comments. Any disputes as to the adequacy of the Long-Term BMP Plan shall be  
14 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at  
15 Section IV below.

16 **D. Employee Training**

17 14. Within thirty (30) days of the Effective Date, Defendants shall develop a  
18 training program, including any materials needed for effectiveness, and shall provide  
19 training for employees as follows:

20 a. Non-Storm Water Discharge Training. Defendants shall conduct training  
21 on the Industrial Permit’s prohibition of non-storm water discharges so that employees  
22 know what non-storm water discharges are and how to avoid them. Such training shall  
23 be specified in the SWPPP;

24 b. BMP Training. Defendants shall provide training to all employees  
25 responsible for BMP implementation and maintenance. Training shall be provided by a  
26 private consultant or representative of Defendants familiar with the Industrial Permit  
27 requirements and shall be repeated as necessary to ensure that all such employees are

1 familiar with the Industrial Permit and SWPPP requirements. Defendants shall maintain  
2 training records to document compliance with this paragraph, and shall provide  
3 Waterkeeper with a copy of these records within fourteen (14) days of receipt of a written  
4 request;

5 c. Sampling Training. Defendants shall provide training to all individuals  
6 performing sampling pursuant to the Industrial Permit at the 2805/2820 Facilities. All  
7 employees shall thereafter be trained prior to becoming responsible for conducting  
8 sampling activities. The training shall be provided by a private consultant or  
9 representative of Defendants familiar with the Industrial Permit requirements and shall be  
10 repeated as necessary to ensure Industrial Permit compliance. Defendants shall maintain  
11 training records to document compliance with this paragraph, and shall provide  
12 Waterkeeper with a copy of these records within fourteen (14) days of receipt of a written  
13 request.

14 d. Visual Observation Training. Defendants shall provide additional training  
15 to all individuals performing visual observations pursuant to the Industrial Permit at the  
16 2805/2820 Facilities. The training will be provided by a private consultant or  
17 representative of Defendants and shall be repeated as necessary to ensure Industrial  
18 Permit compliance. All new staff will receive this training before assuming  
19 responsibilities for implementing the SWPPP. Defendants shall maintain training records  
20 to document compliance with this paragraph, and shall provide Waterkeeper with a copy  
21 of these records within fourteen (14) days of a written request.

22 **F. Sampling, Monitoring, Inspecting, and Reporting**

23 15. Sampling Program. Within thirty (30) days of the Effective Date of this  
24 Consent Decree, Defendants shall revise their monitoring and reporting plan (“M&RP”)  
25 to comply with this section. All storm water discharge locations shall be sampled at the  
26 2805/2820 Facilities. Storm water samples collected must represent the discharge at the  
27 point it leaves the 2820 Facility and the 2805 Facility. For example, if storm water is

1 discharging from both sides of a driveway, two separate storm water samples must be  
2 collected from each side of the driveway. Additionally, sampling of stored or contained  
3 storm water shall occur at the time the stored or contained storm water is released.  
4 Finally, the M&RP shall be revised to include sampling at all new or additional discharge  
5 points created in the future.

6 16. Waterkeeper's Review of Revised M&RP. Defendants agree to submit the  
7 M&RP to Waterkeeper for review and comment as soon as it is completed but in any  
8 event no later than thirty (30) days from the Effective Date of this Consent Decree.  
9 Waterkeeper shall provide comments, if any, to the Defendants within thirty (30) days of  
10 receipt of the M&RP. Defendants shall incorporate Plaintiffs' comments into the M&RP,  
11 or shall justify in writing why any comment is not incorporated within fourteen (14) days  
12 of receiving comments. Any disputes as to the adequacy of the M&RP shall be resolved  
13 pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV  
14 below.

15 17. Sample Analysis and Sample Frequency. Beginning with the 2009/2010  
16 Wet Season (defined as October 1- May 31), Defendants shall collect storm water  
17 samples from each discharge location from each storm event at the 2805/2820 Facilities.  
18 In years 2-5 of the Consent Decree, Ruby Metals agrees to sample every storm event up  
19 to five storm events per Wet Season. Defendant may discontinue analyzing storm water  
20 samples for a constituent specified in Tables 1 and 2 if five consecutive sampling results  
21 within a Wet Season for the constituent are reported as below the limits in Tables 1 and  
22 2.

23 18. Defendants shall analyze the samples for the constituents identified in Table  
24 1 and Table 2. A California State certified laboratory shall perform all sample chemical  
25 analyses. Defendants shall select laboratories and analytical limits such that, at a  
26 minimum, the method detection limits ("MDLs") shall be below both the Table 1 and  
27

1 Table 2 Limits set forth herein. In addition, Defendants shall perform sampling as  
 2 required by the Industrial Permit for the 2805/2820 Facilities.

3 19. BAT/BCT and Technology Based Limits:<sup>1</sup> Contaminants in discharges shall  
 4 not exceed the limits in Table 1:

<b>Contaminant (All metals are total recoverable)</b>	<b>Limit (All but pH expressed as Mg/L)</b>
Total suspended solids	100
Copper	0.064123
Lead	0.081669
Zinc	0.117
Oil and grease	15
Aluminum	0.750
Arsenic	0.16854
Cadmium	0.0159
Iron	1
Mercury	0.0024
Nickel	1.417
Silver	0.0318
Chemical oxygen demand	120
pH	6.0-9.0 units

17  
 18  
 19  
 20  
 21 <sup>1</sup> The Best Available Technology (“BAT”) limits were derived from the International BMP  
 22 Database assembled by EPA and others for contaminants measured at a variety of BMPs, accepted into  
 23 the database, and subjected to statistical analysis. The proposed BAT limit is generally based on the  
 24 maximum median pollutant discharge concentration among all reported BMP types, except  
 25 hydrodynamic devices (which perform more poorly than land-based BMPs). In some cases the Caltrans  
 26 Retrofit Pilot Study results for the same BMPs were also consulted to guide the selection. The BAT  
 27 limit for oil and grease is equivalent to the widely accepted capability of a coalescing plate or equivalent  
 28 oil/water separator. Other contaminants common in scrap yard discharges are not represented at all, or  
 are not sufficiently represented, in the database to set BAT limits. In these cases the limits are the  
 benchmarks in the EPA multi-sector industrial permit. Defendants shall analyze for hardness when  
 collecting samples and Defendants may adjust limits based on hardness where applicable.

20. Water Quality Standard (WQS) Based Limits. Contaminants in discharges shall not exceed the limits in Table 2. The chemical oxygen demand and pH limits are from the applicable Basin Plan, all other are the CTR CMC<sup>2</sup> limits:

<b>Contaminant</b>	<b>Limit</b> (All but pH expressed as Mg/L)
Arsenic	340
Cadmium	0.0043
Copper	0.013
Lead	0.065
Nickel	0.470
Silver	0.0034
Zinc	0.120
PCBs	Goal of 0.000014
Chemical oxygen demand	30
pH	6.5-8.5 units

21. Ruby Metals shall be in violation of this Consent Decree if any sample results exceed Table 1 or Table 2 limits.

22. Action Plan for Table 1 or Table 2 Exceedances. Ruby Metals agrees to submit an action plan if any sampling demonstrates discharges of storm water containing concentration of pollutants exceeding a Table 1 or 2 limit that complies with the requirements below. The Parties agree to comply with the dispute resolution procedures set forth in Section IV below if there are any disagreements or disputes regarding any of the action plan(s) discussed below.

a. Benchmark Levels Action Plan. Defendants shall provide Waterkeeper with a Benchmark Action Plan within thirty (30) days of Ruby Metal's receipt of storm

<sup>2</sup> The CTR CMC limits are the California Toxics Rule (CTR) Criterion Maximum Concentrations (CMC) from the Federal Register, Vol. 65, No. 97, May 18, 2000. Defendant shall measure dissolved as well as total recoverable metals. In general, freshwater limits for metals depend on water hardness. Defendants shall analyze for hardness when collecting samples and Defendants can adjust limits based on hardness where applicable.

1 water sampling data demonstrating an exceedance of a Benchmark Level at either the  
2 2820 Facility or the 2805 Facility. The Action Plan shall include at a minimum (1) the  
3 identification of the pollutant(s) discharged in excess of the Benchmark Levels, (2) an  
4 assessment of the source of each pollutant exceedance, (3) the identification of additional  
5 BMPs that will be implemented to achieve compliance with the Benchmark Levels set  
6 forth in Table 1, and (4) time schedules for implementation of the proposed BMPs.  
7 Waterkeeper shall have thirty (30) days upon receipt of Defendants' Benchmark Action  
8 Plan to provide Defendants with comments. Defendants shall have thirty (30) days from  
9 the date Waterkeeper comments on Defendants' Benchmark Action Plan to implement  
10 any additional non-structural or structural BMPs recommended by Waterkeeper. Ruby  
11 Metals shall provide a written explanation if Ruby Metals refuses to develop and/or  
12 implement any of Waterkeeper's recommended additional BMPs. If any structural BMPs  
13 require any agency approval, then Defendants shall contact Waterkeeper to request an  
14 extension of the deadline to implement the structural BMPs requiring agency approval.  
15 Waterkeeper's consent to Defendants' requested extension shall not be unreasonably  
16 withheld. Defendants shall notify Waterkeeper in writing when the Action Plan has been  
17 implemented.

18           b. WQS Action Plan. Defendants shall provide Waterkeeper with a WQS  
19 Action Plan by July 1 following each Wet Season if storm water sampling data  
20 demonstrating an exceedance of a WQS Level at either the 2820 Facility or the 2805  
21 Facility. The objective of the WQS Action Plan is to set forth additional BMPs designed  
22 to achieve compliance with Table 2 limits. The Action Plan shall include at a minimum  
23 (1) the identification of the pollutant(s) discharged in excess of the WQS; (2) an  
24 assessment of the source of the pollutant; (3) the identification of additional BMPs that  
25 will be implemented to achieve compliance with the applicable WQS; and (4) time  
26 schedules for implementation of the proposed structural and non-structural BMPs.  
27 Waterkeeper shall have thirty (30) days upon receipt of Defendants' WQS Action Plan to

1 provide Defendants with comments. Defendants shall have thirty (30) days from the date  
2 Waterkeeper comments on Defendants' Action Plan to implement any additional non-  
3 structural or structural BMPs. Ruby Metals shall provide a written explanation if Ruby  
4 Metals refuses to develop and/or implement any of Waterkeeper's recommended  
5 additional BMPs. If any structural BMPs require any agency approval, then Defendants  
6 shall contact Waterkeeper to request an extension of the deadline to implement the  
7 structural BMPs requiring agency approval. Waterkeeper's consent to Defendants'  
8 requested extension shall not be unreasonably withheld. Defendants shall notify  
9 Waterkeeper in writing when the Action Plan has been implemented.

10 c. Action Plan for Year 4 Wet Season. If at the end of the 2011-2012 Wet  
11 Season, storm water sample results demonstrate that Defendants continue to discharge  
12 storm water and/or non-stormwater containing pollutants exceeding the limits set forth in  
13 Tables 1 and/or 2, the Parties shall meet and confer by July 1, 2012 to discuss the sample  
14 results, current BMPs, and to devise a mutually agreeable action plan ("Year 4 Action  
15 Plan"). Within fourteen (14) days of meeting and conferring, Defendants will develop  
16 and submit the Year 4 Action Plan to Waterkeeper. Waterkeepers will provide comments  
17 on the Year 4 Action Pan within thirty (30) days of receipt of the plan. Ruby Metals shall  
18 revise the Year 4 Action Plan to include Waterkeeper's comments.

19 **G. Storm Water Pollution Prevention Plan**

20 23. SWPPP Revisions. Within thirty (30) days of the Effective Date of this  
21 Consent Decree, Defendants agree to revise the SWPPP currently in effect at the  
22 2805/2820 Facilities to incorporate all storm water pollution prevention measures and  
23 other requirements set forth in this Consent Decree and/or the Industrial Permit.  
24 Specifically, the SWPPP shall include a description of all industrial activities and  
25 corresponding potential pollution sources, and, for each potential pollutant source, a  
26 description of the potential pollutants from the sources. The SWPPP shall also identify  
27 BMPs (and their implementation dates) designed to achieve compliance with Numeric

1 Limits set forth in Table 1 and Table 2. Defendants shall revise the SWPPP as necessary  
2 to incorporate additional BMPs developed pursuant to this Consent Decree.

3 24. Waterkeeper's Review of Revised SWPPP. Defendants agree to submit the  
4 revised SWPPP to Waterkeeper for review and comment as soon as it is completed but in  
5 any event no later than thirty (30) days from the Effective Date of this Consent Decree.  
6 Within thirty (30) days of Waterkeeper's receipt of the revised SWPPP, Waterkeeper  
7 shall provide Defendants with comments and suggestions, if any, concerning the  
8 revisions to the SWPPP. Within fourteen (14) days of Defendants' receipt of  
9 Waterkeeper's comments on the revised SWPPP, Defendants shall incorporate  
10 Waterkeeper's comments and re-issue the SWPPP. Any disputes as to the adequacy of  
11 the SWPPP shall be resolved pursuant to the dispute resolution provisions of this Consent  
12 Decree, set out at Section IV below.

#### 13 **H. Compliance Monitoring**

14 25. Site Inspections. Waterkeeper, Dr. Richard Horner, or an alternative water  
15 quality engineer identified by Waterkeeper, accompanied by Waterkeeper's attorney or  
16 other representative, may conduct up to three yearly site inspections at the 2805/2820  
17 Facilities for the first two years of the this Consent Decree, and may conduct up to two  
18 site inspections each year thereafter. Site inspections shall occur during normal business  
19 hours and Waterkeeper shall provide Defendants' with as much notice as possible, but at  
20 least twenty-four (24) hours notice during the Wet Weather season and forty-eight (48)  
21 hours notice during the dry season prior to each inspection. Notice will be provided by  
22 phone and electronic mail. During site inspections, Waterkeeper and/or its  
23 representatives shall be allowed access to the 2805/2820 Facilities SWPPP, monitoring  
24 records, and monitoring reports and data for the 2805/2820 Facilities. During site  
25 inspections, Waterkeeper and/or its representatives may collect samples of storm water  
26 discharges at the 2805/2820 Facilities. A certified California laboratory shall analyze  
27 storm water samples collected by Waterkeeper.

1           26. Compliance Monitoring and Oversight. Defendants agree to help defray  
2 Waterkeeper's reasonable costs incurred in conducting site inspections and compliance  
3 monitoring by paying Five Thousand Dollars (\$5,000) towards this end. Payment shall  
4 be made within sixty (60) days from execution of this Consent Decree and be made  
5 payable to Lawyers for Clean Water Attorney Client Trust Account and sent certified  
6 mail or overnight delivery to Lawyers for Clean Water, Inc., 1004 A O'Reilly Avenue,  
7 San Francisco, California 94129.

8           27. Reporting. During the life of this Consent Decree, on a monthly basis,  
9 Defendants shall provide Waterkeeper with a copy of all compliance and monitoring  
10 data, including inspection reports, related to the 2805/2820 Facilities. During the life of  
11 this Consent Decree, Defendants shall provide Waterkeeper with all laboratory analyses  
12 of storm water or non-stormwater data at the 2805/2820 Facilities within seven (7) days  
13 of Defendants' receipt of such information.

14           28. Document Provision. During the life of this Consent Decree, Defendants  
15 shall copy Waterkeeper on all documents related to water quality at the 2805/2820  
16 Facilities that are submitted to the Regional Board, the State Board, and/or any State or  
17 local agency or municipality. Such reports and documents shall be provided to  
18 Waterkeeper concurrently as they are sent to the agencies and/or municipalities. Any  
19 correspondence received by Ruby Metals from any regulatory agency shall be provided  
20 to Waterkeeper within three (3) business days of receipt by Ruby Metals.

21           **I. Environmental Projects and Fees and Costs**

22           29. Environmental Mitigation Project. Defendants agree make a payment of  
23 Thirty Thousand Dollars (\$30,000) to the Public Interest Green Fund to be used for  
24 projects that reduce or mitigate the impacts of storm water pollution in Orange County  
25 and the Inland Empire. Defendants shall pay Five Thousand Dollars (\$5,000) each  
26 month for six months starting ninety (90) days from the Effective Date, for a total of six  
27 payments of Five Thousand Dollars. Payment shall be made via certified mail or

1 overnight delivery to the Public Interest Green Fund at the Orange County Community  
2 Foundation, 30 Corporate Park, Suite 410, Irvine, California 92606. Defendants shall  
3 provide Waterkeeper with a copy of such payment.

4 30. Waterkeeper's Fees and Costs. Defendants agree to partially reimburse  
5 Waterkeeper in the amount of Forty-Five Thousand Dollars (\$45,000) for their  
6 investigation fees and costs, consultant fees and costs, reasonable attorneys' fees, and  
7 other costs incurred as a result of investigating and filing the lawsuit, and negotiating a  
8 resolution of this matter. Payment shall be made within sixty (60) days of execution of  
9 this Consent Decree and be made payable to Lawyers for Clean Water Attorney Client  
10 Trust Account, and sent certified mail or overnight delivery to Lawyers for Clean Water,  
11 Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129.

12 31. Stipulated Payment. Defendants shall make a remediation payment of One  
13 Thousand Dollars (\$1,000) for each missed deadline included in or contemplated by this  
14 Consent Decree, unless the missed deadline results from a Force Majeure Event.  
15 Payments for missed deadline shall be made for the restoration and/or improvement of  
16 the watershed in the area affected by Defendants' discharges and shall be awarded to the  
17 Environmental Mitigation Project recipient identified in paragraph 29 below. Defendants  
18 agree to make the stipulated payment within thirty (30) days of a missed deadline and  
19 mail via certified mail or overnight delivery. Defendants shall provide Waterkeeper with  
20 a copy of each such payment.

#### 21 **J. Commitments of Plaintiff**

22 32. Plaintiffs shall submit this Consent Decree to the United States  
23 Environmental Protection Agency and the United States Department of Justice ("DOJ")  
24 within three (3) days of the final signature of the Parties for agency review consistent  
25 with 40 C.F.R. §135.5. The agency review period expires forty-five (45) days after  
26 receipt by both agencies, as evidenced by the certified return receipts, copies of which  
27 shall be provided to Defendants if requested. In the event that EPA or DOJ object to

1 entry of this Consent Decree the Parties agree to meet and confer to attempt to resolve the  
2 issue(s) raised by EPA or DOJ.

3 33. Plaintiffs shall file this Consent Decree with the District Court within three  
4 (3) days of the Effective Date. Waterkeeper is responsible for notifying Defendants of the  
5 District Court's entry of the Order dismissing these claims with prejudice. Such  
6 notification can be satisfied by the Central District of California's Case  
7 Management/Electronic Case Filing ("CM/ECF") notification to the Parties that the  
8 Order was executed and entered by the District Court.

9 **III. EFFECTIVE DATE AND TERMINATION DATE**

10 34. The term "Effective Date," as used in this Consent Decree, shall mean the  
11 last date for the United States Department of Justice and the United States Environmental  
12 Protection Agency ("Federal Agencies") to comment on the Consent Decree, i.e., the  
13 45th day following the United States Department of Justice and United States  
14 Environmental Protection Agency's receipt of the Consent Decree or, the date on which  
15 the Federal Agencies provides notice that it requires no further review and the Court  
16 enters the final Consent Decree, whichever occurs earlier.

17 35. This Consent Decree will terminate on its own terms five (5) years from the  
18 Effective Date.

19 **IV. DISPUTE RESOLUTION**

20 36. If Ruby Metals claims inability to pay as the basis for their failure to comply  
21 with any provision of this Consent Decree including but not limited to developing or  
22 implementing a BMP, or making monetary payments, Defendants' shall submit financial  
23 documents that support their claim. Waterkeeper reserves the right to require the  
24 submission of additional financial documents in order to analyze Defendants' claim of  
25 inability to pay.

26 37. This Court shall retain jurisdiction over this matter for the purposes of  
27 adjudicating all disputes among the parties that may arise under the provisions of this

1 Consent Decree. The Court shall have the power to enforce this Consent Decree with all  
2 available legal and equitable remedies, including contempt.

3 38. Meet and Confer. A party to this Consent Decree shall invoke the dispute  
4 resolution procedures of this Section by notifying all other Parties in writing of the  
5 matter(s) in dispute and of the party's proposal to resolve the dispute under this Section.  
6 The Parties shall then meet and confer in an attempt to resolve the dispute informally  
7 over a period of ten (10) calendar days from the date of the notice.

8 39. If the Parties cannot resolve a dispute by the end of the meet and confer  
9 informal negotiations, the party invoking the dispute resolution provision may invoke  
10 formal dispute resolution by filing a motion before the United States District Court for  
11 the Central District of California. The Parties shall jointly apply to the Court for an  
12 expedited hearing schedule on the motion.

13 40. If Waterkeeper initiates a motion or proceeding before the Court to enforce  
14 the terms and conditions of this Consent Decree, Waterkeeper shall be entitled to recover  
15 reasonable fees incurred to enforce the terms of this Consent Decree consistent with the  
16 provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §§ 1365, 1319.

17 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

18 41. In consideration of the above, upon the Effective Date of this Consent  
19 Decree, the Parties hereby fully release, except for claims for the Defendants' failure to  
20 comply with this Consent Decree and as expressly provided below, each other and their  
21 respective successors, assigns, officers, agents, employees, and all persons, firms and  
22 corporations having an interest in them, from any and all alleged CWA violations  
23 claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

24 42. Nothing in this Consent Decree limits or otherwise affects Plaintiffs' right to  
25 address or take any position that it deems necessary or appropriate in any formal or  
26 informal proceeding before the Regional Board, EPA, or any other judicial or  
27 administrative body on any other matter relating to Defendants.

1 43. Neither the Consent Decree nor any payment pursuant to the Consent Decree  
2 shall constitute or be construed as a finding, adjudication, or acknowledgement of any  
3 fact, law or liability, nor shall in be construed as an admission of violation of any law,  
4 rule, or regulation. Defendants maintain and reserve all defenses they may have to any  
5 alleged violations that may be raised in the future.

6 44. Force Majeure. Defendants shall notify Waterkeeper pursuant to the terms  
7 of this paragraph, when implementation of the requirements set forth in this Consent  
8 Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite  
9 the timely good-faith efforts of Defendants, due to circumstances beyond the reasonable  
10 control of Defendants or its agents, and which could not have been reasonably foreseen  
11 and prevented by the exercise of due diligence by Defendants. Any delays due to  
12 Defendants' failure to make timely and bona fide applications and to exercise diligent  
13 efforts to obtain any necessary permits, or due to normal inclement weather, shall not, in  
14 any event, be considered to be circumstances beyond Ruby Metals control.

15 a. If Defendants claim impossibility, it shall notify Waterkeeper in writing  
16 within twenty-one (21) days of the date that Ruby Metals first knew of the event or  
17 circumstance that caused or would cause a violation of this Consent Decree or the date  
18 Ruby Metals should have known of the event or circumstance by the exercise of due  
19 diligence. The notice shall describe the reason for the nonperformance and specifically  
20 refer to this Section. It shall describe the anticipated length of time the delay may persist,  
21 the cause or causes of the delay, the measures taken or to be taken by Ruby Metals to  
22 prevent or minimize the delay, the schedule by which the measures will be implemented,  
23 and the anticipated date of compliance. Ruby Metals shall adopt all reasonable measures  
24 to avoid and minimize such delays.

25 b. The Parties shall meet and confer in good-faith concerning the non-  
26 performance and, where the Parties concur that performance was or is impossible, despite  
27 the timely good faith efforts of Ruby Metals, due to circumstances beyond the control of  
28

1 Ruby Metals that could not have been reasonably foreseen and prevented by the exercise  
2 of due diligence by Ruby Metals, new deadlines shall be established.

3 c. If Waterkeeper disagrees with Ruby Metals' notice, or in the event that  
4 the Parties cannot timely agree on the terms of new performance deadlines or  
5 requirements, either party shall have the right to invoke the Dispute Resolution Procedure  
6 pursuant to Section IV. In such proceeding, Ruby Metals shall bear the burden of  
7 proving that any delay in performance of any requirement of this Consent Decree was  
8 caused or will be caused by force majeure and the extent of any delay attributable to such  
9 circumstances.

10 **VI. MISCELLANEOUS PROVISIONS**

11 45. Construction. The language in all parts of this Consent Decree shall be  
12 construed according to its plain and ordinary meaning, except as to those terms defined in  
13 the Industrial Permit, the Clean Water Act, or specifically herein.

14 46. Choice of Law. The laws of the United States shall govern this Consent  
15 Decree.

16 47. Severability. In the event that any provision, paragraph, section, or sentence  
17 of this Consent Decree is held by a court to be unenforceable, the validity of the  
18 enforceable provisions shall not be adversely affected.

19 48. Correspondence. All notices required herein or any other correspondence  
20 pertaining to this Consent Decree shall be sent by regular, certified, or overnight mail and  
21 electronic mail as follows:

22 If to Plaintiff:

23 Layne Friedrich, Esq.  
24 Elizabeth Crosson, Esq.  
25 Lawyers for Clean Water  
26 1004 A O'Reilly Ave  
27 San Francisco, CA 94129  
28 layne@lawyersforcleanwater.com  
liz@lawyersforcleanwater.com

1 With copies to:

2 Orange County Coastkeeper/Inland Empire Waterkeeper  
3 Garry Brown  
4 3151 Airway Ave # F110  
5 Costa Mesa, CA 92626-4621  
6 garry@coastekeeper.org

7 If to Defendant:

8 William Funderburk, Esq.  
9 Stanzler Funderburk & Castellon LLP  
10 811 Wilshire Blvd. Suite 1025  
11 Los Angeles, CA 90017  
12 wfunderburk@sfcfirm.com

12 With copies to:

13 Ruby Metals, Inc.  
14 Attn: Peter Chen  
15 2805 South Industrial Drive  
16 Bloomington, CA 92316  
17 Brian@rubymetals.com

18 Gold Coast Metals Trading, Inc.  
19 Attn: Chen Ying Hsiung  
20 2805 South Industrial Drive  
21 Bloomington, CA 92316  
22 Brian@rubymetals.com

23 Notifications of communications shall be deemed submitted three (3) days after the  
24 date that they are postmarked and sent by first-class mail or deposited with an overnight  
25 mail/delivery service. Any change of address or addresses shall be communicated in the  
26 manner described above for giving notices.

27 49. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent  
28 Decree, warrant or aver in any manner that the Defendants' compliance with this Consent  
Decree will constitute or result in compliance with any federal or state law or regulation.

1 Nothing in this Consent Decree shall be construed to affect or limit in any way the  
2 obligation of the Defendants to comply with all federal, state, and local laws and  
3 regulations governing any activity required by this Consent Decree.

4 50. Counterparts. This Consent Decree may be executed in any number of  
5 counterparts, all of which together shall constitute one original document. Telecopy  
6 and/or facsimile copies of original signature shall be deemed to be originally executed  
7 counterparts of this Consent Decree.

8 51. Modification of the Consent Decree. This Consent Decree, and any  
9 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
10 written instrument, signed by the Parties.

11 52. Full Settlement. This Consent Decree constitutes a full and final settlement  
12 of this matter.

13 53. Integration Clause. This is an integrated Consent Decree. This Consent  
14 Decree is intended to be a full and complete statement of the terms of the agreement  
15 between the parties and expressly supersedes any and all prior oral or written agreements  
16 covenants, representations, and warranties (express or implied) concerning the subject  
17 matter of this Consent Decree.

18 54. Authority. The undersigned representatives for Plaintiffs and Defendants  
19 each certify that he/she is fully authorized by the party whom he/she represents to enter  
20 into the terms and conditions of this Consent Decree.

21 55. The provisions of this Consent Decree apply to and bind the Parties,  
22 including any successors or assigns. The Parties certify that their undersigned  
23 representatives are fully authorized to enter into this Consent Decree, to execute it on  
24 behalf of the Parties, and to legally bind the Parties to its terms.

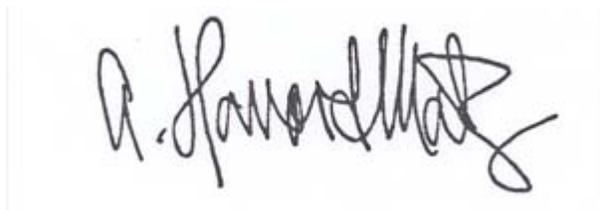
25 56. The Parties agree to be bound by this Consent Decree and not to contest its  
26 validity in any subsequent proceeding to implement or enforce its terms. By entering into  
27

1 this Consent Decree, the Defendants do not admit liability for any purpose as to any  
2 allegation or matter arising out of this Action.

3 The undersigned representatives for Waterkeeper and Defendants each certify that  
4 he/she is fully authorized by the party whom he/she represents to enter into the terms  
5 and conditions of this Consent Decree and that this Consent Decree binds that party.

6 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as  
7 of the date first set forth above.

8 **IT IS SO ORDERED:**



9  
10 Date: January 08, 2010

11  
12 **JS-6**

\_\_\_\_\_  
Honorable A. Howard Matz  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAWYERS FOR CLEAN WATER, INC.

13  
14  
15  
16  
17 Dated: November \_\_\_\_\_, 2009

\_\_\_\_\_  
Layne Friedrich  
Lawyers for Clean Water, Inc.  
Attorneys for Plaintiff

ORANGE COUNTY COASTKEEPER

18  
19  
20  
21  
22  
23 Dated: November \_\_\_\_\_, 2009

\_\_\_\_\_  
Garry Brown  
Orange County Coastkeeper/Inland Empire  
Waterkeeper

1 STANZLER FUNDERBURK CASTELLON LLP

2  
3  
4 Dated: November \_\_\_\_\_, 2009

\_\_\_\_\_  
5 William W. Funderburk  
6 Attorney for Defendants

7  
8 RUBY METALS, INC.

9  
10 Dated: November \_\_\_\_\_, 2009

\_\_\_\_\_  
11 Peter Chen, Owner  
12 Ruby Metals, Inc.

13 GOLD COAST METALS TRADING, INC.

14  
15  
16 Dated: November \_\_\_\_\_, 2009

\_\_\_\_\_  
17 Chen Ying Hsiung, Owner  
18 Gold Coast Metals Trading, Inc.



ORANGE COUNTY  
**COASTKEEPER**  
EDUCATION / ADVOCACY / RESTORATION / ENFORCEMENT

3151 Airway Avenue, Suite F-11C  
Costa Mesa, CA 92626  
Phone 714-850-1965  
Fax 714-850-1592  
Website [www.Coastkeeper.org](http://www.Coastkeeper.org)

August 9, 2010

SA Recycling, LLC  
Attn: George Adams  
3200 E. Frontera Street  
Anaheim, CA 92806

RE: **Settlement between Orange County Coastkeeper and SA Recycling**

Dear Mr. Adams:

Orange County Coastkeeper (Coastkeeper) submits this proposal to SA Recycling, LLC and Remedy Environmental Services (Operators), located at 3200 E. Frontera Street, Anaheim, CA 92806, in order to resolve allegations of storm water pollution discharged from these locations (Facilities). Our settlement proposal is detailed below. If you accept, please sign, date and return.

I. **Sample Analysis and Sample Frequency**

During the 2010/11 Wet Season (defined as October 1, 2010 – May 31, 2011), the Operators agree to collect storm water samples from each discharge location identified below during each storm event at the Facilities. Storm water samples must represent the discharge at the point it leaves the Facilities and be analyzed in conformity with standard laboratory practices. The sampling data will be made available to Coastkeeper. Sampling will be collected from the sole discharge sampling locations, which are the:

- a. *Post treatment discharge into the storm drain; and*
- b. *Discharge from the eastern boundary rail yard/storage onto East Frontera Street.*

II. **Storm Water Pollution Prevention Plan (SWPPP) and Employee Training**

The Operators shall continue to enforce their SWPPP's prohibitions on employees sweeping storm water runoff from their Facilities onto East Frontera.

The Operators agree to continue to implement a training program, including to procure any materials needed for effectiveness, so that employees understand the prohibition on sweeping or pushing storm water from the Facilities onto the street.

III. Environmental Project

The Operators agree to contribute a combined total of twenty thousand dollars (\$20,000) to fund the restoration of an environmental education pond at Rancho Soñado environmental education facility, the headquarters of *Inside the Outdoors*®. The Operators agree to pay the twenty thousand dollars (\$20,000) to Inside the Outdoors Foundation, c/o Orange County Department of Education, 200 Kalmus Drive, Costa Mesa, CA 92628, Attention: Pam Johnson, within fourteen (14) days from the signing of this agreement to be used for this purpose.

IV. Attorney's Fees, Costs and Compliance Fees

The Operators agree to pay the costs and fees borne by Coastkeeper and its legal related to this action within 30 days of execution of this agreement in the amount of \$55,000.

Furthermore, the Operators agree to deposit \$14,000 into an account to reimburse Coastkeeper for direct costs and non-legal expenses associated with this action.

V. Termination Date

Coastkeeper and the Operators agree this agreement will terminate on its own terms one (1) calendar year from the date of execution.

Dated: August 10, 2010



\_\_\_\_\_  
Garry Brown  
Executive Director  
ORANGE COUNTY COASTKEEPER

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
George Adams  
President  
SA RECYCLING AND  
REMEDY ENVIRONMENTAL

1 Daniel Cooper (Bar No. 153576)  
2 Martin McCarthy (Bar No. 194915)  
3 LAWYERS FOR CLEAN WATER, INC.  
4 1004-A O'Reilly Avenue  
5 San Francisco, California 94129  
6 Telephone: (415) 440-6520  
7 Facsimile: (415) 440-4155  
8 Email: daniel@lawyersforcleanwater.com

9 Christopher Sproul (Bar No. 126398)  
10 ENVIRONMENTAL ADVOCATES  
11 5135 Anza Street  
12 San Francisco, California 94121  
13 Telephone: (415) 533-3376  
14 Facsimile: (415) 358-5695  
15 Email: csproul@enviroadvocates.com

16 Jason Flanders (Bar No. 238007)  
17 SAN FRANCISCO BAYKEEPER  
18 785 Market Street, Suite 850  
19 San Francisco, California 94103  
20 Telephone: (415) 856-0444  
21 Facsimile: (415) 856-0443  
22 Email: jason@baykeeper.org

23 Attorneys for Plaintiff  
24 SAN FRANCISCO BAYKEEPER

25 UNITED STATES DISTRICT COURT  
26  
27 NORTHERN DISTRICT OF CALIFORNIA

28 SAN FRANCISCO BAYKEEPER, a California  
non-profit corporation,  
Plaintiff,

v.

CITY OF SAN CARLOS, a California municipal  
corporation,  
Defendant.

Civil Case No.: CV 09-05677 SBA

**CONSENT DECREE**

**CONSENT DECREE**

The following Consent Decree is entered into by and between Plaintiff San Francisco Baykeeper (Plaintiff or "Baykeeper"), and defendant City of San Carlos ("City" or "Defendant"). The entities entering into this Consent Decree are each referred to herein as "Party" and collectively as "Parties."

**WHEREAS**, Baykeeper is a non-profit public benefit corporation dedicated to, among other things, the protection and enhancement of the water quality of the San Francisco Bay;

**WHEREAS**, the City is a municipal corporation and political subdivision of the State of California;

**WHEREAS**, the City owns and/or operates a sanitary sewer collection system that collects, treats, and discharges wastewater generated by residential, commercial, and industrial sources;

**WHEREAS**, the City is one of twenty cities and towns in San Mateo County that have joined together to form the San Mateo Countywide Stormwater Pollution Prevention Program ("STOPP").

STOPP's National Pollution Discharge Elimination System ("NPDES") permit, *Waste Discharge Requirements for City/County Association Of Governments Of San Mateo County, et al.*, San Francisco Regional Water Quality Control Board Order No. 99-058, NPDES Permit No. CAS0029921, reissued as Order No. 99-059, and subsequently amended by Order Nos. R2-2003-0023, R2-2004-0060, R2-2004-0062, and R2-2007-0027 ("MS4 Permit"), regulates discharges into and out of the City's municipal separate storm sewer system;

**WHEREAS**, on September 28, 2009, Baykeeper issued to Defendant a 60-day Notice of Violation and Intent to File Suit ("Notice Letter") under section 505(a) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1365(a). Baykeeper also served a copy of the Notice Letter on, the Administrator and the Regional Administrator for Region IX of the United States Environmental Protection Agency ("EPA"), the Executive Director of the California State Water Resources Control Board ("State Board"), and the Executive Officer of the San Francisco Bay Regional Water Quality Control Board ("Regional Board"). The Notice Letter alleged that Defendant violated and continues to violate the Clean Water Act for discharges of pollutants to waters of the United States without NPDES permit coverage, and discharges of pollutants in violation of the MS4 Permit;





1 g. 'Day' means a calendar day. In computing any period of time under this Consent  
2 Decree, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period  
3 runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State  
4 Holiday.

5 h. 'Design Storm' means a 10-year return period rainstorm with a duration of 24 hours  
6 as measured by a properly calibrated and monitored rain gage, or such rain gages, within San Carlos or,  
7 if no such gage is available, at the San Francisco International Airport. The engineering design criteria  
8 to be used by the City for a 10-year 24-hour storm shall take into account short duration intense rainfall  
9 periods by reference to USDA Urban Hydrology for Small Watersheds guidance TR-55 (June 1986) and  
10 use of the synthetic rainfall distribution curve (Figure B-1 SCS 24-Hour Rainfall Distribution) found in  
11 Appendix B of TR-55. The City shall use the distribution curve for a Type IA storm as referenced on  
12 Figure B-1 of Appendix B of TR-55 based on local rainfall quantities for the San Carlos area in San  
13 Mateo County, California.

14 i. 'FOG' means fats, oil, and grease.

15 j. 'Infiltration' means groundwater, rainwater, or other surface water that may enter  
16 the San Carlos Collection System through the pipe, joints, or cracks.

17 k. 'Inflow' means wastewater or water that may enter the San Carlos Collection  
18 System through unpermitted connections, drains, or manholes.

19 l. 'I' means infiltration and inflow.

20 m. 'Lower Lateral' means the lateral line connecting a home or business to the City's  
21 sewer main extending from the sewer main to the City's clean out or to the back of the public right-of-  
22 way, whichever is applicable to the lateral connection. Lower Laterals are generally connected to upper  
23 laterals.

24 n. 'MS4 Permit' means the *Waste Discharge Requirements for City/County*  
25 *Association Of Governments Of San Mateo County, et al.*, San Francisco Regional Water Quality  
26 Control Board Order No. 99-058, NPDES Permit No. CAS0029921, reissued as Order No. 99-059, and  
27 subsequently amended by Order Nos. R2-2003-0023, R2-2004-0060, R2-2004-0062, and R2-2007-  
28 0027.

1 o. ‘NPDES’ means National Pollutant Discharge Elimination System.

2 p. ‘Private Lateral’ means the private sanitary sewer lateral or line connecting a home  
3 or other structure to the Lower Lateral, generally extending from the outside of the foundation of the  
4 structure to the public right-of-way or the City’s cleanout, whichever is applicable

5 q. ‘Sanitary Sewer Overflow’; ‘overflow’; or ‘SSO’ has the same meaning as those terms  
6 are defined in Section A.1 of the SSO WDR’, or any amendment thereto, and which currently means: ‘any  
7 overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a  
8 sanitary sewer system. SSOs include: (i) Overflows or releases of untreated or partially treated  
9 wastewater that reach waters of the United States; (ii) Overflows or releases of untreated or partially  
10 treated wastewater that do not reach waters of the United States; and (iii) Wastewater backups into  
11 buildings and on private property that are caused by blockages or flow conditions within the publicly  
12 owned portion of a sanitary sewer system.’ For purposes of this definition, ‘waters of the United States’  
13 has the meaning as set forth in 40 C.F.R. § 122.2.

14 r. ‘Sewer line segment’ means any section of publicly owned sewer line or pipe  
15 located between: (1) two manholes/maintenance holes; (2) a pump station and a manhole/maintenance  
16 hole; (3) a pump station or a manhole/maintenance hole and a headworks structure; or (4) a sewer line or  
17 pipe otherwise identifiable as a discrete section.

18 s. ‘SSMP’ means the Sewer System Management Program implemented by the City  
19 for the San Carlos Collection System to monitor the condition, maintenance, and repair of the San  
20 Carlos Collection System.

21 t. ‘Year’ shall mean calendar year, unless otherwise specified.

22 **III. JURISDICTION AND VENUE**

23 3. Plaintiff alleges the following jurisdictional allegations:

24 a. This District Court has jurisdiction over the subject matter of the claims asserted  
25 by Plaintiff pursuant to section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), 28 U.S.C.  
26 §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws  
27 of the United States), and 28 U.S.C. § 1367(a), which provides supplemental jurisdiction for claims  
28 based on state law, including, but not limited to, California Code of Civil Procedure section 1085, the

1 California Water Code sections 13000 *et seq.*, (the Porter-Cologne Act), San Mateo County Ordinance,  
2 title 4 sections 100.010 *et seq* ("San Mateo Ordinance), and the City of San Carlos Municipal Code, title  
3 13 sections 14.010 *et seq.* ("Municipal Code");

4 b. Venue is proper in this judicial district pursuant to sections 309(b) and 505(c) of  
5 the Clean Water Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c);

6 c. The Complaint filed herein states claims for which relief can be granted against  
7 Defendant pursuant to section 505 of the Clean Water Act, 33 U.S.C. § 1365;

8 d. Plaintiffs have standing to bring this action;

9 e. The District Court shall retain jurisdiction over this matter for purposes of  
10 interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is  
11 necessary for the District Court to resolve any motion to enforce this Consent Decree.

#### 12 **IV. EFFECT OF CONSENT DECREE**

13 4. Plaintiff does not, by its consent to this Consent Decree, warrant or aver in any manner that  
14 the Defendant's compliance with this Consent Decree will constitute or result in compliance with any  
15 Federal or State law or regulation. Nothing in this Consent Decree shall be construed to affect or limit  
16 in any way the obligation of the Defendant to comply with all applicable Federal, State and local laws  
17 and regulations governing any activity required by this Consent Decree.

18 5. Nothing in the Consent Decree, including but not limited to the proposed actions and  
19 payments made pursuant to the Consent Decree, shall be used as evidence or be construed as a finding,  
20 adjudication, or acknowledgement of any fact, law, issue of law, or liability, nor shall it be construed as  
21 an admission of violation of any law, issue of law, rule, regulation, permit, or administrative order by  
22 Defendant.

#### 23 **V. APPLICABILITY**

24 6. The provisions of this Consent Decree apply to and bind the Parties, including any successors  
25 or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into  
26 this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

27 7. The Parties agree to be bound by this Consent Decree and not to contest its validity in any  
28 subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the

1 Defendant does not admit liability for any purpose as to any allegation or matter arising out of the  
2 Notice Letter and/or Complaint.

3 8. No change in ownership or corporate or other legal status of the Defendant or any transfer of  
4 the Defendant's assets or liabilities shall in any way alter the responsibilities of the Defendant or any of  
5 its successors or assigns thereof, under this Consent Decree. In any action to enforce this Consent  
6 Decree, the Defendant shall not raise as a defense the failure by any of its agents, servants, contractors,  
7 employees, and successors or assigns to take actions necessary to comply with this Consent Decree.  
8 Defendant is not precluded from raising as a defense that a particular spill in the San Carlos Collection  
9 System was caused by an upstream sewage collection system ('Satellite System') connected to the San  
10 Carlos Collection System. To assert this defense for a particular spill, Defendant shall have the burden  
11 to demonstrate that: (1) Defendant has initiated and is diligently prosecuting enforcement of its service  
12 contract with the Satellite System to address the cause the spill; and (2) that the Satellite System directly  
13 caused the spill in question.

#### 14 **VI. EFFECTIVE DATE AND TERMINATION DATE**

15 9. The term 'Effective Date,' as used in this Consent Decree, shall mean the last date for the  
16 United States Department of Justice to comment on the [proposed] Consent Decree, i.e., the 45th day  
17 following the United States Department of Justice's receipt of the [proposed] Consent Decree and  
18 Stipulated Dismissal or, the date on which the Federal Agencies provide notice that no further review is  
19 required and the District Court enters the final Consent Decree, whichever occurs earlier.

20 10. This Consent Decree will automatically terminate seven (7) years from the Effective Date  
21 ('Termination Date') unless Baykeeper has invoked the Dispute Resolution Procedure set forth in Section  
22 XIX or the Parties have agreed to an early termination of this Consent Decree and the District Court has  
23 authorized the modification of the Termination Date.

24 11. The obligations set forth in this Consent Decree take effect as of the date of execution by all  
25 Parties unless otherwise noted in this Consent Decree.

#### 26 **VII. SSO AND SPILL REDUCTION PERFORMANCE STANDARDS**

27 12. SSO Reduction Goals. It is the goal of this Consent Decree to reduce the City's Collection  
28 System SSOs to zero (0) over time. To approach the goal of zero (0) SSOs, the City shall reduce its

1 SSOs and Lower Lateral spills as follows:

2 a. San Carlos Collection System SSO Reduction Performance Goals.

<b>Calendar Year</b>	<b>Maximum Number of SSOs Per 100 Miles of Sewer Line/Year</b>
2010	46
2011	41
2012	32
2013	23
2014	14
2015	7
2016	5
2017	2

14 b. Lower Lateral SSO Reduction Performance Goals.

15 The City's goal is to reduce the annual number of Lower Lateral spills. The Lower Lateral SSO  
16 Reduction Standards are as follows:

<b>Calendar Year</b>	<b>Maximum Number of Lower Lateral Spills</b>
2010	18
2011	16
2012	13
2013	10
2014	7
2015	4
2016	3
2017	2

28 13. For purposes of determining compliance with the San Carlos Collection System SSO

1 Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals, SSOs and spills  
2 caused by storm events exceeding the Design Storm shall not be counted.

3 14. For purposes of determining compliance with the San Carlos Collection System SSO  
4 Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals, the Parties assume  
5 the City currently has approximately 106 miles of main sewer line in the San Carlos Collection System.

6 15. Failure to meet the San Carlos Collection System SSO Reduction Performance Goals shall be  
7 a violation of this Consent Decree to be resolved by the Dispute Resolution procedure in Section XIX  
8 below.

9 16. Failure to meet the Lower Lateral SSO Reduction Performance Goals shall be a violation of  
10 this Consent Decree to be resolved by the Dispute Resolution procedure in Section XIX below.

11 17. In order to reach the above SSO standards, the City shall implement the programs described  
12 below.

13 18. Compliance or non-compliance with the SSO Reduction Performance Goals and Lower  
14 Lateral SSO Reduction Performance Goals shall be documented by the City in each year's Annual  
15 Report required under Section XVI of this Consent Decree.

16 **VIII. SSO INVESTIGATION, RESPONSE AND REPORTING**

17 19. The terms, conditions, obligations, and requirements of the City's current Sanitary Sewer  
18 Overflow Response Plan ('SORP') are incorporated into this Consent Decree, and are enforceable  
19 pursuant to this Consent Decree.

20 20. The City recognizes that proper identification of the cause of SSOs is essential to prevent  
21 future SSOs.

22 21. Within one-hundred twenty (120) days of the Effective Date of this Consent Decree the City  
23 shall prepare a standard operating procedure ('SSO Cause Determination SOP') aimed at the proper and  
24 consistent determination of the cause of each SSO. The City shall provide a copy of the SSO Cause  
25 Determination SOP to Baykeeper for review and comment within seven (7) days of its finalization.  
26 Within thirty (30) days after providing the SSO Cause Determination SOP to Baykeeper, the City shall  
27 train all of its personnel who respond to SSOs regarding how to use the SSO Cause Determination SOP.  
28 Baykeeper shall provide the City, in writing, with all recommended revisions to the SSO Cause

1 Determination SOP within thirty (30) days after receiving the SSO Cause Determination SOP from the  
2 City. Upon receipt of Baykeeper's comments, the City shall consider each of Baykeeper's recommended  
3 revisions and indicate within thirty (30) days of receipt of Baykeeper's comments whether the City  
4 accepts each such recommendation for revision, and if not, provide a detailed explanation as to why  
5 Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution pursuant to  
6 Section XIX of this Consent Decree regarding disputes over the SSO Cause Determination SOP. In any  
7 such dispute resolution process, the City shall demonstrate that the elements or actions set forth in the  
8 SSO Cause Determination SOP are designed to ensure causes of the SSOs can be readily and accurately  
9 determined. To the extent the Parties do not dispute specific original provisions of the SSO Cause  
10 Determination SOP or specific recommended revisions, the City shall implement all undisputed  
11 provisions or revisions within thirty (30) days of receiving Baykeeper's comments on the SSO Cause  
12 Determination SOP. After the Parties have reached agreement on the SSO Cause Determination SOP,  
13 or after the dispute resolution process resolves any dispute concerning the SSO Cause Determination  
14 SOP, the City shall begin implementation of the SSO Cause Determination SOP as an enforceable  
15 requirement of this Consent Decree within sixty (60) days of agreement or upon the schedule set forth  
16 therein.

17 22. Within one-hundred eighty (180) days of reaching agreement with Baykeeper regarding the  
18 SSO Cause Determination SOP, the City shall complete training of all City personnel that respond to  
19 SSOs in the methods and practices used to identify the root causes of SSOs, including capacity related  
20 SSOs, and shall certify to Baykeeper that the training has been completed. All new employees who may  
21 respond to SSOs shall be trained in the methods and practices used to identify the root causes of SSO  
22 within sixty (60) days of commencing employment or transfer to duties that include SSO response and  
23 the City shall maintain records of such training.

24 23. The cause of any SSO shall be reported to the State Board's California Integrated Water  
25 Quality System (CIWQS) and entered into and maintained in the City's Computerized Maintenance  
26 Management System (CMMS) database. The information in the CMMS database shall be used in  
27 evaluating the City's programs. The City shall include in its Annual Report required under Section XVI  
28 of this Consent Decree a summary of SSO causes as determined by analysis of its CMMS database.



1 Parties have reached agreement on the SSO Reduction Action Plan or after Dispute Resolution resolves  
2 any dispute concerning the SSO Reduction Action Plan, the City shall begin implementation of the SSO  
3 Reduction Action Plan as an enforceable requirement of this Consent Decree within forty-five (45) days  
4 of agreement on the SSO Reduction Action Plan, or upon the schedule set forth therein.

5 28. The City shall address in the SSO Reduction Action Plan the various elements of such a plan  
6 that it believes will be necessary to achieve future compliance with the SSO Reduction Performance  
7 Goals, which may include any or all elements in its SSMP Program.

8 29. If additional funding is necessary to implement the SSO Reduction Action Plan, the City  
9 shall seek such funding as soon as is practical. If the City seeks financing, but is unsuccessful, the City  
10 shall disclose in the SSO Reduction Action Plan the extent of its efforts to obtain financing.

#### 11 **X. CAPACITY ASSURANCE**

12 30. By March 31, 2011, the City shall have completed sufficient flow monitoring of the San  
13 Carlos Collection System to support hydraulic modeling. The monitoring shall be sufficient to calibrate  
14 and validate hydraulic modeling of the San Carlos Collection System.

15 31. Hydraulic Modeling Work Plan. By August 1, 2010, The City shall submit a Hydraulic  
16 Modeling Work Plan for the San Carlos Collection System. The hydraulic modeling shall be sufficient  
17 to identify all necessary capacity improvements to convey peak wet weather flows to the South Bayside  
18 System Authority WWTP without SSOs caused by insufficient capacity in the San Carlos Collection  
19 System. The Hydraulic Modeling Work Plan shall contain a schedule for hydraulic modeling and all  
20 supporting efforts such as smoke testing, dye testing and other measures necessary to identify sources of  
21 I/I.

22 32. Capacity Assurance Report. By March 31, 2012, the City shall provide a Capacity  
23 Assurance Report to Baykeeper identifying all necessary capacity improvements to convey peak wet  
24 weather flows to the South Bayside System Authority WWTP without SSOs caused by insufficient  
25 capacity. The Capacity Assurance Report shall include a schedule for construction of all necessary  
26 capacity improvements identified in the Capacity Assurance Report based on Design Storm criteria.  
27 The schedule for construction of capacity improvements shall be as expeditious as is practicable and the  
28 City shall complete construction of such improvements within five (5) years from the date of the final

1 Capacity Assurance Report. In no event shall the completion of the construction of the improvements  
2 identified in the Capacity Assurance Report extend beyond the Termination Date.

3 33. Inflow and Infiltration (I/I). I/I identified within the San Carlos Collection System by the  
4 hydraulic modeling, smoke testing, dye testing, and condition assessment programs set forth herein,  
5 shall be identified and addressed in the Capacity Assurance Report. Major sources of I/I shall be  
6 removed as expeditiously as practicable. The Capacity Assurance Report shall include capacity  
7 improvements for the San Carlos Collection System designed to eliminate capacity-related SSOs during  
8 the rain events of less than the Design Storm.

9 34. Final Compliance Report. The City shall provide to Baykeeper a Final Compliance Report  
10 for Baykeeper's review and comment. The Final Compliance Report shall be submitted to Baykeeper a  
11 minimum of one (1) year prior to the Termination Date and the Final Compliance Report shall provide  
12 the status of all of the construction and other related activities required in the Capacity Assurance  
13 Report. The report shall provide sufficient information and detail to reasonably demonstrate that the  
14 City has undertaken and will have completed sufficient activities to fully comply with the capacity  
15 related SSOs for rain events less than the Design Storm by the Termination Date. This Final  
16 Compliance Report shall be subject to review, comment and referral to the Dispute Resolution  
17 Procedures as set forth in Section XIX of this Consent Decree. If the City determines that a fee increase  
18 is required to fund capacity improvement projects designed to eliminate capacity-related SSOs, the City  
19 may request a one time, one-year extension to implement the fee increase and obtain the revenue stream.  
20 If the City requests the one-year extension, the City shall have the burden to demonstrate that  
21 elimination of capacity related SSOs cannot be accomplished on the schedule set forth in this Consent  
22 Decree without the fee increase. This extension request shall be subject to the dispute resolution  
23 procedures set forth in Section XIX of this Consent Decree.

24 35. Review of Submittals. Baykeeper shall have the right to review the Hydraulic Modeling  
25 Work Plan and provide comments thereon. Baykeeper shall provide the City, in writing, with all  
26 recommended revisions to the Hydraulic Modeling Work Plan within twenty (20) days of receipt of the  
27 document. The City shall consider each of Baykeeper's recommended revisions and indicate within  
28 twenty (20) days of receipt of Baykeeper's comments whether the City accepts each such

1 recommendation for revision and if not provide a detailed explanation as to why Baykeeper's comments  
2 are being rejected. The City shall implement, within twenty (20) days of receipt of Baykeeper's  
3 comments, all elements in the Hydraulic Modeling Work Plan agreed to by Baykeeper and the City.  
4 Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding  
5 disputes over the Hydraulic Modeling Work Plan.

6 36. Baykeeper shall also provide the City, in writing, with all recommended revisions to the  
7 Capacity Assurance Report within thirty (30) days of receipt of the document. The City shall consider  
8 each of Baykeeper's recommended revisions and indicate within thirty (30) days of receipt of Baykeeper's  
9 comments whether the City accepts each such recommendation for revision and if not provide a detailed  
10 explanation as to why Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution  
11 pursuant to Section XIX of this Consent Decree regarding disputes over the Capacity Assurance Report.

12 37. Neither Party shall invoke Dispute Resolution until both Parties have made good faith efforts  
13 to resolve any professional differences with regard to the Hydraulic Modeling Work Plan and the  
14 Capacity Assurance Report.

15 **XI. SEWER CONDITION ASSESSMENT/REHABILITATION/REPLACEMENT**

16 38. Within three (3) years of the Effective Date of the Consent Decree, the City shall complete a  
17 sewer system assessment ('SSA') inspection and condition assessment of all main sewer line segments in  
18 the San Carlos Collection System that are fifteen (15) inches and smaller in diameter and are greater  
19 than 10 years old. The City shall inspect and assess no less than thirty (30) miles of sewer in each of the  
20 first two (2) years of this Consent Decree.

21 39. Within one-hundred and twenty (120) days of the Effective Date of the Consent Decree, the  
22 City shall propose to Baykeeper a work plan for CCTV inspections. The defects shall be coded and  
23 weighted using the Sanitary Sewer Assessment Defect Codes, which are attached hereto as Appendix A.

24 40. Inspections shall be accomplished using SSA. The work products shall include an inspection  
25 database, prioritized repair projects, and prioritized rehabilitation/ replacement projects. The annual  
26 inspection quantity will include the sum of the lengths of all of the gravity sewers where inspection was  
27 completed. Segments failing to pass the SSA device or camera shall not be included in the annual  
28 inspection quantity.

1 41. The City shall correct defects that may cause an SSO within an appropriate timeframe.  
 2 Based on the Sanitary Sewer Assessment Defect Code scores derived during SSA inspections, the City's  
 3 timeframes for actions to correct observed defects in the sewer segments are shown on the table  
 4 Timeframe for Actions to Correct Observed Defects set out below.

5 **Timeframe for Actions to Correct Observed Defect**

Defect Weight	Condition	Condition Description	Remedy
8-9	Failure Imminent	Structural defects that may lead to complete failure and blockage of the pipe at any time	Repair completed immediately (within 30 days)
6-7	Severe	Severe structural defects of deformed pipe, holes in pipe, broken pipes, and large joint offsets	Repair completed within 1 year or for non-structural defects, re-assess condition within 1 year if it is determined that periodic maintenance can keep the pipe in working order
4-5	Major	Structural defects such as multiple fractures, medium joint offsets and major sags, and pipes with large number of cracks	Repair completed within 5 years, SSA and assess condition within 2 years
2-3	Moderate	Structural defects such as fractures, cracks, small and medium joint offsets, and sags	Inspect with SSA and assess condition every 5 years
0-1	Minor	Structural defects such as slight sags, cracks, and small joint offsets	Inspect with SSA and assess condition every 10 years

6 42. The schedule proposed in paragraph 40 above shall be prioritized to first inspect sewers in  
 7 areas with known SSO problems and sewers with known or suspected structural deficiencies  
 8

9 **XII. IMPLEMENTATION OF FATS, OILS AND GREASE PROGRAM**

10 43. The City shall continue to contract its FOG Control Program to South Bayside System  
 11 Authority ('SBSA') as outlined in the 'Proposal to Conduct a FOG Program for the City of San Carlos'  
 12 dated June 26, 2009. Under this program, the City contracts FOG inspections and education to SBSA.  
 13

14 44. The City shall continue its own residential outreach program to reduce FOG from residential  
 15 sources consistent with its SSMP.  
 16

1 45. The City shall commence a program for enforcement of violations of the Municipal Code  
2 relating to FOG discharges, including community outreach and education. The City agrees to modify its  
3 Municipal Code to include provisions for fines for each violation of not less than One Thousand Dollars  
4 (\$1,000.00) for a first offense, and not less than Five Thousand (\$5,000.00) for a second and/or  
5 subsequent offense. The Municipal Code may include provision for an initial six (6) month grace period  
6 for all customers commencing from the date of adoption of such fines, and may further provide for a  
7 warning prior to prosecution for residential customers who do not willfully violate the Municipal Code.

8 46. The City shall report to Baykeeper the number of violations of the Municipal Code relating  
9 to FOG discharges and the amount of money collected as fines by the City each year in the Annual  
10 Report required under Section XVI of this Consent Decree.

### 11 **XIII. SEWER CLEANING, HOT SPOTS, AND LATERAL PROGRAMS**

12 47. Routine Cleaning. The City shall clean all of its gravity sanitary sewer segments fifteen (15)  
13 inches in diameter or smaller in the San Carlos Collection System at least once every five (5) years.  
14 Lower Laterals shall be cleaned and inspected after each SSO caused by a blockage in the Lower  
15 Lateral.

16 48. Focused Cleaning Program. The City shall expand and improve its Focused Cleaning  
17 Program to include main line sewer segments having repeat and frequent blockages caused by Roots,  
18 Debris, and Pipe Condition, in addition to those main line segments included in the City's Focused  
19 Cleaning Program due to FOG.

20 49. Within one-hundred twenty (120) days from the Effective Date of the Consent Decree, the  
21 City shall develop and submit to Baykeeper for comments a Focused Cleaning Work Plan ('FCWP'). The  
22 FCWP shall include a listing of all lines requiring focused cleaning and the cleaning frequency for each  
23 identified line. The FCWP shall include the rationale relied upon to select the main sewer segments  
24 included in the FCWP and to determine cleaning frequencies. Cleaning frequencies for the Focused  
25 Cleaning Program shall include: one (1) month, two (2) month, three (3) month, six (6) month, twelve  
26 (12) month, and twenty-four (24) month cycles as needed. The FCWP shall incorporate the methodology  
27 set forth below in Figure 1 ('Preventive Maintenance Scheduling Flow Chart') in paragraph 50 below.  
28

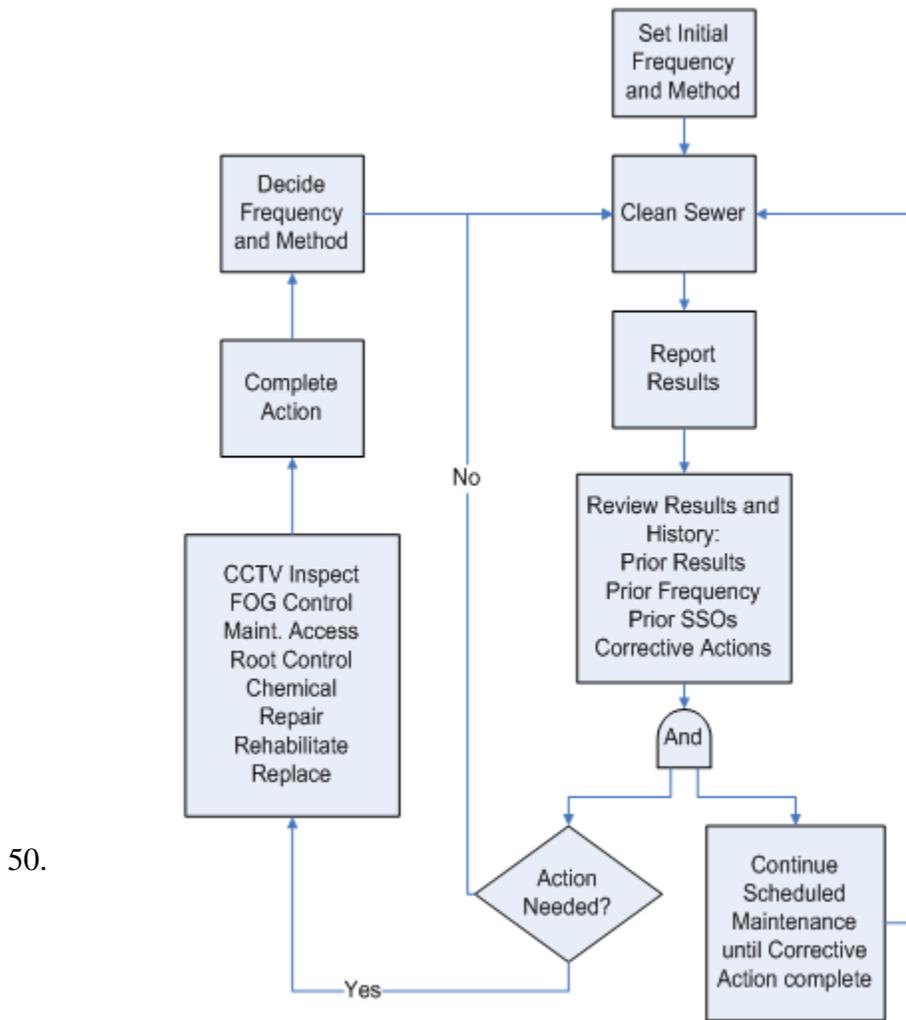


Figure 1 - Preventive Maintenance Scheduling Flow Chart.

19 51. Baykeeper shall review and provide the City with comments on the FCWP within thirty (30)  
20 days of submittal. The City shall consider each of Baykeeper’s recommended revisions and indicate  
21 within thirty (30) days of receipt of Baykeeper’s comments whether the City accepts each such  
22 recommendation for revision and if not provide a detailed explanation as to why Baykeeper’s comments  
23 are being rejected. Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent  
24 Decree regarding disputes over the FCWP.

25 52. The Parties shall attempt to resolve any disputes regarding the FCWP in good faith. Neither  
26 Party shall invoke dispute resolution until good faith efforts to resolve disputes have been completed.  
27 The City shall immediately implement all portions of the Focused Cleaning Program not in dispute and  
28 shall implement all portions of the Final FCWP not previously implemented immediately upon

1 resolution of disputes.

2 53. The Focused Cleaning Program shall be maintained in the City's CMMS database.

3 54. The City shall collect all observations made by its trained sewer cleaning crews in  
4 accordance with the SSO Cause Determination SOP (Section VIII of this Consent Decree) regarding the  
5 extent and nature of materials removed during the cleaning process. The observations shall be recorded  
6 in the City's CMMS database. The City shall maintain or change the frequency of its focused cleaning  
7 for a sewer line segment based on the Sewer Cleaning Results Matrix set forth below in accordance with  
8 the section labeled "Action."

9 **Sewer Cleaning Results Matrix**

	<b>Clear</b>	<b>Light</b>	<b>Moderate</b>	<b>Heavy</b>
<b>Debris</b>	No observable debris	Minor amount of debris 1 pass	Moderate amounts of debris 2-3 passes	Significant amounts of debris More than 4 passes Operator concern for future stoppage
<b>Grease</b>	No observable grease	Minor amounts of grease 15 minutes or less to clean 1 pass	Small "chunks" No "logs" 15-30 minutes to clean 2-3 passes	Big "chunks" or "logs" More than 4 passes Operator concern for future stoppage
<b>Roots</b>	No observable roots	Minor amounts of roots 1 pass	Thin stringy roots No "clumps" 2-3 passes	Thick roots Large "clumps" More than 4 passes Operator concern for future stoppage
<b>Debris:</b> Structural pipe fragments soil, rock, etc.	No observable materials	Specify material (if possible) Minor amounts of material	Specify material Moderate amounts of material per line segment	Specify material Significant amounts of material per line segment Operator concern for future stoppage

<b>Action</b>	Decrease frequency to next lower frequency after 3 consecutive results (e.g. 6 months to 12 months)	Continue current maintenance frequency	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)
---------------	---	--	---	---

55. Changes in cleaning frequency based upon cleaning results shall be as follows:

- a. No reduction in cleaning frequency shall be made in a sewer line segment with a previous history of SSOs without the approval of an appropriate maintenance supervisor or superintendent;
- b. three (3) consecutive results of "clear" will cause the cleaning frequency to be reduced to the next lower cleaning frequency;
- c. results of "medium" or "heavy" will cause the cleaning frequency to be increased to the next highest frequency.
- d. lines on a 12 month or 24 month cleaning cycle may be taken off the FCWP if there have been no SSOs on the line since the initial cleaning and the lines are found to be "clear" or "light" on the second cleaning.

56. At a minimum, main line segments shall be added to the Focused Cleaning Program based on the findings from any SSA Condition Assessment using the Operation and Maintenance Codes Table set forth in Appendix A—Sanitary Sewer Assessment Codes.

57. Sewer Cleaning Quality Assurance/Quality Control Program: The City shall institute and maintain a quality assurance/quality control ("QA/QC") program adequate to ensure proper and complete cleaning of sewers. The QA/QC program shall consist of spot checking the cleaning quality in a minimum of two percent (2%) by sewer segment of the cleaned sewers on a monthly basis using SSA to ensure adequate cleaning. If the cleaning is found to be inadequate, the sewer segment will be re-cleaned within thirty (30) days. If more than ten percent (10%) of the spot checked segments require re-cleaning in any given month, spot checking of the system shall be increased to five percent (5%). Where spot checking of the system has increased to five percent (5%) pursuant to this section, such spot checking will not be reduced to two percent (2%) until three consecutive months show two percent (2%) or less of the pipes inspected required re-cleaning. If a required inspection frequency increase is

1 identified with a single crew, the increased inspection schedule will only apply to that crew.

2 58. If scheduled or hot spot cleaning of a segment or area cannot be properly accomplished due  
3 to pipe condition or access limitations, the condition of the segment shall be considered failing and shall  
4 be repaired within one-hundred and twenty (120) days. If scheduled or hot spot cleaning cannot be  
5 properly accomplished due to access limitations, an action plan to gain access to the segment shall be  
6 developed within one-hundred and twenty (120) days and shall be implemented via repair within one (1)  
7 year.

8 59. The City shall identify the sewer lines cleaned and the results of its QA/QC program each  
9 year in the Annual Report required by Section XVI of this Consent Decree.

10 **XIV. PRIVATE LATERALS**

11 60. Within one-hundred and (180) days of the Effective Date of this Consent Decree, the City  
12 shall propose and recommend to the City Council the adoption of amendments to the Municipal Code to:

- 13 a. Require inspection of private laterals as a condition to sale of a property;
- 14 b. Require inspection of private laterals as a condition to obtaining a building permit if the  
15 value of the construction either exceeds \$75,000, or where any repair or replacement is  
16 being made to the sanitary sewer system;
- 17 c. Require inspection where more than twenty-five percent of the square footage of the  
18 structure is being remodeled;
- 19 d. Set standards for evaluating the condition of private laterals subject to the provisions in  
20 subsections (a)-(b) above.
- 21 e. Require any defects in the private lateral that causes the private lateral to fail the  
22 inspection be repaired or replaced within ninety (90) days. Defects causing a private  
23 lateral to fail the inspection shall include but not be limited to the following: pipe  
24 failure; open joints; and/or openings in the pipe, which allow root intrusion.
- 25 f. Require the private lateral owner, within one-hundred and twenty (120) days of  
26 notification by the City, to remove roots from their laterals that are growing into Lower  
27 Laterals as determined by the City and make all necessary repairs to the private lateral  
28 necessary to prevent a reoccurrence of roots intrusion that reaches the lower lateral.



1 The Rose Foundation for Communities and the Environment  
 2 6008 College Avenue, Suite 10  
 3 Oakland, California 94618  
 Attention: Tim Little

4 64. Litigation Fees and Costs. To help defray Baykeeper's attorneys, consultant, and expert fees  
 5 and costs, and any other costs incurred as a result of investigating, filing this action, and negotiating a  
 6 settlement, Defendant shall pay Plaintiff the sum of Ninety-Five Thousand Dollars (\$95,000) which  
 7 shall include all attorneys' fees and costs for all services performed by and on behalf of Baykeeper by its  
 8 attorneys and consultants up to and through the Effective Date of this Consent Decree. The payment  
 9 shall be made within twenty-one (21) days of the Effective Date of this Consent Decree. The payment  
 10 shall be made in the form of a check payable to *Lawyers for Clean Water Attorney Client Trust Account*  
 11 and addressed to: 1004 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery, and shall  
 12 constitute full payment for all costs of litigation incurred by Baykeeper that have or could have been  
 13 claimed in connection with or arising out of Baykeeper's lawsuit, up to and including the Effective Date.

14 65. Compliance Monitoring. Defendants agree to compensate Plaintiff for time to be spent by  
 15 legal staff and/or technical consultants reviewing compliance reports and any other documents, or  
 16 participating in any meet and confer process under this Consent Decree. To this end, the Defendant  
 17 shall pay Fifty-Five Thousand Dollars (\$55,000) within twenty-one (21) days of the Effective Date of  
 18 this Consent Decree. Payment shall be made payable to *Lawyers for Clean Water Attorney Client Trust*  
 19 *Account* and addressed to 1004 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery.  
 20 Any compliance monitoring money remaining when this Consent Decree terminates shall be returned to  
 21 the City within sixty (60) days of termination.

22 **XVIII. COMMITMENTS OF BAYKEEPER**

23 66. Submission of Consent Decree to Federal Agencies. Baykeeper shall submit a copy of this  
 24 Consent Decree to EPA and the United States Department of Justice ('DOJ') within three (3) days of the  
 25 Consent Decree's execution for agency review consistent with 40 C.F.R. § 135.5. The agency review  
 26 period expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return  
 27 receipts, copies of which shall be provided by Baykeeper to Defendant upon request. In the event that  
 28 EPA or DOJ comment negatively on the provisions of this Consent Decree, the Parties agree to meet and



1 of this Consent Decree consistent with the provisions of sections 505 and 309 of the Clean Water Act,  
2 33 U.S.C. §§ 1365, 1319.

3 **XX. MUTUAL RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND FORCE**  
4 **MAJEURE**

5 73. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties  
6 hereby fully release, except for claims for the Defendant's failure to comply with this Consent Decree  
7 and as expressly provided below, each other and their respective successors, assigns, officers, agents,  
8 employees, and all persons, firms, and corporations having an interest in them, from any and all Clean  
9 Water Act violations alleged or which could have been alleged based upon the facts alleged in the  
10 Complaint, up to and including the Termination Date of this Consent Decree.

11 74. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to address or take  
12 any position that it deems necessary or appropriate in any formal or informal proceeding before the  
13 Regional Board, EPA, or any other judicial or administrative body on any other matter relating to  
14 Defendant.

15 75. Neither the Consent Decree nor any payment pursuant to the Consent Decree shall constitute  
16 or be construed as a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it  
17 be construed as an admission of violation of any law, order, rule, or regulation. Defendant maintains and  
18 reserves all defenses they may have to any alleged violations that may be raised in the future.

19 76. Force Majeure. Defendant shall notify Baykeeper pursuant to the terms of this paragraph,  
20 when implementation of the requirements set forth in this Consent Decree, within the deadlines set forth  
21 in those paragraphs, becomes impossible, despite the timely good-faith efforts of Defendant, due to  
22 circumstances beyond the control of Defendant or its agents, and which could not have been reasonably  
23 foreseen and prevented by the exercise of due diligence by Defendant. Any delays due to Defendant's  
24 failure to make timely and bona fide applications and to exercise diligent efforts to comply with the  
25 terms in this Consent Decree in normal inclement weather shall not, in any event, be considered to be  
26 circumstances beyond Defendant's control. Financial inability shall not, in any event, be considered to  
27 be circumstances beyond Defendant's control.

28 a. If Defendant claims impossibility, it shall notify Baykeeper in writing within thirty (30)

1 days of the date that Defendant first knew of the event or circumstance that caused or  
 2 would cause a violation of this Consent Decree, or the date Defendant should have  
 3 known of the event or circumstance by the exercise of due diligence. The notice shall  
 4 describe the reason for the nonperformance and specifically refer to this Section of this  
 5 Consent Decree. It shall describe the anticipated length of time the delay may persist,  
 6 the cause or causes of the delay, the measures taken or to be taken by Defendant to  
 7 prevent or minimize the delay, the schedule by which the measures will be  
 8 implemented, and the anticipated date of compliance. Defendant shall adopt all  
 9 reasonable measures to avoid and minimize such delays.

- 10 b. The Parties shall meet and confer in good-faith concerning the non-performance and,  
 11 where the Parties concur that performance was or is impossible, despite the timely good  
 12 faith efforts of Defendant, due to circumstances beyond the control of Defendant that  
 13 could not have been reasonably foreseen and prevented by the exercise of due diligence  
 14 by Defendant, new performance deadlines shall be established.
- 15 c. If Baykeeper disagrees with Defendant's notice, or in the event that the Parties cannot  
 16 timely agree on the terms of new performance deadlines or requirements, either Party  
 17 shall have the right to invoke the Dispute Resolution Procedures pursuant to Section  
 18 XIX of this Consent Decree. In such proceeding, Defendant shall bear the burden of  
 19 proving that any delay in performance of any requirement of this Consent Decree was  
 20 caused or will be caused by force majeure and the extent of any delay attributable to  
 21 such circumstances.

22 77. The Dispute Resolution Procedures set forth in Section XIX shall be the exclusive  
 23 mechanism for resolving disputes between the Parties with regard to any aspect of this Consent Decree.

#### 24 **XXI. STIPULATED PAYMENTS**

25 78. Stipulated Payments for Failure to Comply with Consent Decree. Defendant shall make a  
 26 stipulated payment of One Thousand Dollars (\$1,000) for each missed deadline and/or failure to comply  
 27 with a requirement included in or contemplated by this Consent Decree, unless the failure to comply is  
 28 from a Force Majeure Event. Payments for missed deadlines shall be made for the restoration and/or

1 improvement of the San Francisco Bay watershed, and shall be awarded to the Environmental  
2 Mitigation Project recipient identified above. Defendant agrees to make the stipulated payment within  
3 thirty (30) days of a missed deadline and mail via certified mail or overnight delivery. Defendant shall  
4 provide Plaintiff with a copy of each such payment.

5 79. The City agrees to make stipulated payments in the event complete reports covered by this  
6 Section are not timely submitted. Reports covered by this Section include the following Sections from  
7 this Consent Decree: the SSO Cause Determination SOP under Section VIII; the SSO Reduction Action  
8 Plan under Section IX; the Hydraulic Modeling Work Plan, Capacity Assurance Report, and Final  
9 Compliance Report under Section X; the FOG Control Action Plan under Section XII; and the Annual  
10 Reports under Section XVI. The City shall have a fourteen (14) day grace period after the due date for  
11 the reports covered by this Section prior to imposition of stipulated penalties for the first instance of  
12 delayed reporting. Baykeeper is not obligated to notify the City, however it may do so in order to allow  
13 the City to promptly address any alleged deficiency after any submission date has been missed.

14 80. The City shall pay the following stipulated payments in the event that they file a late or  
15 incomplete report covered herein after the grace period:

- 16 a. For a report submitted after the grace period, the City shall pay \$100 per day until the  
17 report is filed, up to thirty (30) days for a total amount of \$3,000.
- 18 b. For any report more than thirty (30) days late, the City shall pay \$5,000.
- 19 c. For any report more than ninety (90) days late, the City shall pay \$10,000.
- 20 d. The above penalties are cumulative, as applicable, to a maximum payment of \$18,000  
21 per report.

22 81. In the case of a late report, the City shall send Baykeeper the report per Section XXII of this  
23 Consent Decree. Baykeeper shall notify the City of receipt of the late report and shall include an invoice  
24 for the amount of the stipulated payment, if any, due and payable. The City shall contact Baykeeper  
25 within five (5) working days if the City disagrees with Baykeeper's stipulated payment calculation and  
26 may meet and confer with Baykeeper or seek Dispute Resolution pursuant to Section XIX of this  
27 Consent Decree. The City shall pay any stipulated payments due pursuant to this Consent Decree within  
28 thirty (30) days after receipt of Baykeeper's invoice itemizing the stipulated payment liability, or thirty

1 (30) days after resolution of a dispute if the dispute resolution process has been invoked pursuant to  
2 Section XIX of this Consent Decree.

3 82. All payments of stipulated penalties described in this Consent Decree shall be paid by the  
4 City to the *Rose Foundation for Communities and the Environment* and sent via overnight mail to: Rose  
5 Foundation for Communities and the Environment, 6008 College Avenue, Oakland, CA 94618,  
6 Attn: Tim Little. Nothing in this Consent Decree shall prevent Baykeeper from waiving any stipulated  
7 penalties, which might be due under this Section, based on the outcome of the Informal Dispute  
8 Resolution process, or based on the City's good faith efforts.

9  
10 **XXII. NOTICES AND SUBMISSIONS**

11 83. Defendant agrees to provide Plaintiff with all documents or reports required or contemplated  
12 by this Consent Decree. All documents provided by Defendant shall be directed to the following  
13 individuals at the addresses specified below unless specifically stated otherwise herein and shall be sent  
14 by certified or overnight delivery, and by electronic mail. Any change in the individuals or addresses  
15 designated by any Party must be made in writing to all Parties.

16 **If to BAYKEEPER:**

17 Daniel Cooper  
18 Martin McCarthy  
19 LAWYERS FOR CLEAN WATER, INC.  
1004 O'Reilly Avenue  
20 San Francisco, CA 94129  
Telephone: (415) 440-6520  
21 Email: daniel@lawyersforcleanwater.com  
martin@lawyersforcleanwater.com

22 Jason Flanders  
23 SAN FRANCISCO BAYKEEPER, INC.  
785 Market Street, Suite 850  
24 San Francisco, CA 94103-2023  
25 Email: jason@baykeeper.org  
26  
27  
28

1           If to the CITY:

2           Gregory J. Rubens  
3           AARONSON, DICKERSON, COHN & LANZONE  
4           939 Laurel Street, Suite D  
5           San Carlos, CA 94070  
6           Telephone: (650) 593-3117 ext. 202  
7           Fax: (650) 637-1401  
8           Email: grubens@adcl.com

9           Mark Weiss  
10          CITY OF SAN CARLOS  
11          600 Elm Street  
12          P.O. Box 3009  
13          San Carlos, CA 94070  
14          Tel: (650) 802-4228  
15          Fax: (650) 595-6729  
16          Email: mweiss@cityofsancarlos.org

17           84. Notifications of communications shall be deemed submitted three (3) days after the date that  
18 they are postmarked and sent by first-class mail or deposited with an overnight mail/delivery service.

19           85. Defendant also agrees to make available to Baykeeper any new or existing documents within  
20 the City's custody or control that are reasonably necessary to evaluate system performance and/or  
21 compliance with this Consent Decree within seven (7) days of written request by Baykeeper.

22           86. During the life of this Consent Decree, Defendant shall preserve at least one legible copy of  
23 all records and documents, including computer-stored information, which relate to performance of its  
24 obligations under this Consent Decree.

25           87. Any notice, report, certification, data presentation or other document submitted by Defendant  
26 to Baykeeper pursuant to this Consent Decree, which discusses, describes, demonstrates, or supports any  
27 finding or makes any representation concerning compliance or non-compliance with any requirement(s)  
28 of this Consent Decree, shall contain the following certification, signed and dated by a responsible  
official:

          I certify, under penalty of perjury, that this document and all attachments were  
prepared under my direction or supervision in accordance with a system designed  
to assure that qualified personnel properly gather and evaluate the information  
submitted and is, to the best of my knowledge and belief, true, accurate and  
complete.

**XXIII. GENERAL PROVISIONS**

1  
2 88. Continuing Jurisdiction. The Parties stipulate that the District Court shall retain jurisdiction  
3 to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as  
4 may be necessary or appropriate for the construction or execution of this Consent Decree up to and  
5 including the Termination Date in paragraph 10.

6 89. Construction. The language in all parts of this Consent Decree shall be construed according  
7 to its plain and ordinary meaning, except as to those terms defined in Section II above.

8 90. Choice of Law. The laws of the United States shall govern this Consent Decree.

9 91. Severability. In the event that any provision, paragraph, section, or sentence of this Consent  
10 Decree is held by a District Court to be unenforceable, the validity of the enforceable provisions shall  
11 not be adversely affected.

12 92. Counterparts. This Consent Decree may be executed in any number of counterparts, all of  
13 which together shall constitute one original document. Telecopy, scanned copies (i.e., pdf) and/or  
14 facsimile copies of original signature shall be deemed to be originally executed counterparts of this  
15 Consent Decree.

16 93. Modification of the Consent Decree. This Consent Decree, and any provisions herein, may  
17 not be changed, waived, discharged, or terminated unless by a written instrument, signed by the Parties.

18 94. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

19 95. Integration Clause. This is an integrated Consent Decree. This Consent Decree is intended  
20 to be a full and complete statement of the terms of the agreement between the Parties and expressly  
21 supersedes any and all prior oral or written agreements, covenants, representations, and warranties  
22 (express or implied) concerning the subject matter of this Consent Decree.

23 96. Authority. The undersigned representatives for Baykeeper and the City each certify that  
24 he/she is fully authorized by the Party whom he/she represents to enter into the terms and conditions of  
25 this Consent Decree.

26 ///

27 ///

28 ///

The Parties hereby enter into this Consent Decree.

CITY OF SAN CARLOS

Date: \_\_\_\_\_

By: Mark Weiss, City Manager

SAN FRANCISCO BAYKEEPER

Date: \_\_\_\_\_

By: Deb Self, Executive Director

APPROVED AS TO FORM:

For DEFENDANT CITY OF SAN CARLOS:  
AARONSON DICKERSON COHN & LANZONE

Date: \_\_\_\_\_

By: Greg Rubens

CITY ATTORNEY

Date: \_\_\_\_\_

By: Mark Weiss  
Assistant City Attorney

For SAN FRANCISCO BAYKEEPER:  
LAWYERS FOR CLEAN WATER INC.

Date: \_\_\_\_\_

By: Daniel Cooper

**ORDER**

IT IS HEREBY ORDERED that the above captioned action is dismissed with prejudice.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over Baykeeper's claims against the City of San Carlos for the sole purpose of enforcing compliance by the Parties with the terms of the Consent Decree. All proceedings relating to enforcing compliance with the Consent Decree shall be before the federal Magistrate.

IT IS SO ORDERED.

Date: 4/19/10

NORTHERN DISTRICT OF CALIFORNIA



Honorable Sandra Brown Armstrong  
United States District Court Judge  
Northern District of California

1 Michael R. Lozeau (State Bar No. 142893)  
2 LOZEAU DRURY LLP  
3 1516 Oak Street, Suite 216  
4 Alameda, CA 94501  
5 Tel: (510) 749-9102  
6 Fax: (510) 749-9103 (fax)  
7 E-mail: Michael@lozeaudrury.com

8 Andrew L. Packard (State Bar No. 168690)  
9 LAW OFFICES OF ANDREW L. PACKARD  
10 319 Pleasant Street  
11 Petaluma, CA 94952  
12 Tel: (707) 763-7227  
13 Fax: (415) 763-9227  
14 E-mail: andrew@packardlawoffices.com

15 Attorneys for Plaintiff  
16 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 CALIFORNIA SPORTFISHING  
20 PROTECTION ALLIANCE, a non-profit  
21 corporation,

22 Plaintiff,

23 vs.

24 TOMRA PACIFIC, INC., a corporation.

25 Defendant.

Case No. C10-00701-BZ

**[PROPOSED] CONSENT DECREE**

26 **WHEREAS**, Plaintiff California Sportfishing Protection (hereinafter “CSPA” or “Plaintiff”) is a non-profit corporation dedicated to the protection, enhancement and restoration of waters of the State of California, including waters adjacent to urbanized areas of San Francisco Bay;

27 **WHEREAS**, Defendant Tomra Pacific, Inc. (“Tomra”) is a corporation organized under the laws of the State of Delaware;

28 **WHEREAS**, Defendant operates a metal recycling facility located at 40595 Albrae Street in Fremont, California (the “Facility”), where Defendant engages in used beverage container (“UBC”) collection, storage, sorting, and processing of aluminum, glass and plastic, and related activities;

1           **WHEREAS**, Defendant discharges storm water at the Facility pursuant to State Water  
2 Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge  
3 Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges  
4 of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter,  
5 the “General Permit”). The Facility is divided into two areas. Persons drop off materials to be  
6 recycled at the front of the Facility. For purposes of this Consent Decree, this front area of the  
7 Facility is referred to as the “Drop-Off Area.” The rear of the Facility includes storage, processing,  
8 and shipping of recyclable materials. For purposes of this Consent Decree, this rear area of the  
9 Facility is referred to as the “Processing Area.” A map of the Facility is attached hereto as Exhibit 1  
10 displaying the Processing Area and the Drop Off Area and their drainage features and is  
11 incorporated by reference;

12           **WHEREAS**, on or about November 20, 2009, CSPA served Defendant, the United States  
13 Attorney General, the national and Region IX offices of the United States Environmental Protection  
14 Agency, the State Water Resources Control Board (“State Board”) and the Regional Water Quality  
15 Control Board – San Francisco Bay Region (“Regional Board”) with a Notice of Violation and  
16 Intent to File Suit (“60-Day Notice”) under Sections 505(a)(1) and (f) of the Federal Water Pollution  
17 Control Act (the “Act” or “Clean Water Act”), 33 U.S.C. § 1365(a)(1) and (f);

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

21           **WHEREAS**, on February 18, 2010, CSPA filed a complaint against Defendant in the United  
22 States District Court for the Northern District of California, entitled *California Sportfishing*  
23 *Protection Alliance v. Tomra Pacific, Inc.*, (Case No. C10-00701-BZ) (hereinafter “Complaint” or  
24 “Action”). A true and correct copy of the Complaint as well as the 60-Day Notice is attached hereto  
25 as Exhibit 2;

26           **WHEREAS**, CSPA and Defendant (hereinafter, collectively referred to as the “Settling  
27 Parties”) have agreed that it is in the parties’ mutual interest to enter into a Consent Decree setting  
28



1 storm water control or treatment system that achieves equivalent or better storm water pollution  
2 reductions (including for example, no discharge) than the Stormwater Rx unit subject to CSPA's  
3 review and written concurrence, which shall not be unreasonably withheld. If Tomra intends to  
4 proceed with such an alternative treatment system, Tomra shall notify CSPA as soon as possible but  
5 not later than July 1, 2011. By that date, Tomra shall provide CSPA with all information gathered  
6 by Tomra to investigate the alternative storm water control or treatment system. CSPA shall have  
7 60-days to review any alternative storm water control or treatment system proposed by Tomra. If  
8 CSPA, in good faith, does not believe that an alternative system proposed by Tomra Pacific will  
9 achieve equivalent or better storm water pollution reductions at the facility, Tomra Pacific must  
10 install the Stormwater Rx unit.

11 5. The parties agree to meet and confer in good faith on any alternative proposal. If  
12 CSPA objects to any alternative storm water control or treatment system or component or  
13 implementation thereof proposed by Tomra, at the request of either Settling Party, the Settling  
14 Parties shall in good faith seek to mediate any dispute well in advance of the deadline.

15 6. As of October 1, 2011, Tomra Pacific agrees that any discharge of storm water from  
16 the rear of the facility shall strictly comply with EPA's Benchmark Values and all applicable water  
17 quality standards established by either the San Francisco Bay Regional Board or EPA.

18 7. Tomra Pacific shall conduct heightened sweeping in the Facility's Drop-Off Area  
19 including but not limited to manually sweeping the area on a daily basis; hand-vacuuming the area  
20 before each forecast rain event during the rainy season, and mechanical sweeping of the area using a  
21 regenerative sweeper at least once per week during the wet season (October through May) and every  
22 other week during the dry season (June through September).

23 8. Not later than November 15, 2010, Tomra shall install filters in each of the drop  
24 inlets located in the Drop-Off Area conforming to the specifications set forth in Exhibit 3. To the  
25 extent such filters do not reduce pollutants in the Facility's storm water to levels below the Levels of  
26 Concern set forth in Paragraph 17, Tomra shall implement additional filtering or other management  
27 measures consistent with Paragraphs 18 through 22 below.  
28



1 detect the individual constituents at or below the Levels of Concern set forth in Paragraph 17.

2 14. Results from Tomra's sampling and analysis shall be provided to CSPA within  
3 fourteen (14) days of receipt of the final written laboratory report from each sampling event.

4 15. Tomra shall maintain logs of all sweeping activities at the Drop Off Area Facility,  
5 including the date and location of any sweeping, as part of the Facility's annual report

6 16. Tomra shall maintain logs of maintenance and replacement activities pertaining to  
7 each of the storm water management measures installed or implemented at the Facility. Such logs  
8 shall be maintained for each of the drop inlet filters installed at the Facility and maintenance  
9 activities associated with the Stormwater Rx unit or, if applicable, alternative storm water treatment  
10 system required by Paragraphs 3 and 4 above. Such logs shall be included in the Facility's Annual  
11 Report.

#### 12 **EXCEEDANCE OF LEVELS OF POTENTIAL CONCERN**

##### 13 **Storm Water Discharges from Processing Area**

14 17. Not later than October 1, 2011, Tomra shall not discharge storm water from the  
15 Processing Area in excess of the following Levels of Concern: pH – 6.0-9.0 units; total suspended  
16 solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; chemical oxygen demand ("COD")  
17 – 120 mg/L; specific conductance – 200 µmho/cm; aluminum – 0.75 mg/L (EPA Benchmark); zinc  
18 – .117 mg/L (EPA Benchmark), 0.120 mg/L (Basin Plan Standard); copper – .0636 mg/L (EPA  
19 Benchmark), 0.013 mg/L (Basin Plan Standard), lead – 0.0816 (EPA Benchmark), 0.065 mg/L  
20 (Basin Plan Standard).

##### 21 **Storm Water Discharges from Drop-Off Area**

22 18. If analytical results of storm water samples taken by Tomra during the 2010-2011,  
23 2011-2012 and/or 2012-2103 wet season indicate that storm water discharges from the Facility's  
24 Drop-Off Area exceed the Levels of Concern set forth in Paragraph 17 above, Tomra agrees to take  
25 additional feasible measures aimed at reducing pollutants in the Facility's storm water discharged  
26 from the Drop-Off Area to levels at or below these levels.

27 19. In furtherance of that objective, when one or more analytical results of storm water  
28

1 samples taken by Tomra during the 2010-2011 and/or 2011-2012 wet season indicate that storm  
2 water discharges from the Facility's Drop-Off Area exceed the Levels of Concern, Tomra shall  
3 prepare a written statement ("Memorandum") discussing:

- 4 (1) Any exceedance or exceedances of any Level of Concern;
- 5 (2) An explanation of the possible cause(s) and/or source(s) of any exceedance; and
- 6 (3) Additional feasible best management practices ("BMPs") that will be taken to further  
7 reduce the possibility of future exceedance(s).

8 20. Such Memorandum shall be e-mailed and sent via first class mail to CSPA not later  
9 than July 30th following the conclusion of each wet season. Any additional measures set forth in the  
10 Memorandum shall be implemented as soon as practicable, but not later than sixty (60) days from  
11 the due date of the Memorandum, except where 1) structural changes require longer than sixty (60)  
12 days to complete; 2) weather-related conditions render immediate implementation infeasible; or 3)  
13 the Settling Parties agree in writing to defer implementation of specific measures in order to  
14 effectively meet and confer in accordance with Paragraph 21. Within thirty (30) days of  
15 implementation, Tomra's SWPPP shall be amended to include all additional BMP measures  
16 designated in the Memorandum.

17 21. Upon receipt of the Memorandum, CSPA may review and comment on any  
18 additional measures. If requested by CSPA within thirty (30) days of receipt of such Memorandum,  
19 CSPA and Tomra shall meet and confer and conduct a site inspection within ninety (90) days after  
20 the receipt of the Memorandum to discuss the contents of the Memorandum and the adequacy of  
21 proposed measures to improve the quality of the Facility's storm water discharged from the Drop-  
22 Off Area to levels at or below the Levels of Concern. If within thirty (30) days of the parties  
23 meeting and conferring, the parties do not agree on the adequacy of the additional measures set forth  
24 in the Memorandum, the Settling Parties may agree to seek a settlement conference before the  
25 Mediator assigned to this action by the District Court pursuant to Paragraphs 30 through 32 below.  
26 If the Settling Parties fail to reach agreement on additional measures, CSPA may bring a motion  
27 before the District Court Judge consistent with Paragraphs 29 through 30 below. If CSPA does not  
28

1 request a meet and confer regarding the Memorandum within the thirty (30) day comment period  
2 provided for in this paragraph, CSPA shall waive any right to object to such Memorandum pursuant  
3 to this Agreement.

4 22. Any concurrence or failure to object by CSPA with regard to the reasonableness of  
5 any additional measures required by this Agreement or implemented by Tomra shall not be deemed  
6 to be an admission of the adequacy of such measures should they fail to bring the Facility's storm  
7 water within the General Permit's best available technology requirements.

8 23. In addition to any site inspections conducted as part of meeting and conferring on  
9 additional measures set forth above, Tomra shall permit representatives of CSPA to perform up to  
10 (2) site visits per year at the Facility during normal daylight business hours during the term of this  
11 Agreement; provided that CSPA provides Tomra with at least one week prior notice via e-mail and  
12 telephone using the contact information listed in Paragraph 42 below.

13 24. Within thirty (30) days of the Effective Date of this Consent Decree, Tomra shall  
14 amend the Facility Storm Water Pollution Prevention Plan ("SWPPP") to incorporate all changes,  
15 improvements and best management practices set forth in this Consent Decree. A copy of the  
16 amended SWPPP shall be provided to CSPA within seven (7) business days of completion.

17 25. During the life of this AGREEMENT, Tomra shall provide CSPA with a copy of all  
18 documents submitted to the Regional Board or the State Board concerning the Facility's storm water  
19 discharges, including but not limited to all documents and reports submitted to the Regional Board  
20 and/or State Board as required by the General Permit. Such documents and reports shall be mailed  
21 to CSPA contemporaneously with submission to such agency. Tomra also shall provide CSPA a  
22 copy of all documents referenced in this agreement, including but not limited to logs or analyses,  
23 within fourteen (14) days of a written request (via e-mail or regular mail) by CSPA.  
24

#### 25 **MITIGATION FEES AND COSTS**

26 26. As mitigation of the violations alleged in CSPA's Notice and Complaint, Tomra shall  
27 pay the sum of Thirty-Five Thousand dollars (\$35,000.00) (the "Payment") to the Rose Foundation  
28 for Communities and the Environment ("Rose Foundation"). The Payment shall be conditioned on

1 the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted to  
2 CSPA or Tomra and (b) projects funded by the Payment shall be designed to benefit water quality in  
3 the San Francisco Bay or its tributaries. Within fifteen (15) days of the Effective Date of the  
4 Consent Decree, Tomra shall make the Payment to the Rose Foundation.

5 27. Tomra shall reimburse CSPA in the total amount of \$40,000.00 to defray CSPA's  
6 investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and all other costs  
7 incurred as a result of investigating the activities at the Facility, bringing these matters to Tomra's  
8 attention, and negotiating a resolution of this action in the public interest. Such payment shall be  
9 made within fifteen (15) days of the Effective Date of the Consent Decree. The payment shall be  
10 made out to "Lozeau Drury LLP Attorney-Client Trust Account."

11 28. Tomra shall reimburse CSPA up to five thousand dollars (\$5,000) per year for three  
12 years for reasonable costs and fees associated with monitoring Tomra's compliance with this  
13 Consent Decree and evaluating any alternative treatment method proposed by Tomra pursuant to  
14 Paragraph 4 above. Monitoring activities include site inspections, review of water quality sampling  
15 reports, review of annual reports, discussion with representatives of Tomra concerning potential  
16 changes to compliance requirements, preparation and participation in meet and confer sessions and  
17 mediation, water quality sampling, etc. Three (3) annual payments shall be made payable to the  
18 "Lozeau Drury LLP Attorney-Client Trust Account" within thirty (30) days of receipt of an invoice  
19 from CSPA which contains a daily and hourly description of fees and costs incurred by CSPA to  
20 monitor implementation of the Consent Decree during the previous twelve (12) months.  
21

#### 22 **DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

23 29. The Effective Date shall be the date this Consent Decree is approved and entered by  
24 the Court. The Consent Decree shall continue in effect until October 1, 2013. This Court shall  
25 retain jurisdiction in this matter from the Effective Date through the date of its termination, for the  
26 purposes of enforcing the terms of this Consent Decree. In addition, following the date of  
27 termination of this Decree, this Court shall retain jurisdiction for the purposes of enforcing this  
28 Decree for any disputes which arose prior to the termination of the Consent Decree.



1 Termination Date of this Consent Decree.

2 34. The Settling Parties acknowledge that they are familiar with section 1542 of the  
3 California Civil Code, which provides:

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

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

12 35. The Parties enter into this Consent Decree for the purpose of avoiding prolonged and  
13 costly litigation. Nothing in this Consent Decree shall be construed as, and Tomra expressly does  
14 not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall  
15 compliance with this Consent Decree constitute or be construed as an admission by Tomra of any  
16 fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not  
17 diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this  
18 Consent Decree.

19 36. CSPA shall submit this Consent Decree to the U.S. EPA and the U.S. Department of  
20 Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days  
21 after the Effective Date of this Consent Decree for review consistent with 40 C.F.R. § 135.5. The  
22 Agencies' review period expires forty-five (45) days after receipt of the Consent Decree by both  
23 Agencies, as evidenced by the return receipts, copies of which shall be provided to Tomra upon  
24 receipt by CSPA. In the event that the Agencies comment negatively on the provisions of this  
25 Consent Decree, CSPA and Tomra agree to meet and confer to attempt to resolve the issue(s) raised  
26 by the Agencies. If CSPA and Tomra are unable to resolve any issue(s) raised by the Agencies in  
27 their comments, CSPA and Tomra agree to expeditiously seek a settlement conference with the  
28

1 Court-appointed mediator to resolve the issue(s).

2 **MISCELLANEOUS PROVISIONS**

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

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

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

9 40. The undersigned are authorized to execute this Consent Decree on behalf of their  
10 respective parties and have read, understood and agreed to all of the terms and conditions of this  
11 Consent Decree.

12 41. All agreements, covenants, representations and warranties, express or implied, oral or  
13 written, of the Settling Parties concerning the subject matter of this Consent Decree are contained  
14 herein.

15 42. Any notices or documents required or provided for by this Consent Decree or related  
16 thereto that are to be provided to CSPA pursuant to this Consent Decree shall be e-mailed and sent  
17 by U.S. Mail, postage prepaid, and addressed as follows:

18  
19 Bill Jennings, Executive Director  
20 California Sportfishing Protection Alliance  
21 3536 Rainier Road  
22 Stockton, CA 95204  
23 deltakeep@aol.com

24 With copies sent to:

25 Michael R. Lozeau  
26 Lozeau Drury LLP  
27 1516 Oak Street, Suite 216  
28 Alameda, CA 94501  
michael@lozeaudrury.com

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Tomra pursuant to this Consent Decree shall be sent by e-mail and U.S. Mail,

1 postage prepaid, and addressed as follows:

2 Tomra Pacific, Inc.  
3 P.O. Drawer 1034  
4 Monticello, NY 12701  
5 Attn: Secretary

6 With copies sent to:

7 Ralph Robinson  
8 Wilson Elser Moskowitz Edelman & Dicker LLP  
9 525 Market Street, 17th Floor  
10 San Francisco, California 94105  
11 Ralph.robinson@wilsonelser.com

12 and

13 Walt Garigliano  
14 P.O. Box 1034  
15 Monticello, NY 12701  
16 Gariglianow.law@tomrana.com

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

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

21 44. No Party shall be considered to be in default in the performance of any of its  
22 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any act  
23 of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force  
24 Majeure event does not include normal inclement weather, such as anything less than or equal to a  
25 100 year/24 hour storm event or inability to pay. Any Party seeking to rely upon this paragraph  
26 shall have the burden of establishing that it could not reasonably have been expected to avoid, and  
27 which by exercise of due diligence has been unable to overcome, the Force Majeure.

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

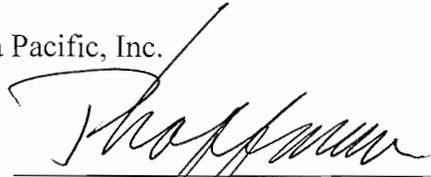
46. Nothing in this Consent Decree shall preclude Tomra from implementing protective measures for storm water drainage in excess of the protections set forth herein.

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

Dated: 12/9/2010

Tomra Pacific, Inc.

By:

  
Phil Hoffman, Acting President

Dated: \_\_\_\_\_

California Sportfishing Protection Alliance

By:

\_\_\_\_\_  
Bill Jennings, Executive Director

**APPROVED AND SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

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

Dated: \_\_\_\_\_ Tomra Pacific, Inc.

By: \_\_\_\_\_

Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

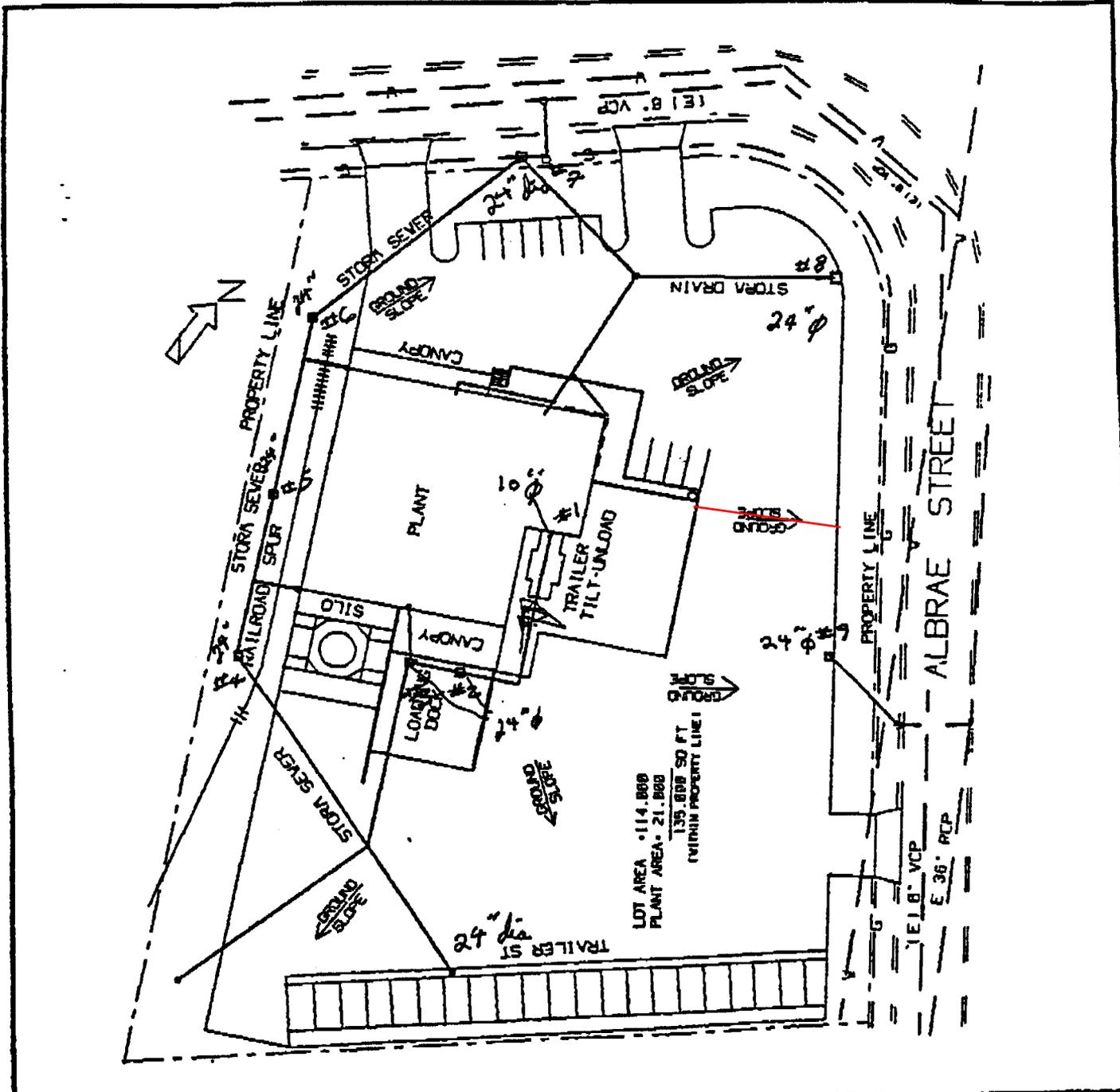
By: \_\_\_\_\_  
Bill Jennings, Executive Director

**APPROVED AND SO ORDERED.**

Date: \_\_\_\_\_  
\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

# EXHIBIT 1

# NOTICE OF INTENT SITE MAP



<b>MAP INFORMATION</b> TYPE <u>UTILITY PLOT PLAN</u> NUMBER <u>Reynolds DWG #CC-98-401-959</u> SCALE <u>1" = 35'</u>		<b>STATE OF CALIFORNIA</b> <b>STATE WATER RESOURCES CONTROL BOARD</b> FACILITY <u>Fremont Recycling Plant</u> <u>Reynolds Aluminum Recycling Co.</u> COUNTY <u>Div. of Reynolds Metals Company</u> <u>Alameda</u>	
DATE	DRAWN	BY	CHECKED
3/17/92		By: N.C.	N.C.

# EXHIBIT 2

1 Michael R. Lozeau (State Bar No. 142893)  
2 David A. Zizmor (State Bar No. 255863)  
3 LOZEAU DRURY LLP  
4 1516 Oak Street, Suite 216  
5 Alameda, CA 94501  
6 Tel: (510) 749-9102  
7 Fax: (510) 749-9103 (fax)  
8 E-mail: michael@lozeaudrury.com  
9 david@lozeaudrury.com

6 Andrew L. Packard (State Bar No. 168690)  
7 LAW OFFICES OF ANDREW L. PACKARD  
8 319 Pleasant Street  
9 Petaluma, CA 94952  
10 Tel: (707) 763-7227  
11 Fax: (415) 763-9227  
12 E-mail: andrew@packardlawoffices.com

10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

12 UNITED STATES DISTRICT COURT E-filing  
13 NORTHERN DISTRICT OF CALIFORNIA

14 CALIFORNIA SPORTFISHING  
15 PROTECTION ALLIANCE, a non-profit  
16 corporation,  
17 Plaintiff,  
18 vs.  
19 TOMRA PACIFIC, INC., a corporation,  
20 Defendant.

Case No. C10-00701  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES

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

BZ  
ADR

21 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its  
22 counsel, hereby alleges:

23 I. JURISDICTION AND VENUE

24 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
25 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or  
26 "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter  
27 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28

1 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is  
2 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of  
3 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§  
4 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

5 2. On or about November 20, 2009, Plaintiff provided notice of Defendant's  
6 violations of the Act, and of its intention to file suit against Defendant, to the Administrator  
7 of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA  
8 Region IX; the Executive Director of the State Water Resources Control Board ("State  
9 Board"); the Executive Officer of the California Regional Water Quality Control Board, San  
10 Francisco Bay Region ("Regional Board"); and to Defendant, as required by the Act, 33  
11 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's notice letter is attached as  
12 Exhibit A, and is incorporated by reference.

13 3. More than sixty days have passed since notice was served on Defendant and  
14 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
15 neither the EPA nor the State of California has commenced or is diligently prosecuting a  
16 court action to redress the violations alleged in this complaint. This action's claim for civil  
17 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,  
18 33 U.S.C. § 1319(g).

19 4. Venue is proper in the Northern District of California pursuant to Section  
20 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
21 within this judicial district.

22 5. Intradistrict assignment is proper in Oakland, California, pursuant to Local  
23 Rule 3-2(c), because the source of the violations is located within Alameda County.

## 24 **II. INTRODUCTION**

25 6. This complaint seeks relief for Defendant's discharges of polluted storm water  
26 and non-storm water pollutants from Defendant TOMRA PACIFIC, INC.'s metal recycling  
27 facility located at 40595 Albrae Street in Fremont, California ("the Facility") in violation of  
28 the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No.

1 CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ,  
2 as amended by Water Quality Order No. 97-03-DWQ (hereinafter “the Order” or “Permit”  
3 or “General Permit”). Defendant’s violations of the discharge, treatment technology,  
4 monitoring, and other procedural and substantive requirements of the Permit and the Act are  
5 ongoing and continuous.

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

### 14 **III. PARTIES**

15 8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
16 (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of  
17 California with its main office in Stockton, California. CSPA has approximately 2,000  
18 members who live, recreate, and work in and around waters of the State of California,  
19 including San Francisco Bay. CSPA is dedicated to the preservation, protection, and defense  
20 of the environment, the wildlife, and the natural resources of all waters of California. To  
21 further these goals, CSPA actively seeks federal and state agency implementation of the Act  
22 and other laws and, where necessary, directly initiates enforcement actions on behalf of itself  
23 and its members.

24 9. Members of CSPA reside in and around San Francisco Bay and enjoy using  
25 the Bay for recreation and other activities. Members of CSPA use and enjoy the waters into  
26 which Defendant has caused, is causing, and will continue to cause, pollutants to be  
27 discharged. Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch,  
28 view wildlife, and engage in scientific study including monitoring activities, among other

1 things. Defendant's discharges of pollutants threaten or impair each of those uses or  
2 contribute to such threats and impairments. Thus, the interests of CSPA's members have  
3 been, are being, and will continue to be adversely affected by Defendant's failure to comply  
4 with the Clean Water Act and the Permit. The relief sought herein will redress the harms to  
5 Plaintiff caused by Defendant's activities.

6 10. Continuing commission of the acts and omissions alleged above will irreparably  
7 harm Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy  
8 at law.

9 11. Defendant TOMRA PACIFIC, INC. ("Tomra") is a corporation organized  
10 under the laws of California. Tomra operates a recycling facility in Fremont, California.

#### 11 **IV. STATUTORY BACKGROUND**

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

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

23 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
24 U.S. EPA has authorized California's State Board to issue NPDES permits including general  
25 NPDES permits in California.

26 15. The State Board elected to issue a statewide general permit for industrial storm  
27 water discharges. The State Board issued the General Permit on or about November 19,  
28 1991; modified the General Permit on or about September 17, 1992; and reissued the

1 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water  
2 Act, 33 U.S.C. § 1342(p).

3 16. In order to discharge storm water lawfully in California, industrial dischargers  
4 must comply with the terms of the General Permit or have obtained and complied with an  
5 individual NPDES permit. 33 U.S.C. § 1311(a).

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

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

28 19. EPA has established Parameter Benchmark Values as guidelines for

1 determining whether a facility discharging industrial storm water has implemented the  
2 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established  
3 Parameter Benchmark Values for the following parameters, among others: total suspended  
4 solids – 100 mg/L; oil & grease – 15 mg/L; pH – 6.0-9.0 s.u.; iron – 1.0 mg/L; copper –  
5 0.0636 mg/L, zinc – 0.117 mg/L; chemical oxygen demand – 120 mg/L; and aluminum –  
6 0.75 mg/L. The State Board has also proposed a Benchmark Value for electrical  
7 conductance of 200 µmhos/cm.

8         20. Dischargers must develop and implement a Storm Water Pollution Prevention  
9 Plan (“SWPPP”). The SWPPP must describe storm water control facilities and measures  
10 that comply with the BAT and BCT standards. The General Permit requires that an initial  
11 SWPPP have been developed and implemented before October 1, 1992 (Section A and  
12 Provision E(2)). The SWPPP must, among other requirements, identify and evaluate sources  
13 of pollutants associated with industrial activities that may affect the quality of storm and  
14 non-storm water discharges from the facility and identify and implement site-specific best  
15 management practices (“BMPs”) to reduce or prevent pollutants associated with industrial  
16 activities in storm water and authorized non-storm water discharges (Section A(2)). The  
17 SWPPP’s BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include:  
18 a description of individuals and their responsibilities for developing and implementing the  
19 SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage  
20 areas with flow pattern and nearby water bodies, the location of the storm water collection,  
21 conveyance and discharge system, structural control measures, impervious areas, areas of  
22 actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of  
23 significant materials handled and stored at the site (Section A(5)); a description of potential  
24 pollutant sources including industrial processes, material handling and storage areas, dust  
25 and particulate generating activities, and a description of significant spills and leaks, a list of  
26 all non-storm water discharges and their sources, and a description of locations where soil  
27 erosion may occur (Section A(6)). The SWPPP must include an assessment of potential  
28 pollutant sources at the Facility and a description of the BMPs to be implemented at the

1 Facility that will reduce or prevent pollutants in storm water discharges and authorized non-  
2 storm water discharges, including structural BMPs where non-structural BMPs are not  
3 effective (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and  
4 must be revised where necessary (Section A(9),(10)).

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

13         22. Section C(11)(d) of the General Permit's Standard Provisions requires  
14 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).  
15 Section A(9) of the General Permit requires an annual evaluation of storm water controls  
16 including the preparation of an evaluation report and implementation of any additional  
17 measures in the SWPPP to respond to the monitoring results and other inspection activities.

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

23         24. As part of their monitoring program, dischargers must identify all storm water  
24 discharge locations that produce a significant storm water discharge, evaluate the  
25 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
26 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
27 conduct visual observations of these discharge locations for at least one storm per month  
28 during the wet season (October through May) and record their findings in their Annual

1 Report (Section B(4)). Section B(4)(c) requires visual observation records to note, among  
2 other things, the date of each monthly observation. Dischargers must also collect and  
3 analyze storm water samples from at least two storms per year. Section B(5)(a) of the  
4 General Permit requires that dischargers “shall collect storm water samples during the first  
5 hour of discharge from (1) the first storm event of the wet season, and (2) at least one other  
6 storm event in the wet season. All storm water discharge locations shall be sampled.”  
7 Section B(5)(c)(i) requires dischargers to sample and analyze during the wet season for basic  
8 parameters, such as pH, total suspended solids, electrical conductance, and total organic  
9 content or oil & grease, as well as certain industry-specific parameters. Section B(5)(c)(ii)  
10 requires dischargers to sample for toxic chemicals and other pollutants likely to be in the  
11 storm water discharged from the facility. Section B(5)(c)(iii) requires discharges to sample  
12 for parameters dependent on a facility’s standard industrial classification (“SIC”) code.  
13 Facilities that fall under SIC Code 5093 (“processing, reclaiming, and wholesale distribution  
14 of scrap and waste materials”) are required to analyze their storm water discharge samples  
15 for total suspended solids, iron, lead, aluminum, copper, zinc, and chemical oxygen demand.  
16 Dischargers must also conduct dry season visual observations to identify sources of non-  
17 storm water pollution. Section B(7)(a) indicates that the visual observations and samples  
18 must represent the “quality and quantity of the facility’s storm water discharges from the  
19 storm event.” Section B(7)(c) requires that “if visual observation and sample collection  
20 locations are difficult to observe or sample...facility operators shall identify and collect  
21 samples from other locations that represent the quality and quantity of the facility’s storm  
22 water discharges from the storm event.”

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

1           26.     The General Permit does not provide for any mixing zones by dischargers.  
2     The General Permit does not provide for any dilution credits to be applied by dischargers.

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

10          28.     The Regional Board has established water quality standards for San Francisco  
11     Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally referred to  
12     as the Basin Plan.

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

16          30.     The Basin Plan includes a narrative oil and grease standard which states that  
17     “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that  
18     result in a visible film or coating on the surface of the water or on objects in the water, that  
19     cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at 3.3.7.

20          31.     The Basin Plan provides that “[s]urface waters shall not contain concentrations  
21     of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.*  
22     at 3.3.21.

23          32.     The Basin Plan provides that “[w]aters shall not contain suspended material in  
24     concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14.

25          33.     The Basin Plan provides that “[t]he suspended sediment load and suspended  
26     sediment discharge rate of surface waters shall not be altered in such a manner as to cause  
27     nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12.

28          34.     The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor

1 raised above 8.5.” *Id.* at 3.3.9.

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

7 36. The Basin Plan establishes Marine Water Quality Objectives for copper of  
8 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average). Basin Plan at Table 3-3.  
9 The EPA has adopted saltwater numeric water quality standards for copper of 0.0031 mg/L  
10 (CMC) and 0.0048 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

11 37. The Basin Plan establishes Marine Water Quality Objectives for lead of 0.0081  
12 mg/L (4-day average) and 0.21 mg/L (1-hour average). Basin Plan at Table 3-3. The EPA  
13 has adopted saltwater numeric water quality standards for lead of 0.210 mg/L (CMC) and  
14 0.0081 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

15 **V. STATEMENT OF FACTS**

16 38. Defendant Tomra operates a recycling facility located at 40595 Albrae Street  
17 in Fremont, California. The Facility receives, sorts, and processes a variety of products for  
18 recycling. The Facility falls within SIC Code 5093. The Facility covers approximately  
19 35,000 square feet, the majority of which is paved and used for transporting and storing  
20 recyclable materials throughout the Facility. On information and belief, Plaintiff alleges that  
21 there is at least one large building located on the property. On information and belief,  
22 Plaintiff alleges that the receiving, sorting, and processing of recyclable materials occurs  
23 both inside and outside of this building. Recyclable materials are transported in and out of  
24 this building for storage in the paved areas of the Facility.

25 39. Defendant channels and collects storm water falling on the Facility through a  
26 series of storm water drains that lead to at least six storm water outfalls. Each outfall  
27 collects storm water runoff from a particular area of the Facility. The Facility’s outfalls  
28 discharge either to a channel adjacent to the Facility, which flows to the Bay, or to the City

1 of Fremont's storm drain system, which then flows to the Bay.

2 40. On information and belief, Plaintiff alleges that the industrial activities at the  
3 site include the receiving, sorting, and processing of recyclable materials. Industrial  
4 activities also include the outdoor handling, processing, and storage of these materials as  
5 well as other materials used to process and clean them.

6 41. Significant activities at the site take place outside and are exposed to rainfall.  
7 These activities include the storage and movement of raw materials and finished products,  
8 equipment used to clean and process the recyclable materials; the storage and use of vehicles  
9 and equipment for handling the materials; and the storage, handling, and disposal of waste  
10 materials. Loading and delivery of raw materials and finished products occurs outside.  
11 Trucks enter and exit the Facility directly from and to public roads. These areas are exposed  
12 to storm water and storm flows due to the lack of overhead coverage, berms, and other storm  
13 water controls.

14 42. Industrial equipment and vehicles are operated and stored at the Facility in  
15 areas exposed to storm water flows. Plaintiff is informed and believes, and thereupon  
16 alleges, that such machinery and equipment leak contaminants such as oil, grease, diesel  
17 fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows, and that such  
18 equipment and vehicles track sediment and other contaminants throughout the Facility.

19 43. Plaintiff is informed and believes, and thereupon alleges that the storm water  
20 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,  
21 and other pollutants as it flows toward the storm water drains. Storm water and any  
22 pollutants contained in that storm water entering the drains flows directly to the municipal  
23 storm drain system.

24 44. The management practices at the Facility are wholly inadequate to prevent the  
25 sources of contamination described above from causing the discharge of pollutants to waters  
26 of the United States. The Facility lacks sufficient structural controls such as grading,  
27 berming, roofing, containment, or drainage structures to prevent rainfall and storm water  
28 flows from coming into contact with these and other exposed sources of contaminants. The

1 Facility lacks sufficient structural controls to prevent the discharge of water once  
 2 contaminated. The Facility lacks adequate storm water pollution treatment technologies to  
 3 treat storm water once contaminated.

4 45. Since at least November 20, 2004, Defendant has taken samples or arranged  
 5 for samples to be taken of storm water discharges at the Facility. The sample results were  
 6 reported in the Facility’s annual reports submitted to the Regional Board. Defendant Tomra  
 7 certified each of those annual reports pursuant to Sections A and C of the General Permit.

8 46. Since at least November 20, 2004, the Facility has detected iron, copper, lead,  
 9 zinc, aluminum, total suspended solids, pH, oil and grease, chemical oxygen demand, and  
 10 electrical conductance in storm water discharged from the Facility. Levels of these  
 11 pollutants detected in the Facility’s storm water have been in excess of EPA’s numeric  
 12 parameter benchmark values and the State Board’s proposed value for electrical  
 13 conductance. Levels of these pollutants detected in the Facility’s storm water have been in  
 14 excess of water quality standards established in the Basin Plan.

15 47. Since at least November 20, 2004, the Facility has observed oil and grease,  
 16 turbidity and cloudiness, floating material, and discoloration in storm water discharged from  
 17 the Facility in excess of the narrative water quality standards established in the Basin Plan.

18 48. The following discharges on the following dates contained concentrations of  
 19 pollutants in excess of numeric or narrative water quality standards established in the Basin  
 20 Plan:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
1/21/2009	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
1/21/2009	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5

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12/20/2008	Oil & Grease Sheen Observed		Narrative	Drains #3, #5, and #6
12/20/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3, #5, and #6
11/25/2008	Oil & Grease Sheen Observed		Narrative	Drain #5
11/25/2008	Discoloration Observed		Narrative	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0048 mg/L (1-hour average) – Marine	Drain #5
11/25/2008	Lead	0.019 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.081 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #5
10/30/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
10/30/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
2/19/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
2/19/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
1/25/2008	Oil & Grease Sheen		Narrative	Drain #5

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1/25/2008	Turbidity/Cloudiness Observed		Narrative	Drain #5
1/25/2008	Floating Material Observed		Narrative	Drain #5
12/4/2007	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
5/2/2007	Turbidity/Cloudiness Observed		Narrative	Drain #2
4/14/2007	Oil & Grease Sheen Observed		Narrative	Drain #5
4/14/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/26/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/26/2007	Discoloration Observed		Narrative	Drain #5
3/26/2007	Copper	0.06 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Copper	0.06 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
3/26/2007	Lead	0.0091 mg/L	0.0081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified

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11/14/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
11/14/2006	Discoloration Observed		Narrative	Drain #5
10/12/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
10/12/2006	Discoloration Observed		Narrative	Drain #5
3/17/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
3/17/2006	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/17/2006	Floating Material Observed		Narrative	Drain #5
3/17/2006	Discoloration Observed		Narrative	Drain #5
2/17/2006	pH	6.4	6.5 – 8.5	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
1/31/2006	Oil & Grease Sheen		Narrative	Drain #1

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1/31/2006	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/30/2005	Oil & Grease Sheen Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Turbidity/Cloudiness Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Floating Material Observed		Narrative	Drains #2, #3, and #5
2/16/2005	pH	6.1	6.5 – 8.5	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
2/14/2005	Oil & Grease Sheen Observed		Narrative	Drain #1
2/14/2005	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/27/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
12/27/2004	Turbidity/Cloudiness Observed		Narrative	Drain #5

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12/27/2004	Copper	0.03 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Copper	0.03 mg/L	0.0048 mg/L (1-hour average) – Marine	Drain #5
12/27/2004	Lead	0.0086 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #5
11/10/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
11/10/2004	Turbidity/Cloudiness Observed		Narrative	Drain #5

49. The levels of total suspended solids in storm water detected by the Facility have exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA. The levels of total suspended solids in storm water detected by the Facility have exceeded the standard for suspended materials articulated in the Basin Plan. For example, on November 25, 2008, the level of total suspended solids measured by Defendant in the Facility’s discharged storm water was 304 mg/L. That level of total suspended solids is over three times the benchmark value for total suspended solids established by EPA. The Facility has also measured levels of total suspended solids in storm water discharged from the Facility in excess of EPA’s benchmark value of 100 mg/L on March 26, 2007; February 17, 2006; and December 27, 2004.

50. The levels of zinc in storm water detected by the Facility have exceeded the numeric standards for zinc established in the Basin Plan. For example, on March 26, 2007, the level of zinc measured by Defendant in the Facility’s discharged storm water was 1.4 mg/L. That level of zinc is nearly seventeen times the 4-day average numeric water quality

1 standard of .081 mg/L for zinc established by the Regional Board in the Basin Plan. That  
2 level of zinc is nearly sixteen times the 1-hour average numeric water quality standard of  
3 .081 mg/L for zinc established by the Regional Board in the Basin Plan. The Facility has  
4 also measured levels of zinc in storm water discharged from the Facility in excess of the  
5 numeric water quality standards for zinc established in the Basin Plan on November 25,  
6 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December 27, 2004.

7 51. The levels of zinc in storm water detected by the Facility have exceeded the  
8 benchmark value for zinc of 0.117 mg/L established by EPA. For example, on March 26,  
9 2007, the level of zinc measured by Defendant in the Facility's discharged storm water was  
10 1.4 mg/L. That level of zinc is nearly twelve times the benchmark value for zinc established  
11 by EPA. The Facility has also measured levels of zinc in storm water discharged from the  
12 Facility in excess of EPA's benchmark value of 0.117 mg/L on November 25, 2008;  
13 February 17, 2006; February 16, 2005; and December 27, 2004.

14 52. The levels of copper in storm water detected by the Facility have exceeded the  
15 numeric standards for copper established in the Basin Plan. For example, on February 16,  
16 2005, the level of copper measured by Defendant in the Facility's discharged storm water  
17 was 0.074 mg/L. That level of copper is nearly 24 times the 4-day average numeric water  
18 quality standard of .0031 mg/L for copper established by the Regional Board in the Basin  
19 Plan. That level of copper is greater than 15 times the 1-hour average numeric water quality  
20 standard of .0048 mg/L for copper established by the Regional Board in the Basin Plan. The  
21 Facility has also measured levels of copper in storm water discharged from the Facility in  
22 excess of the numeric water quality standards for copper established in the Basin Plan on  
23 November 25, 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December  
24 27, 2004.

25 53. The levels of copper in storm water detected by the Facility have been outside  
26 the benchmark value for copper of 0.0636 mg/L established by EPA. For example, on  
27 February 16, 2005, the level of copper measured by Defendant in the Facility's discharged  
28 storm water was 0.074 mg/L. The Facility also has measured levels of copper in storm water

1 discharged from the Facility outside of the EPA's benchmark value of 0.0636 mg/L on  
2 November 25, 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December  
3 27, 2004.

4 54. The levels of lead in storm water detected by the Facility have exceeded the  
5 numeric standards for lead established in the Basin Plan. For example, on February 16,  
6 2005, the level of copper measured by Defendant in the Facility's discharged storm water  
7 was 0.019 mg/L. That level of lead is more than double the 4-day average numeric water  
8 quality standard of .0081 mg/L for lead established by the Regional Board in the Basin Plan.  
9 The Facility has also measured levels of lead in storm water discharged from the Facility in  
10 excess of the numeric water quality standards for lead established in the Basin Plan on  
11 November 25, 2008; March 26, 2007; and December 27, 2004.

12 55. The levels of aluminum in storm water detected by the Facility have exceeded  
13 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on  
14 March 26, 2007, the level of aluminum measured by Defendant in the Facility's discharged  
15 storm water was 8.5 mg/L. That level of aluminum is over eleven times the benchmark  
16 value for aluminum established by EPA. The Facility has also measured levels of aluminum  
17 in storm water discharged from the Facility in excess of EPA's benchmark value of 0.75  
18 mg/L on November 25, 2008; February 17, 2006; and December 27, 2004.

19 56. The levels of iron in storm water detected by the Facility have exceeded the  
20 benchmark value for iron of 1.0 mg/L established by EPA. For example, on November 25,  
21 2008, the level of iron measured by Defendant in the Facility's discharged storm water was  
22 9.9 mg/L. That level of iron is nearly ten times the benchmark value for iron established by  
23 EPA. The Facility has also measured levels of iron in storm water discharged from the  
24 Facility in excess of EPA's benchmark value of 1.0 mg/L on March 26, 2007; February 17,  
25 2006; and December 27, 2004.

26 57. The electrical conductance levels detected by the Facility in its storm water  
27 have been greater than the numeric water quality standards applicable to electrical  
28 conductance in California. The electrical conductance levels detected by the Facility in its

1 storm water have been greater than the benchmark value of 200  $\mu\text{mho/cm}$  proposed by the  
2 State Board. For example, on December 27, 2004, the electrical conductance level measured  
3 by Defendant in the Facility's discharged storm water was 220  $\mu\text{mho/cm}$ . The Facility also  
4 has measured levels of electrical conductance in storm water discharged from the Facility in  
5 excess of the proposed benchmark value of 200  $\mu\text{mho/cm}$  on March 26, 2007.

6 58. The levels of oil and grease in storm water detected by the Facility have  
7 exceeded the benchmark value for oil and grease of 15 mg/L established by EPA. On  
8 February 17, 2006, the level of oil and grease measured by Defendant in the Facility's  
9 discharged storm water was 17 mg/L.

10 59. The levels of chemical oxygen demand in storm water detected by the Facility  
11 have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established  
12 by EPA. On December 27, 2004, the level of chemical oxygen demand measured by  
13 Defendant in the Facility's discharged storm water was 640 mg/L. That level of chemical  
14 oxygen demand is over five times the benchmark value for chemical oxygen demand  
15 established by EPA.

16 60. On information and belief, Plaintiff alleges that since at least November 20,  
17 2004, Defendant has failed to implement BAT and BCT at the Facility for its discharges of  
18 zinc, copper, lead, total suspended solids, aluminum, iron, electrical conductance, oil and  
19 grease, chemical oxygen demand, and other pollutants. Section B(3) of the General Permit  
20 requires that Defendant implement BAT for toxic and nonconventional pollutants and BCT  
21 for conventional pollutants by no later than October 1, 1992. As of the date of this  
22 Complaint, Defendant has failed to implement BAT and BCT.

23 61. On information and belief, Plaintiff alleges that since at least November 20,  
24 2004, Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan  
25 for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP  
26 prepared for the Facility does not set forth site-specific best management practices for the  
27 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and  
28 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an

1 adequate assessment of potential pollutant sources, structural pollutant control measures  
2 employed by the Defendant, a list of actual and potential areas of pollutant contact, or an  
3 adequate description of best management practices to be implemented at the Facility to  
4 reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges,  
5 Defendant's SWPPP has not been evaluated to ensure its effectiveness and revised where  
6 necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and  
7 thereupon alleges, that the SWPPP does not include each of the mandatory elements required  
8 by Section A of the General Permit.

9         62. Information available to CSPA indicates that as a result of these practices,  
10 storm water containing excessive pollutants is being discharged during rain events from the  
11 Facility directly to either a channel adjacent to the Facility, which flows to the Bay, or to the  
12 City of Fremont's storm drain system, which then flows to the Bay.

13         63. On information and belief, Plaintiff alleges that Defendant has failed to collect  
14 the two required storm samples from each and every storm water discharge location at the  
15 Facility during each wet season since at least November 20, 2004. Plaintiff is informed and  
16 believes, and thereupon alleges that Defendant failed to sample two storm events during  
17 each of the 2005-2006, 2006-2007, and 2008-2009 wet seasons; and failed to sample any  
18 storm events during the 2007-2008 wet season. On information and belief, Plaintiff further  
19 alleges that during both the 2007-2008 and 2008-2009 wet seasons, Defendant sampled and  
20 analyzed storm water discharges from just one of the Facility's six outfalls; and during each  
21 of the 2004-2005, 2005-2006, and 2006-2007 wet seasons, Defendant sampled and analyzed  
22 storm water discharges from just one of the Facility's four outfalls.

23         64. On information and belief, Plaintiff alleges that Defendant failed to make the  
24 required monthly visual observations at the Facility in January 2005, March 2005, February  
25 2006, and April 2006.

26         65. On information and belief, Plaintiff alleges that Defendant either failed to  
27 record mandatory observations or recorded no rainfall, and therefore no observations, in  
28 months during which rainfall occurred, at the Facility on sixteen separate occasions: in April,

1 May, October, and November of 2005; May and December of 2006; January, February,  
2 October, and November of 2007; March and April of 2008; and February, March, April, and  
3 May of 2009.

4 66. On information and belief, Plaintiff alleges that Defendant failed to note the  
5 dates on its monthly visual observations in April, May, October, and November of 2005;  
6 May 2006; May 2008; and February, March, April, and May of 2009.

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

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

18 69. Information available to Plaintiff indicates that Defendant has not fulfilled the  
19 requirements set forth in the General Permit for discharges from the Facility due to the  
20 continued discharge of contaminated storm water. Plaintiff is informed and believes, and  
21 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and  
22 continuing.

23 **VI. CLAIMS FOR RELIEF**

24 **FIRST CAUSE OF ACTION**  
25 **Failure to Implement the Best Available and**  
26 **Best Conventional Treatment Technologies**  
**(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

27 70. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully  
28 set forth herein.



1 the General Permit.

2 77. During every rain event, storm water flows freely over exposed materials, waste  
3 products, and other accumulated pollutants at the Facility, becoming contaminated with  
4 suspended solids, zinc, copper, lead, pH, oil and grease, and other unmonitored pollutants at  
5 levels above applicable water quality standards. The storm water then flows untreated from  
6 the Facility into either a channel adjacent to the Facility or into the City of Fremont storm drain  
7 system and then flows into the Bay.

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

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

15 80. Every day since at least November 20, 2004, that Defendant has discharged and  
16 continues to discharge polluted storm water from the Facility in violation of the General Permit  
17 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These  
18 violations are ongoing and continuous.

19 **THIRD CAUSE OF ACTION**

20 **Failure to Prepare, Implement, Review, and Update**  
21 **an Adequate Storm Water Pollution Prevention Plan**  
22 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

25 82. Section A and Provision E of the General Permit requires dischargers of storm  
26 water associated with industrial activity to develop and implement an adequate SWPPP no  
27 later than October 1, 1992.

28 83. Defendant has failed to develop and implement an adequate SWPPP for the  
Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the

1 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials without  
2 appropriate best management practices; the continued exposure of significant quantities of  
3 various materials to storm water flows; the continued exposure and tracking of waste resulting  
4 from the operation or maintenance of vehicles at the site, including trucks; the failure to either  
5 treat storm water prior to discharge or to implement effective containment practices; and the  
6 continued discharge of storm water pollutants from the Facility at levels in excess of EPA  
7 benchmark values.

8 84. Defendant has failed to update the Facility's SWPPP in response to the  
9 analytical results of the Facility's storm water monitoring.

10 85. Each day since November 20, 2004, that Defendant has failed to develop,  
11 implement and update an adequate SWPPP for the Facility is a separate and distinct violation  
12 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13 86. Defendant has been in violation of the SWPPP requirements every day since  
14 November 20, 2004. Defendant continues to be in violation of the SWPPP requirements each  
15 day that it fails to develop and fully implement an adequate SWPPP for the Facility.

#### 16 **FOURTH CAUSE OF ACTION**

#### 17 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program 18 (Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 87. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully  
20 set forth herein.

21 88. Section B of the General Permit requires dischargers of storm water associated  
22 with industrial activity to have developed and be implementing a monitoring and reporting  
23 program (including, *inter alia*, sampling and analysis of discharges) no later than October 1,  
1992.

24 89. Defendant has failed to develop and implement an adequate monitoring and  
25 reporting program for the Facility. Defendant's ongoing failure to develop and implement  
26 an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to  
27 sample two storm events per wet season.

28 90. Each day since November 20, 2004, that Defendant has failed to develop and

1 implement an adequate monitoring and reporting program for the Facility in violation of the  
2 General Permit is a separate and distinct violation of the General Permit and Section 301(a)  
3 of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results  
4 are ongoing and continuous violations of the Act.

5 **FIFTH CAUSE OF ACTION**

6 **False Certification of Compliance in Annual Report**  
7 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

8 91. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully  
9 set forth herein.

10 92. Defendant has falsely certified compliance with the General Permit in each of  
11 the annual reports submitted to the Regional Board since at least July 1, 2005.

12 93. Each day since at least July 1, 2005 that Defendant has falsely certified  
13 compliance with the General Permit is a separate and distinct violation of the General Permit  
14 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of  
15 the General Permit's certification requirement each day that it maintains its false certification  
16 of its compliance with the General Permit.

17 **VII. RELIEF REQUESTED**

18 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- 19 a. Declare Defendant to have violated and to be in violation of the Act as  
20 alleged herein;
- 21 b. Enjoin Defendant from discharging polluted storm water from the Facility  
22 unless authorized by the Permit;
- 23 c. Enjoin Defendant from further violating the substantive and procedural  
24 requirements of the Permit;
- 25 d. Order Defendant to immediately implement storm water pollution control  
26 and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
27 pollutants in the Facility's storm water from contributing to violations of any water quality  
28 standards;
- e. Order Defendant to comply with the Permit's monitoring and reporting

1 requirements, including ordering supplemental monitoring to compensate for past monitoring  
2 violations;

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

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

8 h. Order Defendant to pay civil penalties of up to \$37,500 per day per violation  
9 for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§  
10 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

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

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

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

16 Dated: February 18, 2010

Respectfully submitted,

17 LOZEAU DRURY LLP

18  
19 By:



20 Michael R. Lozeau  
21 Attorneys for Plaintiff  
22 CALIFORNIA SPORTFISHING PROTECTION  
23 ALLIANCE  
24  
25  
26  
27  
28

# EXHIBIT A

## California Sportfishing Protection Alliance

*“An Advocate for Fisheries, Habitat and Water Quality”*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

November 20, 2009

Randall Gusikoski, President  
Francisco Minjavez  
Tomra Pacific – Fremont Plant  
40595 Albrae Street  
Fremont, CA 94538

Mr. Scott Lamb, President  
Tomra Pacific, Inc.  
150 Klug Circle  
Corona, CA 92880

Mr. Greg Knoll, CEO-President  
Tomra of North America  
480 Lordship Boulevard  
Stratford, CT 06615

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

Dear Messrs. Gusikoski, Minjavez, Knoll and Lamb:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“Act”) that CSPA believes are occurring at Tomra Pacific, Inc., located at 40595 Albrae Street in Fremont, California (“Facility”). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay (“Bay”) and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility (all recipients are hereinafter collectively referred to as “Tomra Pacific”).

This letter addresses Tomra Pacific’s unlawful discharge of pollutants from the Facility into channels that flow into the 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 Waste Discharge Identification Number (“WDID”) for the Facility listed on documents submitted to the Regional Board is 201I013847. 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 Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Tomra Pacific on formal notice that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Tomra Pacific, including the responsible owners, officers, or operators, under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

On March 19, 1998, Tomra Pacific filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Tomra Pacific certified that the Facility is classified under SIC code 5093 (“processing, reclaiming, and wholesale distribution of scrap and waste materials”). The Facility collects and discharges storm water from its approximately 35,000 square foot industrial site into at least six storm water discharge locations at the Facility. The storm water discharged by Tomra Pacific is discharged to the City of Fremont storm drain system which flows into San Francisco Bay.

The Regional Board has identified beneficial uses of the Bay’s waters and established water quality standards for San Francisco Bay as well its tributaries 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](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 peoples’ use of San Francisco 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 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 “[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 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 suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12. 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.

Both the Regional Board and EPA have established numeric water quality standards for pollutants discharged by Tomra Pacific that flow into San Francisco Bay. 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 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 0.21 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”). 65 Fed. Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Tomra Pacific: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, iron – 1 mg/L, aluminum – 0.75 mg/L, copper – 0.0636 mg/L, zinc – 0.117 mg/L, and chemical oxygen demand (“COD”) – 120 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance of 200 µmho/cm.

## **II. Alleged Violations of the NPDES Permit.**

### ***A. Discharges in Violation of the Permit.***

Tomra Pacific 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. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility’s discharge monitoring locations.

Tomra Pacific has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, iron, zinc, aluminum, copper, lead, chemical oxygen demand (“COD”), and other pollutants in violation of the General Permit. Tomra Pacific’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 narrative and numeric water quality standards established in the Basin Plan or promulgated by EPA 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:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
1/21/2009	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
1/21/2009	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
12/20/2008	Oil & Grease Sheen Observed		Narrative	Drains #3, #5, and #6
12/20/2008	Turbidity/Cloudiness		Narrative	Drains #3, #5,

	Observed			and #6
11/25/2008	Oil & Grease Sheen Observed		Narrative	Drain #5
11/25/2008	Discoloration Observed		Narrative	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0048 mg/L (1-hour average) – Marine	Drain #5
11/25/2008	Lead	0.019 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.081 mg/L (4- day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.09 mg/L (1- hour average) – Marine	Drain #5
10/30/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
10/30/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
2/19/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
2/19/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
1/25/2008	Oil & Grease Sheen Observed		Narrative	Drain #5
1/25/2008	Turbidity/Cloudiness Observed		Narrative	Drain #5
1/25/2008	Floating Material Observed		Narrative	Drain #5
12/4/2007	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
5/2/2007	Turbidity/Cloudiness Observed		Narrative	Drain #2
4/14/2007	Oil & Grease Sheen Observed		Narrative	Drain #5
4/14/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5

3/26/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/26/2007	Discoloration Observed		Narrative	Drain #5
3/26/2007	Copper	0.06 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Copper	0.06 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
3/26/2007	Lead	0.0091 mg/L	0.0081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
11/14/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
11/14/2006	Discoloration Observed		Narrative	Drain #5
10/12/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
10/12/2006	Discoloration Observed		Narrative	Drain #5
3/17/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
3/17/2006	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/17/2006	Floating Material Observed		Narrative	Drain #5
3/17/2006	Discoloration Observed		Narrative	Drain #5
2/17/2006	pH	6.4	6.5 – 8.5	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0048 mg/L (1-hour average) –	Not Identified

			Marine	
2/17/2006	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
1/31/2006	Oil & Grease Sheen Observed		Narrative	Drain #1
1/31/2006	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/30/2005	Oil & Grease Sheen Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Turbidity/Cloudiness Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Floating Material Observed		Narrative	Drains #2, #3, and #5
2/16/2005	pH	6.1	6.5 – 8.5	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
2/14/2005	Oil & Grease Sheen Observed		Narrative	Drain #1
2/14/2005	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/27/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
12/27/2004	Turbidity/Cloudiness Observed		Narrative	Drain #5
12/27/2004	Copper	0.03 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Copper	0.03 mg/L	0.0048 mg/L	Drain #5

			(1-hour average) – Marine	
12/27/2004	Lead	0.0086 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #5
11/10/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
11/10/2004	Turbidity/Cloudiness Observed		Narrative	Drain #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:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
11/25/2008	TSS	304 mg/L	100 mg/L	Drain #5
11/25/2008	Iron	9.9 mg/L	1.0 mg/L	Drain #5
11/25/2008	Aluminum	6.4 mg/L	0.75 mg/L	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0636 mg/L	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.117 mg/L	Drain #5
3/26/2007	TSS	250 mg/L	100 mg/L	Not Identified
3/26/2007	Specific Conductivity	210	200 µmho/cm (proposed)	Not Identified
3/26/2007	Iron	9.7 mg/L	1.0 mg/L	Not Identified
3/26/2007	Aluminum	8.5 mg/L	0.75 mg/L	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.117 mg/L	Not Identified
2/17/2006	TSS	190 mg/L	100 mg/L	Not Identified
2/17/2006	Oil & Grease	17 mg/L	15 mg/L	Not Identified
2/17/2006	Iron	2 mg/L	1.0 mg/L	Not Identified
2/17/2006	Aluminum	1.6 mg/L	0.75 mg/L	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.117 mg/L	Not Identified
2/17/2006	COD	150 mg/L	120 mg/L	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0636 mg/L	Not Identified

2/16/2005	Zinc	0.12 mg/L	0.117 mg/L	Not Identified
12/27/2004	TSS	140 mg/L	100 mg/L	Drain #5
12/27/2004	Specific Conductivity	220	200 µmho/cm (proposed)	Drain #5
12/27/2004	Iron	5.2 mg/L	1.0 mg/L	Drain #5
12/27/2004	Aluminum	4.2 mg/L	0.75 mg/L	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.117 mg/L	Drain #5
12/27/2004	COD	640 mg/L	120 mg/L	Drain #5

CSPA’s investigation, including its review of Tomra Pacific’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 Tomra Pacific has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, specific conductivity, iron, aluminum, lead, copper, zinc, COD, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Tomra Pacific was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Tomra Pacific is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers indicate 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. CSPA also alleges that such violations have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least November 20, 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 CSPA alleges that Tomra Pacific has discharged storm water containing impermissible levels of TSS, pH, specific conductivity, iron, aluminum, lead, copper, zinc, and COD 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, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

***B. Failure to Sample and Analyze Storm Events and Mandatory Parameters***

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.* Tomra Pacific failed to sample a second storm event during each of the 2005-2006, 2006-2007, and 2008-2009 rainy seasons, and failed to sample *any* storm events during the 2007-2008 rainy season, for a total of five 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, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

Additionally, on information and belief, CSPA alleges that Tomra Pacific has failed to collect the two required storm water samples from each and every storm water discharge location in each of the last five years despite discharging storm water from its facility. During the past five years, Tomra Pacific has only sampled and analyzed storm water discharges from one location at the Facility. CSPA alleges that during both the 2007-2008 and 2008-2009 rainy seasons, Tomra Pacific discharged storm water from at least five other locations. CSPA further alleges that during each of the 2004-2005, 2005-2006, and 2006-2007 rainy seasons, Tomra Pacific discharged storm water from at least three other locations. The failure to collect five samples from two discharge locations for two rainy seasons and three samples from two discharge locations for three rainy seasons results in thirty-eight 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, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

***C. 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)).

CSPA's investigation of the conditions at the Facility as well as Tomra Pacific's Annual Reports indicate that Tomra Pacific has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Tomra Pacific has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Tomra Pacific has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least November 20, 2004, and will continue to be in violation every day that Tomra Pacific fails to prepare, implement, review, and update an effective SWPPP. Tomra Pacific is subject to penalties for violations of the Order and the Act occurring since November 20, 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(4)(c) requires visual observation records to note, among other things, the date of each monthly observation. 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." Tomra Pacific failed to make monthly visual observations as required under Section B(4) of the General Permit in January 2004, March 2004, February 2006, and April 2006, for a total of four violations of the General Permit. Also in violation of Section B(4), Tomra Pacific recorded no observations or no rainfall in months during which rainfall occurred (*see* Attachment A: Rain Dates) in April, May, October, and November of 2005; May and December of 2006; January, February, October, and November of 2007; March and April of

2008; and February, March, April, and May of 2009, for a total of sixteen General Permit violations. Tomra Pacific failed to note the dates on its monthly visual observations as required by Section B(4)(c) of the General Permit in April, May, October, and November of 2005; May 2006; May 2008; and February, March, April and May of 2009, for a total of ten General Permit violations. 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, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

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 Tomra Pacific is not representative of the quality of the Facility's various storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Tomra Pacific is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since November 20, 2004.

***E. 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) & (10) and B(14).

In addition, since 2004, Tomra Pacific and its agent, Francisco Minjavez, inaccurately certified in their Annual Reports that the Facility was in compliance with the General Permit. Consequently, Tomra Pacific has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Tomra Pacific failed to submit a complete or correct report and every time Tomra Pacific or its agent falsely purported to comply with the Act. Tomra Pacific is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since November 20, 2004.

**IV. Persons Responsible for the Violations.**

CSPA puts Tomra Pacific, Francisco Minjavez, and Randall Gusikoski 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, CSPA puts

Tomra Pacific, Francisco Minjavez, and Randall Gusikoski on notice that it intends to include those persons in this action.

**V. Name and Address of Noticing Party.**

Our name, address, and contact information is as follows:

Bill Jennings, Executive Director;  
California Sportfishing Protection Alliance,  
3536 Rainier Avenue,  
Stockton, CA 95204  
Tel. (209) 464-5067  
Fax (209) 464-1028  
E-Mail: deltakeep@aol.com

**VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau  
David A. Zizmor  
Lozeau Drury LLP  
1516 Oak Street, Suite 216  
Alameda, California 94501  
Tel. (510) 749-9102  
michael@lozeaudrury.com  
david@lozeaudrury.com

Andrew L. Packard  
Law Offices of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
Tel. (707) 763-7227  
andrew@packardlawoffices.com

**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; 73 FR 75340) each separate violation of the Act subjects Tomra Pacific 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, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Tomra

Randall Gusikoski  
Tomra Pacific, Inc.  
November 20, 2009  
Page 14 of 15

Pacific and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we 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, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style with a large initial "B".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

CSC Lawyers Incorporating Service [Registered Agent]  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833

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  
P.O. Box 100  
Sacramento, CA 95812-0100

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

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, Tomra Pacific, Fremont, California

November 27, 2004	January 26, 2005	October 27, 2005
November 28, 2004	January 27, 2005	October 28, 2005
December 1, 2004	January 28, 2005	October 29, 2005
December 2, 2004	January 29, 2005	November 4, 2005
December 3, 2004	February 7, 2005	November 8, 2005
December 4, 2004	February 8, 2005	November 10, 2005
December 5, 2004	February 12, 2005	November 25, 2005
December 6, 2004	February 15, 2005	November 26, 2005
December 7, 2004	February 16, 2005	November 29, 2005
December 8, 2004	February 18, 2005	November 30, 2005
December 9, 2004	February 19, 2005	December 1, 2005
December 10, 2004	February 20, 2005	December 2, 2005
December 11, 2004	February 21, 2005	December 8, 2005
December 12, 2004	February 22, 2005	December 18, 2005
December 13, 2004	February 27, 2005	December 19, 2005
December 14, 2004	March 2, 2005	December 22, 2005
December 15, 2004	March 4, 2005	December 23, 2005
December 16, 2004	March 5, 2005	December 26, 2005
December 17, 2004	March 19, 2005	December 28, 2005
December 18, 2004	March 20, 2005	December 29, 2005
December 19, 2004	March 21, 2005	December 30, 2005
December 20, 2004	March 22, 2005	December 31, 2005
December 21, 2004	March 23, 2005	January 1, 2006
December 22, 2004	March 24, 2005	January 2, 2006
December 23, 2004	March 28, 2005	January 3, 2006
December 24, 2004	March 29, 2005	January 4, 2006
December 25, 2004	April 4, 2005	January 7, 2006
December 26, 2004	April 7, 2005	January 11, 2006
December 27, 2004	April 8, 2005	January 14, 2006
December 28, 2004	April 9, 2005	January 15, 2006
December 29, 2004	April 23, 2005	January 18, 2006
December 30, 2004	April 28, 2005	January 19, 2006
December 31, 2004	April 29, 2005	January 21, 2006
January 1, 2005	May 5, 2005	January 22, 2006
January 2, 2005	May 6, 2005	January 27, 2006
January 3, 2005	May 8, 2005	January 29, 2006
January 4, 2005	May 9, 2005	January 31, 2006
January 5, 2005	May 10, 2005	February 2, 2006
January 6, 2005	May 19, 2005	February 4, 2006
January 7, 2005	May 20, 2005	February 18, 2006
January 8, 2005	June 8, 2005	February 27, 2006
January 9, 2005	June 9, 2005	February 28, 2006
January 10, 2005	June 17, 2005	March 1, 2006
January 11, 2005	September 21, 2005	March 2, 2006
January 12, 2005	October 15, 2005	March 3, 2006

## ATTACHMENT A

### Rain Dates, Tomra Pacific, Inc., Fremont, California

March 4, 2006	November 12, 2006	September 23, 2007
March 6, 2006	November 13, 2006	October 10, 2007
March 7, 2006	November 14, 2006	October 12, 2007
March 8, 2006	November 23, 2006	October 13, 2007
March 9, 2006	November 27, 2006	October 16, 2007
March 10, 2006	December 9, 2006	October 17, 2007
March 11, 2006	December 10, 2006	October 18, 2007
March 12, 2006	December 11, 2006	October 20, 2007
March 13, 2006	December 12, 2006	October 30, 2007
March 14, 2006	December 13, 2006	November 11, 2007
March 15, 2006	December 14, 2006	December 4, 2007
March 17, 2006	December 15, 2006	December 5, 2007
March 18, 2006	December 22, 2006	December 7, 2007
March 21, 2006	December 27, 2006	December 17, 2007
March 25, 2006	January 4, 2007	December 18, 2007
March 26, 2006	January 5, 2007	December 19, 2007
March 28, 2006	January 17, 2007	December 20, 2007
March 29, 2006	January 27, 2007	December 26, 2007
March 30, 2006	January 28, 2007	December 28, 2007
March 31, 2006	January 29, 2007	December 29, 2007
April 1, 2006	February 9, 2007	January 4, 2008
April 3, 2006	February 10, 2007	January 5, 2008
April 4, 2006	February 11, 2007	January 6, 2008
April 5, 2006	February 13, 2007	January 7, 2008
April 6, 2006	February 22, 2007	January 9, 2008
April 8, 2006	February 23, 2007	January 10, 2008
April 10, 2006	February 25, 2007	January 11, 2008
April 11, 2006	February 26, 2007	January 21, 2008
April 12, 2006	February 27, 2007	January 22, 2008
April 13, 2006	February 28, 2007	January 23, 2008
April 15, 2006	March 21, 2007	January 24, 2008
April 16, 2006	March 27, 2007	January 25, 2008
April 17, 2006	April 11, 2007	January 26, 2008
May 20, 2006	April 12, 2007	January 27, 2008
May 22, 2006	April 14, 2007	January 28, 2008
October 5, 2006	April 15, 2007	January 29, 2008
October 6, 2006	April 20, 2007	January 30, 2008
November 2, 2006	April 22, 2007	February 1, 2008
November 3, 2006	May 2, 2007	February 3, 2008
November 4, 2006	May 4, 2007	February 4, 2008
November 8, 2006	May 5, 2007	February 20, 2008
November 11, 2006	September 22, 2007	February 21, 2008

## ATTACHMENT A

### Rain Dates, Tomra Pacific, Inc., Fremont, California

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

# EXHIBIT 3




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## TRITON Filter

### TRITON FILTER CATCH BASIN INSERT


[Print brochure](#)

REM has developed the TRITON Catch Basin Insert to help eliminate hydrocarbons and other contaminants such as antifreeze, metals, sand, silt and litter from storm water runoff.

The TRITON is designed to be inserted below the grate of storm drain inlets.



[\(click for larger view\)](#)

### Product Specification

Non-reactive High Density polyethylene plastic construction.

Round, Square, Rectangular and Custom models.

Filter Media Cartridges available for the removal of Hydrocarbons, Metals Antifreeze, Sand, Silt and Litter.

Media is non hazardous, per EPA and OSHA standards.

Easy servicing, removable Filter Media Cartridge allows for quick servicing.

Patented design with high nominal flow and high overflow capacities.

Easy to install in new and existing catch basins.

Maintenance contracts available.

Servicing of filters on a regular basis is a requirement to meet most local and state BMP's.

Meets Best Available Technology for use in Storm Water BMP (Best Management Practices).

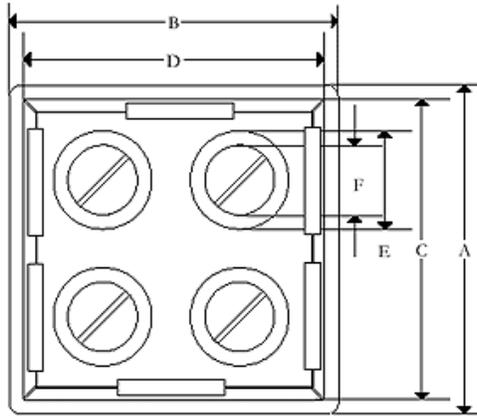
Media Cartridges can be interchanged with GEO-TRAP series as site conditions change.

### Related Links

[Product Brochure »](#)

[View MSDS of Filter Media »](#)

## Standard Dimensions



	A	B	C	D	E	F	G	Inserts
TR1212	13	13	11	11	6.75	3.5	5.5	1
TR1616	16.5	16.5	13.5	13.5	10.25	7.25	6.5	1
TR1818	19	19	13.5	13.5	10.5	7.25	6.5	1
TR1824	17.5	24	15	21	10.5	7.25	6.5	1
TR18RD	18		11		6.75	3.5	6.75	1
TR2024	19.5	23.5	17.5	21.5	10.5	7.25	6.5	1
TR24SR	23.75	26.5	21	21	14	11	11.5	1
TR2436	27	38	17	30	10.25	7.25	9	2
TR2448	23.25	52	21	46	14	11	11.5	2
TR24RD	24.5		21		14	11	11.5	1
TR3030	33	29	21	21	14	11	11.5	1
TR3636	40	40	34	34	10.25	7.25	9	4
TR4848	52	52	46	46	14	11	11.5	4

## Notes

1. All dimensions are in inches.
2. Dimension (G) is filter depth.
3. Units are constructed from High Density Polyethylene plastic with U.V. inhibitors.
4. Media Cartridges can be interchanged with GEO-TRAP series as site conditions change.
5. Low profile filters are also available for shallow catch basins.
6. **Custom sizes are available to fit most applications. Please call a distributor near you for details.**
7. Patent No. 6,217,757.





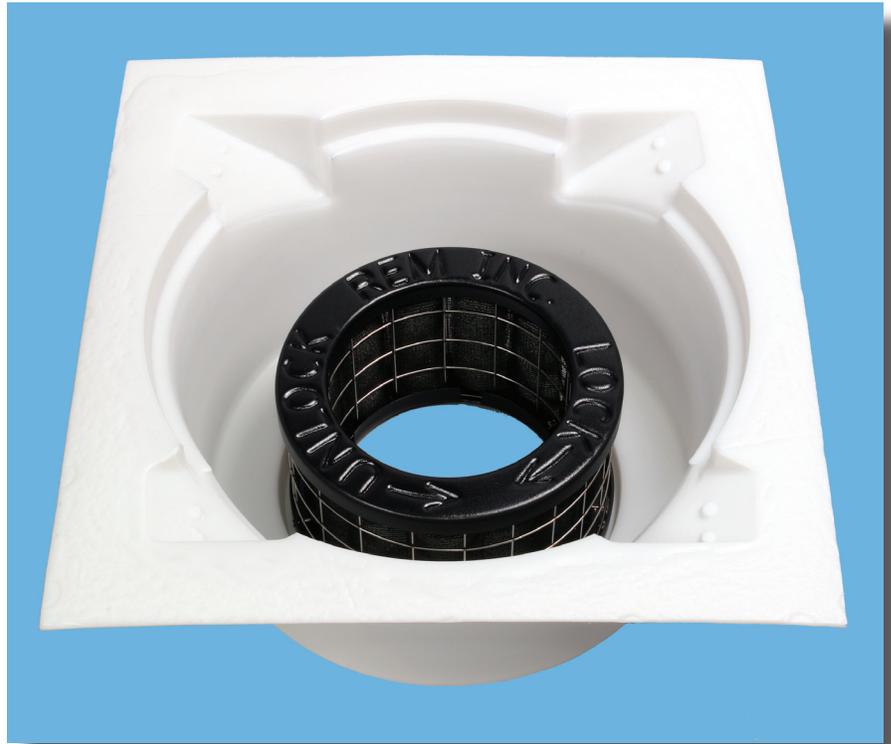
# TRITON FILTER™

## Product Specification

## CATCH BASIN FILTER INSERT

### THE TRITON FILTER

- Non-reactive High Density Polyethylene (HDPE) plastic construction, with U.V. inhibitors.
- Round, Square, Rectangular, Low Profile and Custom models.
- Dual Stage and Dual Capacity Filters are also available.
- Quick and easy servicing made available by replaceable Media-Paks.
- Filter Media-Pak available for the removal of hydrocarbons, metals, sand, silt, and litter.
- Disposable Filter Media-Pak is constructed from durable geotextile, polypropylene fabric.
- Media-Pak can be interchanged with Geo-Trap series as site conditions change.
- Media is nonhazardous, per EPA and OSHA standards.
- Patented design with high nominal flow and high overflow capacities.
- Easy to install in new and existing catch basins.
- Meets Best Available Technology (BAT) for use in Stormwater Best Management Practices (BMP).
- Maintenance contracts, including recycling of all spent absorbents are available.
- Servicing of filters on a regular basis is a requirement to meet most local and state BMP's.



MODEL TR24SR

### TRITON CATCH BASIN FILTER INSERT

REM has developed the TRITON Catch Basin Insert to help eliminate hydrocarbons and other contaminants such as metals, sand, silt and litter from stormwater runoff.

The TRITON is designed to be inserted below the grate of storm drain inlets.

**Patent No. 6,217,757**

### REM - HELPING KEEP YOUR WATERWAYS CLEAN

*The most recent National Water Quality Inventory reports that runoff from urban areas is the leading source of impairments to surveyed estuaries and the third largest source of water quality impairments to surveyed lakes. In addition, population and development trends indicate that by 2010 more than half of the Nation will live in coastal towns and cities. Runoff from these rapidly growing urban areas will continue to degrade coastal waters.<sup>1</sup>*

<sup>1</sup>Environmental Protection Agency's Office of Water EPA841-F-96-004G

Revel Environmental Manufacturing, Inc.

[www.remfilters.com](http://www.remfilters.com)

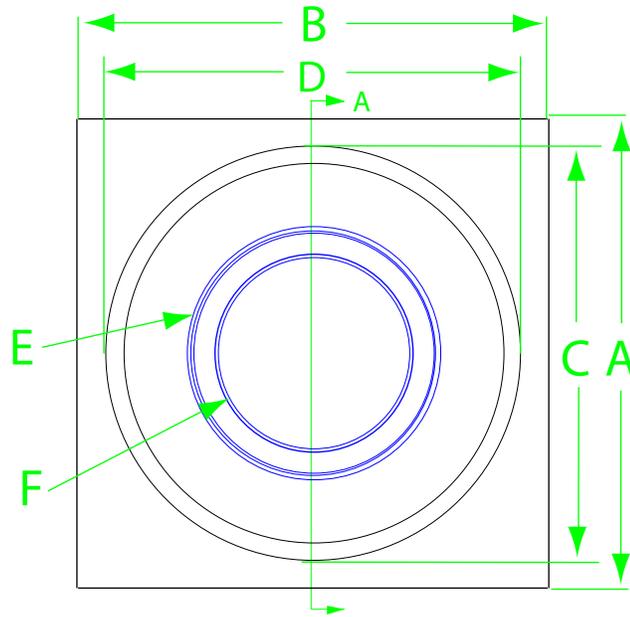
888-526-4736



# TRITON FILTER™ CATCH BASIN INSERT

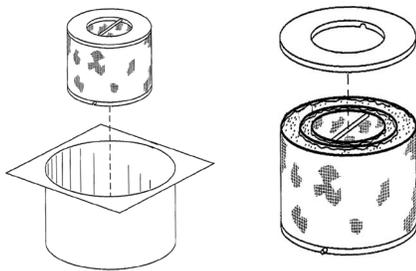


TRITON MEDIA CARTRIDGE



DIMENSIONAL SPECIFICATIONS

## STANDARD DIMENSIONS (IN INCHES)



### NOTES:

1. All dimensions are in inches.
2. Units are constructed from High Density Polyethylene Plastic with U.V. inhibitors.
3. Media Cartridges can be inter-changed with Geo-Trap series as site conditions change.
4. Low profile filters are also available for shallow catch basins.
5. Custom sizes are available to fit most applications. Please call a distributor near you for details.
6. Optional TDG series Trash & Debris Guard also available.
7. Dual stage and dual capacity filters also available.

	A*	B*	C	D	E	F	G*	CARTRIDGES
<b>TR1212</b>	13	13	11	11	6.75	3.75	5.5	1
<b>TR1212RD</b>	13 DIA.		11 DIA.		6.75	3.75	5.5	1
<b>TR1616</b>	18	18	14	14	6.75	3.75	10.5	1
<b>TR1818</b>	20	20	17	17	10.5	7.25	10.5	1
<b>TR18RD</b>	20 DIA.		16.5 DIA.		6.75	3.75	10.5	1
<b>TR1824</b>	19	25	17	17	10.5	7.25	10.5	1
<b>TR2024</b>	21	25	17	17	10.5	7.25	10.5	1
<b>TR24SR</b>	26	26	21	21	14	11	13	1
<b>TR24RD</b>	26 DIA.		21 DIA.		14	11	13	1
<b>TR2436</b>	26	38	17	30	10.5	7.25	10.5	2
<b>TR3030</b>	33	33	21	21	14	11	13	1
<b>TR36SR</b>	40	40	33	33	14	11	22	1 TALL
<b>TR36RD</b>	40 DIA.		30 DIA.		14	11	22	1 TALL
<b>TR2448</b>	26	52	21	42	14	11	13	2
<b>TR4848</b>	52	52	42	42	24	20	22	1 TALL

\* Note: Dimension "G" is filter depth.  
Dimensions "A" and "B" can be adjusted to suit varying sizes of catch basins.



**Revel Environmental Manufacturing Inc.**

sales@remfilters.com (888) 526-4736 Lic. No. 857410

Northern California  
960-B Detroit Avenue  
Concord, California 94518  
P: (925) 676-4736  
F: (925) 676-8676

Southern California  
2110 South Grand Avenue  
Santa Ana, California 92705  
P: (714) 557-2676  
F: (714) 557-2679

**Distributed By:**



CleanWay Environmental Partners, Inc.  
PO Box 30087  
10620 NE Marx Street  
Portland, Oregon 97294  
Toll free 800-723-1373  
Tel 503-280-5102  
Fax 503-288-3658



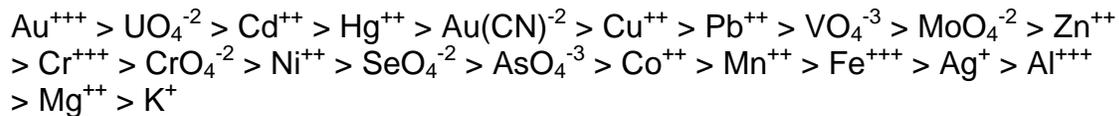
## MetalZorb™

Treated Sponge Product for the Removal of Heavy Metal Contaminants

### General Properties

Treated Sponge Products Type M and M-TU have selective affinity for heavy metals in cationic and anionic states in aqueous solution. MetalZorb functions by forming coordination complexes preferentially with ions of the transition group Heavy Metals, namely metals classified in groups IB through VIII B of the Periodic Table of Elements; and generally characterized as having incomplete inner rings of electrons or otherwise capable of existing in more than one valence state.

By comparison, metals such as calcium, magnesium and aluminum, having complete inner rings of electrons and single valence states, show poor affinity for the treated sponge. MetalZorb provides ligand sites that surround the metal and form a coordination complex. The order of its affinity for metals is influenced by solution parameters such as pH, temperature and total ionic content. However, the following affinity sequence of some representative ions can generally be expected to be:



When employed as a stationary bed in a tank or column through which an aqueous stream flows, absorption bands are produced generally in accordance with the affinity sequence. In certain situations, strongly absorbed species will displace less strongly absorbed species. This characteristic may be employed to separate ions. When utilized in an upward flow fluidized bed or in rotating drums, simultaneous absorption of a number of ionic species will occur in amounts relative to the initial concentration and affinity sequence.

At saturation, the MetalZorb will contain between 6% and 15% (dry weight) of absorbed ions, depending on the affinity of the sponge product for the ion and its molecular weight. This represents an absorption capacity of about 1.0 – 2.0 molar equivalent of absorbed ion/dry gram of sponge product. The presence of commonly abundant innocuous ions such as  $\text{Na}^+$ ,  $\text{K}^+$ ,  $\text{Ca}^{++}$ ,  $\text{Mg}^{++}$ ,  $\text{Al}^{+++}$ ,  $\text{Cl}^-$ ,  $\text{SO}_4^{-2}$  will not adversely affect the sponge's absorption capacity.

## **Applications**

These treated sponge absorbents are highly effective for removing toxic species in low ppm and ppb concentrations from industrial wastewater, groundwater, stormwater, landfill leachate, municipal process streams and drainage waters. They are particularly useful in remediating waters that contain less than 20 ppm of targeted species, especially where treated effluent concentrations below 1 ppb are sought. Absorbent sponge is typically employed as a polishing operation following an upstream treatment such as a precipitation process. MetalZorb is uniquely capable of absorbing metals such as mercury, lead, nickel and cadmium, which are chelated by EDTA or other synthetic or naturally occurring chelating agents.

For applications where the solutions are high temperature or exposed to extreme pH ranges, please contact CleanWay for technical support.

## **Statement of Non-Warranty**

All data, statements and recommendations in this publication are based on the best information available and believed to be reliable. CleanWay assumes no obligation or liability, and makes no express or implied warranty with regard to the data, statements and recommendation given or applications covered or results obtained. All information is given and accepted at the user's risk. Although no adverse physiological effects have been observed in the handling of the treated sponge product, users assume all risk of use and handling. No statement shall be taken as a recommendation of action or use without independent investigation. Users are reminded to practice such safety precautions as may be indicated in the particular circumstances to protect health and property.

**Patents issued and pending.**

1 ANDREW L. PACKARD (Bar No. 168690)  
2 ERIK M. ROPER (Bar No. 259756)  
3 HALLIE B. ALBERT (Bar No. 258737)  
4 Law Offices of Andrew L. Packard  
5 100 Petaluma Blvd. N., Suite 301  
6 Petaluma, CA 94952  
7 Tel: (707) 763-7227  
8 Fax: (707) 763-9227  
9 E-mail: Andrew@packardlawoffices.com

6 ROBERT J. TUERCK (Bar No. 255741)  
7 Jackson & Tuerck  
8 P. O. Box 148  
9 429 W. Main Street, Suite C  
10 Quincy, CA 95971  
11 Tel: (530) 283-0406  
12 E-mail: bob@jacksontuerck.com

10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING  
12 PROTECTION ALLIANCE

13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA SPORTFISHING  
16 PROTECTION ALLIANCE, a non-profit  
17 corporation,

17 Plaintiff,

18 vs.

19 USA WASTE OF CALIFORNIA, INC. a  
20 Delaware corporation, and MIKE  
21 DONOHUE, an individual,

21 Defendants.

Case No. 2:10-CV-01096-GEB-KJN

**[PROPOSED] CONSENT AGREEMENT**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387; and, California  
Health & Safety Code § 25249.5 *et seq.*)

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

25 **WHEREAS**, Defendant USA Waste of California, Inc. (hereinafter “USA Waste”) owns and  
26 operates an approximately 4-acre recycling, waste transfer and local trucking facility located at 2569  
27

1 Scott Avenue, in Chico, California (the “Facility”), Defendant Mike Donohue was previously the  
2 District Manager for USA Waste at the Facility. He no longer holds that position and is now the  
3 District Fleet Manager at several sites other than the Facility;

4 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the “Parties;”

5 **WHEREAS**, the Facility collects and discharges storm water to Comanche Creek and  
6 Comanche Creek ultimately flows into the Sacramento River, and the Sacramento-San Joaquin Delta  
7 (a map of the Facility is attached hereto as Exhibit A and incorporated herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
9 to the National Pollutant Discharge Elimination System (“NPDES”), General Permit No. CAS000001  
10 [State Water Resources Control Board], Water Quality Order No. 91-13-DWQ (as amended by Water  
11 Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act,  
12 33 U.S.C. § 1342 (hereinafter “General Permit”);

13 **WHEREAS**, on or about March 4, 2010, Plaintiff provided notice of Defendants’ alleged  
14 violations of the Clean Water Act, and of its intention to file suit against Defendants, to the  
15 Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of  
16 EPA Region IX; the Executive Director of the State Water Resources Control Board (“State Board”);  
17 the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional  
18 Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies  
19 of CSPA’s “Clean Water Act Notice Of Violations Letter” is attached as Exhibit B and incorporated  
20 herein by reference);

21 **WHEREAS**, on or about September 10, 2010, Plaintiff provided notice of USA Waste’s  
22 alleged violations of California Health & Safety Code § 25249.5 *et seq.* (referred to as “Proposition  
23 65”) (“Proposition 65 Notice Letter”), and of its intention to file suit against USA Waste to the  
24 Proposition 65 Enforcement Reporting section of the office of the California Attorney General  
25 (“California Attorney General”); the District Attorney of each California county containing sources of  
26 drinking water potentially impacted by USA Waste’s violations of Proposition 65 as described in the  
27 Proposition 65 Notice Letter; and, to USA Waste, as required by California Health & Safety Code  
28

1 Section 25249.5 *et seq.* (true and correct copies of CSPA’s “Proposition 65 Notice Of Violations  
2 Letter” is attached as Exhibit C and incorporated herein by reference);

3 **WHEREAS**, unless otherwise noted, the Clean Water Act Notice Of Violations Letter and the  
4 Proposition 65 Notice Of Violations Letter shall hereinafter collectively be referred to as “the  
5 Notices”;

6 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and  
7 maintain that they have complied at all times with the provisions of the Clean Water Act and the  
8 General Permit, and California Health & Safety Code sections 25249.5 *et seq.*;

9 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States  
10 District Court, Eastern District of California, on May 4, 2010 and filed a First Amended Complaint  
11 pursuant to the Parties’ stipulated agreement on November 15, 2010;

12 **WHEREAS**, for purposes of this Consent Agreement only, the Parties stipulate that venue is  
13 proper in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to  
14 enter this Consent Agreement, but otherwise preserve all affirmative defenses in the event this  
15 Consent Agreement is not entered by this Court;

16 **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of  
17 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c) and to the Proposition  
18 65 Enforcement Reporting section of the office of the California Attorney General; and shall thereafter  
19 be submitted for approval by the Court, the date of which approval shall be referred to herein as the  
20 “Court Approval Date;”

21 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States  
22 District Court, CSPA shall request a dismissal of the First Amended Complaint with prejudice and the  
23 Parties shall stipulate and request that the Court retain jurisdiction for the enforcement of this  
24 Agreement as provided herein;

25 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter  
26 without further litigation.

27 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES, AND**  
28

1 **ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

2 **I. COMMITMENT OF DEFENDANTS**

3 **1. Compliance With General Permit & Clean Water Act.** Beginning immediately, and  
4 throughout the term of this Consent Agreement, USA Waste, as a corporate entity acting by and  
5 through its designated agent, representatives and/or employees, shall commence all measures needed  
6 to operate the Facility in full compliance with the requirements of the General Permit and the Clean  
7 Water Act, subject to any defenses available under the law.

8 **2. USA Waste’s Implementation of Specific Storm Water Best Management**  
9 **Practices.** Except as otherwise noted herein, within 30 days after the Court Approval Date, USA  
10 Waste shall complete or cause to be completed the implementations of the following storm water  
11 control measures/best management practices (“BMPs”):

12 (a) USA Waste shall improve the effectiveness of the Facility’s existing infiltration  
13 basin (“the Basin”) by removing sediment buildup therein and increasing the Basin’s overall  
14 capacity by deepening the Basin consistent with the conceptual drawings attached in Exhibit D,  
15 attached hereto, and incorporated herein by reference. As depicted in the drawings and as  
16 shown in the photographs in Exhibit D, USA Waste’ redesigned Basin includes one standpipe  
17 within the Basin with greater freeboard to increase the Basin’s storm water retention time.

18 (b) USA Waste shall install Triton Cartridge filters in all Facility storm water drain  
19 inlets and maintain them thereafter consistent with manufacturer’s recommendations;

20 (c) Throughout the Wet Season (i.e., October 1 through May 31) in each of the two  
21 Wet Seasons occurring during the term of this Consent Agreement (i.e., 2010-2011 and 2011-  
22 2012), USA Waste shall monitor local weather reporting in order to identify when the next  
23 anticipated qualifying storm event is likely to occur at the Facility;

24 (d) Throughout the Wet Season (i.e., October 1 through May 31) in each of the two  
25 Wet Seasons occurring during the term of this Consent Agreement (i.e., 2010-2011 and 2011-  
26 2012), USA Waste shall employ a regenerative sweeper to sweep the Facility’s impervious  
27

1 surfaces prior to the onset of any anticipated qualifying storm events in addition to sweeping on  
2 a quarterly basis, with one comprehensive Facility sweeping occurring during each of the  
3 months of January, March, July and October;

4 (e) USA Waste shall install structural controls necessary to direct all storm water  
5 flows away from the Facility's Public Drop Off Area and towards the Facility's storm water  
6 conveyance system and the Facility Basin, provided, however, if USA Waste determines that  
7 such structural controls will require material subsurface work (e.g., excavation, installation of  
8 drop inlets. Or additional subsurface piping), the schedule for completion shall be extended to  
9 90 days after the Court Approval Date or such later date as agreed to in writing by the Parties.

10 (f) USA Waste shall work with the adjacent auto wrecking facility to eliminate or  
11 reduce to the greatest extent feasible storm water run-on from the adjacent auto wrecking  
12 facility;

13 (g) During the Wet Season, USA Waste shall cover the Facility's Recyclable  
14 Stockpile Area (i.e., over the glass pit, the comingle pile and the plastic pit) with tarpaulins  
15 prior to and during rain events; and,

16 (h) USA Waste shall include a visual monitoring inspection form in the SWPPP and  
17 train Facility personnel responsible for conducting visual monitoring of storm water in the  
18 proper use of the form.

19 **3. SWPPP Amendments/Additional BMPs.** Within 30 days after the Court Approval  
20 Date, USA Waste shall formally amend the SWPPP for the Facility to incorporate all of the  
21 requirements of this Consent Agreement, as well as the revised Facility map attached hereto as  
22 Exhibit A.

23 **4. Sampling Frequency.** USA Waste shall collect and analyze or cause to be collected  
24 and analyzed samples from four (4) Qualifying Storm Events<sup>1</sup> (to the extent that such Qualifying

25 \_\_\_\_\_  
26 <sup>1</sup> "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are  
27 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
28 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 Storm Events occur), in each of the two Wet Seasons occurring during the term of this Consent  
2 Agreement (2010-2011 and 2011-2012). The storm water sample results shall be compared with the  
3 values set forth in Exhibit E, attached hereto, and incorporated herein by reference. If the results of  
4 any such samples exceed the parameter values set forth in Exhibit E, USA Waste shall comply with  
5 the “Action Memorandum” requirements set forth below.

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

13 **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”;**  
14 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4  
15 above exceeds the evaluation levels set forth in Exhibit E, or if USA Waste fails to collect and analyze  
16 samples from four (4) storm events, as qualified in the General Permit, USA Waste shall prepare a  
17 written statement discussing the exceedance(s) and /or failure to collect and analyze samples from four  
18 (4) storm events, the possible cause and/or source of the exceedance(s), and additional measures that  
19 will be taken to address and eliminate the problem and future exceedances (“Action Memorandum”).  
20 The Action Memorandum shall be provided to CSPA not later than July 15<sup>th</sup> following the  
21 conclusion of each rainy season. Recognizing that a SWPPP is an ongoing iterative process meant  
22 to encourage innovative BMPs, such additional measures may include, but are not limited to, taking  
23 confirmation samples, further material improvements to the storm water collection and discharge  
24 system, changing the frequency of Facility sweeping, changing the type and extent of storm water  
25 filtration media or modifying other industrial activities or management practices at the Facility. Such  
26 additional measures, to the extent feasible, shall be implemented immediately and in no event later  
27 than 60 days after the due date of the Action Memorandum. Within THIRTY (30) days of  
28

1 implementation, the Facility SWPPP shall be amended to include all additional BMP measures  
2 designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum  
3 and suggest any additional pollution prevention measures it believes are appropriate; however,  
4 CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the  
5 Action Memorandum. Upon request by CSPA, USA Waste agrees to meet and confer in good faith (at  
6 the Facility, if requested by Plaintiff) regarding the contents and sufficiency of the Action  
7 Memorandum.

8           **7. Inspections During The Term Of This Agreement.** In addition to any site  
9 inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as  
10 set forth above, USA Waste shall permit representatives of CSPA to perform up to three (3) physical  
11 inspections of the Facility during the term of this Consent Agreement. These inspections shall be  
12 performed by CSPA's counsel and consultants and may include sampling, photographing, and/or  
13 videotaping. CSPA shall provide USA Waste with a copy of all sampling reports, photographs and/or  
14 video arising from such site inspections. CSPA shall provide at least forty-eight (48) hours advance  
15 notice of such physical site inspection, except that USA Waste shall have the right to deny access if  
16 circumstances would make the inspection unduly burdensome and pose significant interference with  
17 business operations or any party/attorney, or the safety of individuals. In such case, USA Waste shall  
18 specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by  
19 CSPA may proceed. USA Waste shall not make any alterations to Facility conditions during the  
20 period between receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's  
21 inspection that USA Waste would not otherwise have made but for receiving notice of CSPA's request  
22 to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any  
23 applicable laws or regulations. Nothing herein shall be construed to prevent USA Waste from  
24 continuing to implement any BMPs identified in the SWPPP during the period prior to an inspection  
25 by CSPA or at any time.

26           **8. USA Waste' Communications with Regional and State Boards.** During the term of  
27 this Consent Agreement, USA Waste shall provide CSPA with copies of all documents submitted to  
28

1 the Regional Board or the State Board concerning storm water discharges from the Facility, including,  
2 but not limited to, all documents and reports submitted to the Regional Board and/or State Board as  
3 required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to  
4 the Notice provisions herein (at ¶ 24) and contemporaneously with USA Waste' submission to such  
5 agencies.

6 **9. SWPPP Amendments.** USA Waste shall provide CSPA with a copy of any  
7 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen  
8 (14) days of such amendment.

9 **II. MITIGATION, PAYMENT IN LIEU OF CIVIL PENALTIES, COMPLIANCE**  
10 **MONITORING AND FEES AND COSTS**

11 **10.** As mitigation of the Clean Water Act violations alleged in CSPA's First Amended  
12 Complaint, USA Waste agrees to pay the sum of \$30,000 within SEVEN (7) business days after the  
13 Court Approval Date to the Rose Foundation for Communities and the Environment (6008 College  
14 Avenue, Oakland, CA 94618, Attn: Tim Little) for projects to improve water quality in Comanche  
15 Creek, the Sacramento River and/or the Sacramento-San Joaquin-San Francisco Bay-River Delta. In  
16 lieu of any civil penalty assessment against USA Waste under Proposition 65, USA Waste agrees to  
17 pay the additional sum of \$10,000 to the Rose Foundation for Communities and the Environment  
18 within SEVEN (7) business days after the Court Approval Date. These additional funds shall be used  
19 to reduce exposures to toxic chemicals, and to increase consumer, worker and community awareness  
20 of the health hazards posed by toxic chemicals consistent with the statutory goals of Proposition 65.

21 **11.** USA Waste agrees to reimburse CSPA in the amount of \$32,500 to defray CSPA's  
22 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred  
23 as a result of investigating the activities at the Facility, bringing the Action and negotiating a  
24 resolution in the public interest. Such payment shall be made to the Law Offices of Andrew L.  
25 Packard Attorney-Client Trust Account within SEVEN (7) business days after the Court Approval  
26 Date.

27 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
28

1 expert, consultant and attorneys' fees and costs associated with monitoring USA Waste' compliance  
2 with this Consent Agreement, USA Waste agrees to contribute \$7,500 total to a compliance  
3 monitoring fund maintained by CSPA. Compliance monitoring activities may include, but shall not be  
4 limited to, site inspections, review of water quality sampling reports, review of annual reports,  
5 discussions with representatives of USA Waste concerning the Action Memoranda referenced above,  
6 and potential changes to compliance requirements herein, preparation for and participation in meet-  
7 and-confer sessions, water quality sampling and analysis, and compliance-related activities. Payment  
8 shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within  
9 SEVEN (7) business days of the Court Approval Date.

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

11 **13.** With the exception of the timelines set forth above for addressing exceedances of  
12 values specified on Exhibit E and Action Memoranda, if a dispute under this Consent Agreement  
13 arises, or either Party believes that a breach of this Consent Agreement has occurred, CSPA and USA  
14 Waste shall meet and confer within seven (7) days of receiving written notification from the other  
15 Party of a request for a meeting to determine whether a violation has occurred and to develop a  
16 mutually agreed upon plan, including implementation dates, to resolve the dispute. If CSPA and USA  
17 Waste fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven  
18 days have passed after the meet-and-confer occurred or should have occurred, either Party shall be  
19 entitled to all rights and remedies under the law, including filing a motion with the District Court of  
20 California, Eastern District, which shall retain jurisdiction over the Action for the limited purposes of  
21 enforcement of the terms of this Consent Agreement. CSPA and USA Waste shall be entitled to seek  
22 fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the  
23 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case  
24 law interpreting such provision.

25 **14. CSPA Waiver and Release.** Upon Court approval and entry of this Consent  
26 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
27 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their  
28

1 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their  
2 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other  
3 representatives (each a “Released Defendant Party”) from, and waives all claims which arise or could  
4 have arisen from or pertain to the Action, including, without limitation, all claims for injunctive relief,  
5 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others),  
6 costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action,  
7 for the alleged failure of USA Waste to comply with the Clean Water Act and Proposition 65 at the  
8 Facility, up to the Effective Date of this Consent Decree.

9           During the term of the Consent Agreement, CSPA agrees that neither CSPA, its officers,  
10 executive staff, or members of its governing board nor any organization under the control of CSPA, its  
11 officers, executive staff, or members of its governing board, will file any lawsuit against USA Waste  
12 seeking relief for alleged violations of the Clean Water Act, General Permit or Proposition 65. CSPA  
13 further agrees that, during the term of the Consent Agreement, CSPA will not support other lawsuits,  
14 by providing financial assistance, personnel time or other affirmative actions, against USA Waste that  
15 may be proposed by other groups that or individuals who would rely upon the citizen suit provision of  
16 the Clean Water Act to challenge USA Waste’s compliance with the Clean Water Act or General  
17 Permit, or rely on the private enforcement provisions of Proposition 65 to challenge USA Waste’s  
18 compliance with Proposition 65.

19           **15. Defendants’ Waiver and Release.** Defendants, on their own behalf and on behalf of  
20 those Released Defendant Parties under its control, releases CSPA (and its officers, directors,  
21 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and  
22 its agents, attorneys, and other representative) from, and waives all claims which arise or could have  
23 arisen from or pertain to the Action, including all claims for fees (including fees of attorneys, experts,  
24 and others), costs, expenses or any other sum incurred or claimed or which could have been claimed  
25 for matters associated with or related to the Action.

26           **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and  
27 Order that shall provide that:  
28

1 a. the First Amended Complaint and all claims therein shall be dismissed with  
2 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2); and

3 b. the Court shall retain and have jurisdiction over CSPA and USA Waste with  
4 respect to disputes arising under this Agreement.

5 Nothing in this Consent Agreement shall be construed as a waiver of any party's right to appeal from  
6 an order that arises from an action to enforce the terms of this Consent Agreement. The Parties agree  
7 that Defendant Mike Donohue shall be dismissed from this matter and that all obligations under this  
8 Consent Decree shall be those of USA Waste and CSPA, and not of Defendant Mike Donohue.

9 **IV. MISCELLANEOUS PROVISIONS**

10 17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged  
11 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants  
12 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,  
13 nor shall compliance with this Consent Agreement constitute or be construed as an admission by  
14 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph  
15 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under  
16 this Consent Agreement.

17 18. The Consent Agreement shall terminate on September 30, 2012.

18 19. The Consent Agreement may be executed in one or more counterparts which, taken  
19 together, shall be deemed to constitute one and the same document. An executed copy of this Consent  
20 Agreement shall be valid as an original.

21 20. In the event that any one of the provisions of this Consent Agreement is held by a court  
22 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

23 21. The language in all parts of this Consent Agreement, unless otherwise stated, shall be  
24 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed  
25 pursuant to California law, without regard to conflict of law principles.

26 22. The undersigned are authorized to execute this Consent Agreement on behalf of their  
27  
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1 respective parties and have read, understood and agreed to be bound by all of the terms and conditions  
2 of this Consent Agreement.

3       **23.** All agreements, covenants, representations and warranties, express or implied, oral or  
4 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.  
5 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other  
6 person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment,  
7 unless otherwise expressly provided for therein.

8       **24. Notices.** Any notices or documents required or provided for by this Consent  
9 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement  
10 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
11 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

12           Bill Jennings, Executive Director  
13           California Sportfishing Protection Alliance  
14           3536 Rainier Avenue  
15           Stockton, CA 95204  
16           E-mail: DeltaKeep@aol.com

17           With copies sent to:

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

26           And to:

27           Robert J. Tuerck, Esq.  
28           Jackson & Tuerck  
29           P.O. Box 148  
30           429 W. Main Street, Suite C  
31           Quincy, CA 95971  
32           Tel: 530-283-0406  
33           Fax: 530-283-0416  
34           E-mail: Bob@JacksonTuerck.com

35 Any notices or documents required or provided for by this Consent Agreement or related thereto that

1 are to be provided to USA Waste pursuant to this Consent Agreement shall be sent by U.S. Mail,  
2 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
3 transmission to the email addresses listed below:

4 USA Waste of California, Inc.  
5 Attn: District Manager  
6 2569 Scott Avenue  
7 Chico, CA 95928  
8 Tel: 530.243.2562  
9 Fax: 530.345.5790

10 With copies sent to:

11 John Lynn Smith, Esq.  
12 Reed Smith, LLP  
13 101 Second Street, Suite 1800  
14 San Francisco, CA 94105  
15 Tel: 415.659.4863  
16 Fax: 415.391.8269  
17 E-mail: jlsmith@reedsmith.com

18 Andrew M. Kenefick, Esq.  
19 Waste Management Legal Department  
20 801 Second Avenue, Suite 614  
21 Seattle, WA 98104  
22 Tel: (206) 264-3062  
23 Fax: (866) 863-7961  
24 E-mail: akenefick@wm.com

25 Each Party shall promptly notify the other of any change in the above-listed contact information.

26 **25.** Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

27 **26.** Neither CSPA nor USA Waste shall be considered to be in default in the performance  
28 of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure  
event is any circumstances beyond the Party's control, including, without limitation, any act of God,  
war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event  
does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour  
storm event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden  
of establishing that it could not reasonably have been expected to avoid, and which by exercise of due  
diligence has been unable to overcome, the Force Majeure.

**27.** If for any reason the Court should decline to approve this Consent Agreement in the

1 form presented, the Parties shall use their best efforts to work together to modify the Consent  
2 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to  
3 modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall  
4 become null and void.

5 **28.** This Consent Agreement shall be deemed to have been drafted equally by the Parties,  
6 and shall not be interpreted for or against any Party on the ground that any such party drafted it.

7 **29.** This Consent Agreement and the attachments contain all of the terms and conditions  
8 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede  
9 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and  
10 communications of the Parties, whether oral or written, respecting the matters covered by this Consent  
11 Agreement. This Consent Agreement may be amended or modified only by a writing signed by CSPA  
12 and USA Waste or their authorized representatives, and then by order of the Court.

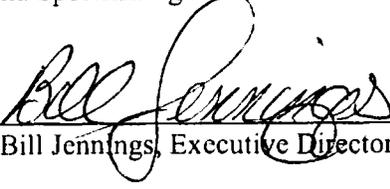
13 **30.** Except in case of an emergency but subject to the regulatory authority of any applicable  
14 governmental authority, any breach of or default under this Consent Agreement capable of being cured  
15 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach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

20 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for  
21 its approval and entry as an Order and Final Judgment, provided, however that, pursuant to 33 U.S.C.  
22 § 1365(c)(3), the Court shall not enter this Consent Decree until 45 days after receipt of a copy of the  
23 proposed Consent Decree by the Attorney General and the Administrator of the U.S. Environmental  
24 Protection Agency. If the Attorney General and the Administrator of the U.S. Environmental  
25 Protection Agency do not submit comments on the Consent Decree, the Parties shall notify the  
26 Court when the 45-day statutory review period has ended.

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Dated: 7 Nov. 2010

California Sportfishing Protection Alliance

By:   
Bill Jennings, Executive Director

Dated: \_\_\_\_\_

USA Waste of California, Inc.

By: \_\_\_\_\_  
Robert E. Longo  
Vice President and Assistant Secretary

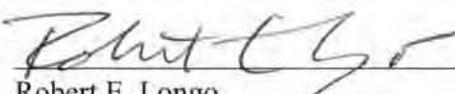
Dated: \_\_\_\_\_

Mike Donohue

By: \_\_\_\_\_  
Mike Donohue

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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance  
  
By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: 11-5-10 USA Waste of California, Inc.  
  
By:  \_\_\_\_\_  
Robert E. Longo  
Vice President and Assistant Secretary

Dated: \_\_\_\_\_ Mike Donohue  
  
By: \_\_\_\_\_  
Mike Donohue

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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_ USA Waste of California, Inc.

By: \_\_\_\_\_  
Robert E. Longo  
Vice President and Assistant Secretary

Dated: 11/5/2010 . Mike Donohue

By: Michael F. Donohue  
Mike Donohue

**EXHIBIT A – Facility Site Map**

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**EXHIBIT B – Clean Water Act Notice of Violation**

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## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

March 4, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Mike Donohue  
District Manager  
USA Waste of California, Inc.  
2569 Scott Ave.  
Chico, CA 95928

USA Waste of California, Inc.  
c/o: C T Corporation System  
818 West Seventh St.  
Los Angeles, CA 90017

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

Dear Mr. Donohue:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the USA Waste of California, Inc. (hereafter, "USA Waste") waste transfer and recycling facility located at 2569 Scott Avenue in Chico, California ("the Facility"). The WDID identification number for the Facility is 5R04I016186. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Little Butte Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Based on publicly available documents, CSPA is informed and believes USA Waste commonly refers to, and may be formally doing business at the Facility as "North Valley Disposal" (hereafter, "NVD"). For purposes of this Notice of Violations and Intent to File Suit under the Act (hereafter, the "Notice"), unless otherwise noted, CSPA will refer to USA Waste and NVD as NVD within this Notice.

This letter addresses NVD's unlawful discharges of pollutants from the Facility to Little Butte Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the

**EXHIBIT B**

substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit”).

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

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, NVD is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against NVD under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

NVD owns and/or operates the Facility as a recycling and trucking facility in Chico, California. The Facility is primarily used as a waste transfer and recycling station; other current activities at the Facility include the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to, from and within the Facility.

On November 15, 2004, NVD submitted its notice of intent (“2004 NOI”) to comply with the terms of the General Industrial Storm Water Permit. The 2004 NOI reports that the Facility is classified solely as a local trucking facility under Standard Industrial Classification code 4212 (“Local Trucking”). The Facility collects and discharges storm water from its 3.7-acre industrial site through at least one discharge point indirectly to Little Butte Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium –

0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by NVD: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes are being discharged from the Facility are: aluminum – 0.75 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

NVD violated and continues to violate the terms and conditions of the General 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 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.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On May 18 and 23, 2007, the Regional Board sent NVD a letter reviewing NVD’s 2005-2006 Annual Report (“the Review Letter”). The Review Letter informed NVD that its 2005-2006 Annual Report evidenced that the Facility was discharging pollutants in excess of applicable EPA benchmarks. The Review Letter further ordered NVD to: (1) identify sources of pollutants at the Facility contributing to the exceedances; (2) review current BMPs; (3) modify existing BMPs or implement new BMPs to reduce or eliminate the discharge of pollutants in order to comply with the General Permit; (4) modify the Facility’s SWPPP and Monitoring Plan to document such changes; and (5) provide the Regional Board a response by July 1, 2007 addressing NVD’s efforts to implement the orders expressed in the Review Letter.

On June 30, 2007, NVD responded to the Review Letter indicating, among other things, that it believed that new BMPs it had implemented would reduce its discharges of iron in excess of EPA benchmarks. Notwithstanding NVD's belief in the likely effectiveness of its BMPs, based on its review of available public documents, CSPA is informed and believes that NVD substantially failed to comply with the Regional Board's orders expressed in the Review Letter to the extent that the Facility's currently employed BMPs continue to fail to reduce or eliminate the discharge of pollutants in excess of EPA benchmarks.

More recently, on December 15, 2009, the Regional Board sent NVD a letter reviewing NVD's 2008-2009 Annual Report ("the Second Review Letter"). The Second Review Letter informed NVD that its 2008-2009 Annual Report established that the Facility was discharging pollutants in excess of EPA benchmarks. Specifically, this letter states: "The levels of pollutants in your storm water samples indicate that the current BMPs implemented at your site are not sufficient to reduce pollutant concentrations below benchmark levels." The Second Review Letter ordered NVD to: (1) review previously submitted Annual Reports and identify the number of consecutive years that your facility has exceeded benchmark levels; (2) identify sources of pollutants at the Facility contributing to the exceedances; (3) review current BMPs; (4) modify existing BMPs or implement new BMPs to reduce or eliminate the discharge of pollutants in order to comply with the General Permit; (5) modify the Facility's SWPPP and Monitoring Plan to document such changes; and, (6) provide the Regional Board a response by January 10, 2010 addressing NVD's efforts to implement the orders expressed in the Second Review Letter.

On December 28, 2009, NVD responded to the Second Review Letter. Notwithstanding NVD's assertion in this response that it "modifies or adds additional BMPs as necessary," its response includes specific data to the contrary. To wit, its letter reports data from a storm water discharge sample collected on October 13, 2009 evidencing the fact that NVD continues to discharge pollutants in excess of benchmarks for, among other things, chemical oxygen demand (COD), aluminum (Al), zinc (Zn), iron (Fe) and lead (Pb). NVD's December 28, 2009 letter is entirely non-responsive as to items (1) – (6), requested by the Regional Board on the Second Review Letter. Based on its review of publicly available documents, CSPA is informed and believes that NVD continues to operate in violation of the General Permit. NVD's ongoing violations are discussed further below.

**A. NVD Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

NVD has discharged and continues to discharge stormwater with unacceptable levels of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb) in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated

in the table of rain data attached hereto as Attachment A. NVD's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. 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 violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
4/8/2005	TSS	650 mg/L	100 mg/L
2/27/2006	TSS	130 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
4/8/2005	Fe	76,000 µg/L	1000 µg/L
1/10/2006	Fe	1200 µg/L	1000 µg/L
2/20/2008	Fe	2120 µg/L	1000 µg/L
10/31/2008	Fe	2610 µg/L	1000 µg/L
10/13/2009	Fe	2010 µg/L	1000 µg/L

**3. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of EPA Benchmark Value.**

Date	Parameter	Discharge	EPA Benchmark Value
4/8/2005	O&G	59 mg/L	15 mg/L

**4. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed Benchmark Value.**

Date	Parameter	Concentration in Discharge	Proposed Benchmark Value
4/08/2005	SC	280 µmhos/cm	200 µmhos/cm

**5. Discharges of Storm Water Containing Aluminum (Al) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/31/2008	Al	1.7 mg/L	0.75 mg/L
10/13/2009	Al	1.7 mg/L	0.75 mg/L

**6. Discharges of Storm Water Containing Zinc (Zn) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/31/2008	Zn	0.61 mg/L	0.117 mg/L
10/13/2009	Zn	0.35 mg/L	0.117 mg/L

**7. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/31/2008	COD	210 mg/L	120 mg/L

**8. Discharges of Storm Water Containing Lead (Pb) in Excess of EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Discharge</b>	<b>EPA Benchmark Value</b>
10/13/2009	Pb	3.01 mg/L	0.0816 mg/L

CSPA's investigation, including its review of NVD's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark Values and the Basin Plan's benchmark for pH, indicates that NVD has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Oil and Grease (O&G), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. NVD was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, NVD is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that NVD has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 4, 2005. CSPA alleges that such violations also have occurred and will occur

on other rain dates, including during every single significant rain event that has occurred since March 4, 2005, 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 CSPA alleges that NVD has discharged storm water containing impermissible levels of TSS, O&G, Iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other unmonitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NVD is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 4, 2005.

**B. NVD Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon.

NVD’s 2004 NOI only designates the Facility as conforming to SIC 4212 – an SIC which does not require sampling of additional analytical parameters found in Table D of the General Permit. However, on November 2, 2000, NVD filed an NOI designating the Facility as conforming to both SIC 4212 and SIC 5093. SIC 5093 governs recycling facilities. CSPA’s investigation has revealed that the Facility continues to function as a recycling facility. NVD’s failure to accurately designate all SICs applicable to the Facility constitutes yet another violation of the Act and the General Permit. Facilities such as NVD, which are required to be designated under SIC 5093, are also required to sample for iron, lead, aluminum, copper, zinc and chemical oxygen demand. Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that NVD has failed to develop and implement an adequate Monitoring & Reporting Plan. First, NVD has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, NVD has failed to analyze its storm water samples for all additional analytical parameters required for facilities designated under SIC 5093 (i.e., iron, lead, aluminum, copper, zinc and chemical oxygen demand) during each of the past five years. Finally, CSPA is informed and believes that NVD has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NVD is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 4, 2005. These violations are set forth in greater detail below.

**1. NVD Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that NVD has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that during the 2006-2007 wet season, NVD substantially failed to collect at least two storm water samples from the Facility's discharge point. Contrary to the assertion in NVD's 2006-2007 Annual Report that it sampled two storm events, NVD effectively sampled only one storm event. This failure to properly sample two storm events is evidenced by NVD's 2006-2007 Annual Report in its responses to Form 1 (Sampling & Analysis Results, First Storm Event). NVD's responses on this portion of the 2006-2007 Annual Report only report a result for Oil & Grease discharges.

NVD attempted to explain away its failure to properly sample two storm events during the 2006-2007 wet season by blaming the laboratory (See note on bottom of Form 1: "Broken sample bottle by lab."). However, this does not explain why NVD failed to even attempt to collect another sample prior to the expiration of the 2006-2007 wet season. It is worth noting that the lab report attached to NVD's 2006-2007 Annual Report reveals that the allegedly compromised sample collected during the first storm event on November 2, 2006, was received by the lab on December 30, 2006. Presumably if the lab broke the bottle it would have done so at some point near in time to December 30, 2006. Thus, NVD had approximately five months remaining in the 2006-2007 wet season in which to sample a discharge from a second storm event in compliance with the requirements of the General Permit and the Act. NVD's failure to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Further, CSPA notes that NVD's 2006-2007 Annual Report admits that NVD failed to collect a storm water sample from the first storm event of the wet season. Contrary to its response to Attachment Summary Item 4, NVD failed to attach any explanation for its failure to sample the first storm event of the 2006-2007 wet season. NVD's failure to sample the first qualifying storm event constitutes an additional and separate violation of the General Permit.

Continuing its practice of failing to collect the required minimum of two storm water samples from each discharge point, NVD also failed to collect two storm water samples during the 2008-2009 wet season. Based on CSPA's review of publicly available rainfall data from this region and a review of the historic rainfall monitoring station data, NVD's assertion that there were no qualifying storm events after October 31, 2008 during the 2008-2009 wet season simply strains credulity. For example, records from a nearby precipitation monitoring station indicate that on Monday, December 15, 2008, no less than 0.37 inches of rain fell less than three miles from the Facility. Further, December 15, 2008 was directly preceded by more than three days with no rain. Given the amount of precipitation recorded, coupled with the sufficient amount of dry days directly preceding it, Monday, December 15, 2008 was clearly a qualifying storm event at the Facility. As stated above, each storm season NVD failed to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by NVD. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

**2. NVD Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that NVD has failed to monitor for at least five other pollutants likely to be present in storm water discharges in significant quantities – chromium, manganese, mercury, nickel and nitrate+nitrite. NVD's failure to monitor these pollutants extends back at least until March 4, 2005. NVD's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. NVD Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since March 4, 2005.**

CSPA is informed and believes that available documents demonstrate NVD's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in

violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NVD is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since March 4, 2005.

**C. NVD Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that NVD has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, NVD must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the information available regarding the internal structure of the Facility, CSPA believes that at a minimum NVD must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters, treatment boxes or oil/water separator units), and/or prevent storm water discharge altogether. NVD has failed to implement such measures adequately.

NVD was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, NVD has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that NVD fails to implement BAT and BCT. NVD is subject to penalties for violations of the Order and the Act occurring since March 4, 2005.

**D. NVD Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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 also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to 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)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that NVD has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. In flagrant violation of the express wishes of the Regional Board in the communications to NVD discussed above, NVD has continuously failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. NVD has therefore been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that NVD fails to develop and implement an adequate SWPPP. NVD is subject to penalties for violations of the Order and the Act occurring since March 4, 2005.

**E. NVD Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

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

As indicated above, NVD is discharging elevated levels of total suspended solids, Iron (Fe), O&G, Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD) and Lead (Pb) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, NVD was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, NVD was aware of high levels of these pollutants prior to March 4, 2005. Likewise, NVD has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). NVD has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since March 4, 2005, and will continue to be in violation every day that NVD fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. NVD is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since March 4, 2005.

**F. NVD Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying

compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that NVD has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, NVD has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, NVD has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time NVD submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. NVD's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. NVD is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since March 4, 2005.

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

CSPA hereby puts Mike Donohue and USA Waste of California, Inc. 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, CSPA puts Mike Donohue and USA Waste of California, Inc. on notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

### **V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard, Esq.  
Erik Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, California 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

Notice of Violation and Intent To File Suit  
March 4, 2010  
Page 15 of 15

Robert J. Tuerck, Esq.  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

## **VI. Penalties.**

Pursuant to Section 309(d) of the Act (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 Mike Donohue and USA Waste of California, Inc. to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA 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 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.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Mike Donohue and USA Waste of California, Inc. for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

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

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

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

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

**ATTACHMENT A**

**Notice of Intent to File Suit, NVD (Chico, CA)  
Significant Rain Events,\* March 4, 2005-March 4, 2010**

March 19 2005	Jan. 04 2006	Nov. 26 2006	Jan. 08 2008
March 20 2005	Jan. 11 2006	Nov. 27 2006	Jan. 09 2008
March 21 2005	Jan. 14 2006	Dec. 09 2006	Jan. 11 2008
March 22 2005	Jan. 17 2006	Dec. 10 2006	Jan. 12 2008
March 27 2005	Jan. 18 2006	Dec. 11 2006	Jan. 21 2008
March 28 2005	Jan. 30 2006	Dec. 12 2006	Jan. 22 2008
April 02 2005	Jan. 31 2006	Dec. 13 2006	Jan. 24 2008
April 07 2005	Feb. 02 2006	Jan. 09 2007	Jan. 25 2008
April 08 2005	Feb. 26 2006	Feb. 08 2007	Jan. 26 2008
April 09 2005	Feb. 27 2006	Feb. 09 2007	Jan. 27 2008
April 11 2005	Feb. 28 2006	Feb. 10 2007	Jan. 28 2008
April 24 2005	Mar. 02 2006	Feb. 12 2007	Jan. 29 2008
April 25 2005	Mar. 03 2006	Feb. 13 2007	Jan. 31 2008
April 28 2005	Mar. 05 2006	Feb. 22 2007	Feb. 02 2008
May 05 2005	Mar. 06 2006	Feb. 24 2007	Feb. 19 2008
May 06 2005	Mar. 07 2006	Feb. 26 2007	Feb. 20 2008
May 08 2005	Mar. 12 2006	Feb. 28 2007	Feb. 21 2008
May 09 2005	Mar. 13 2006	Mar. 26 2007	Feb. 22 2008
May 10 2005	Mar. 14 2006	Mar. 27 2007	Feb. 23 2008
May 18 2005	Mar. 16 2006	April 11 2007	Feb. 24 2008
May 19 2005	Mar. 17 2006	April 12 2007	Mar. 15 2008
Oct. 15 2005	Mar. 20 2006	April 14 2007	April 23 2008
Oct. 17 2005	Mar. 21 2006	April 16 2007	May 24 2008
Oct. 26 2005	Mar. 24 2006	April 19 2007	Oct. 06 2008
Oct. 28 2005	Mar. 25 2006	April 21 2007	Oct. 31 2008
Oct. 31 2005	Mar. 27 2006	April 23 2007	Nov. 01 2008
Nov. 04 2005	Mar. 28 2006	May 02 2007	Nov. 03 2008
Nov. 08 2005	Mar. 29 2006	May 04 2007	Nov. 04 2008
Nov. 25 2005	April 02 2006	Oct. 01 2007	Nov. 10 2008
Nov. 28 2005	April 03 2006	Oct. 10 2007	Dec. 15 2008
Nov. 29 2005	April 04 2006	Oct. 12 2007	Dec. 24 2008
Dec. 01 2005	April 05 2006	Oct. 17 2007	Dec. 25 2008
Dec. 17 2005	April 10 2006	Nov. 10 2007	Jan. 05 2009
Dec. 18 2005	April 11 2006	Nov. 11 2007	Jan. 12 2009
Dec. 19 2005	April 12 2006	Nov. 13 2007	Jan. 13 2009
Dec. 20 2005	April 13 2006	Dec. 04 2007	Jan. 20 2009
Dec. 21 2005	April 16 2006	Dec. 07 2007	Jan. 28 2009
Dec. 22 2005	April 17 2006	Dec. 18 2007	Feb. 06 2009
Dec. 25 2005	April 22 2006	Dec. 19 2007	Feb. 09 2009
Dec. 26 2005	April 24 2006	Dec. 20 2007	Feb. 11 2009
Dec. 27 2005	May 21 2006	Dec. 21 2007	Feb. 12 2009
Dec. 28 2005	May 22 2006	Dec. 28 2007	Feb. 13 2009
Dec. 29 2005	Oct. 05 2006	Dec. 29 2007	Feb. 15 2009
Dec. 30 2005	Nov. 03 2006	Jan. 03 2008	Feb. 16 2009
Dec. 31 2005	Nov. 11 2006	Jan. 04 2008	Feb. 17 2009
Jan. 01 2006	Nov. 13 2006	Jan. 05 2008	Feb. 18 2009
Jan. 03 2006	Nov. 16 2006	Jan. 07 2008	Feb. 23 2009

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**EXHIBIT B**

**ATTACHMENT A**

**Notice of Intent to File Suit, NVD (Chico, CA)  
Significant Rain Events,\* March 4, 2005-March 4, 2010**

Feb.	24	2009	Nov.	18	2009	Dec.	30	2009	Jan.	26	2010
Feb.	26	2009	Nov.	23	2009	Jan.	04	2010	Jan.	27	2010
Mar.	01	2009	Nov.	27	2009	Jan.	12	2010	Jan.	30	2010
Mar.	02	2009	Nov.	30	2009	Jan.	13	2010	Feb.	01	2010
Mar.	03	2009	Dec.	11	2009	Jan.	14	2010	Feb.	04	2010
Mar.	04	2009	Dec.	12	2009	Jan.	17	2010	Feb.	06	2010
Mar.	23	2009	Dec.	13	2009	Jan.	18	2010	Feb.	08	2010
April	09	2009	Dec.	14	2009	Jan.	19	2010	Feb.	09	2010
May	01	2009	Dec.	16	2009	Jan.	20	2010	Feb.	22	2010
May	02	2009	Dec.	20	2009	Jan.	21	2010	Feb.	24	2010
May	05	2009	Dec.	21	2009	Jan.	22	2010	Mar.	03	2010
Oct.	13	2009	Dec.	27	2009	Jan.	24	2010			
Oct.	14	2009	Dec.	29	2009	Jan.	25	2010			

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**EXHIBIT C – Proposition 65 Notice of Violation**

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LAW OFFICES OF  
**ANDREW L. PACKARD**  
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

September 10, 2010

(See attached Certificate of Service)

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies and USA Waste of California, Inc.:

This office represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of California’s waters, including Comanche Creek, the San Joaquin River, the Sacramento River, and the Sacramento-San Joaquin Delta and their tributaries.

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code Section 25249.5 *et seq.* (also referred to as “Proposition 65”). This letter serves to provide you and the Violator with CSPA's notification of these violations. Pursuant to Section 25249.7(d) of the statute, CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies commence and diligently prosecute an action against these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is **USA WASTE OF CALIFORNIA, INC.** (hereinafter referred to as “the Violator”). These violations involve the discharge of lead and lead compounds, arsenic, cadmium, mercury and nickel to sources of drinking water. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from its facility located at 2569 Scott Avenue in Chico, California (“the Facility”).

The Violator is discharging lead and lead compounds, arsenic, cadmium, mercury and nickel from the Facility to designated sources of drinking water in violation of Proposition 65. The Violator is allowing storm water contaminated with lead and lead compounds, arsenic, cadmium, mercury and nickel to discharge from the Facility into City of Chico municipal storm water inlets, which then empty into Comanche Creek, thence to the Sacramento River.

**EXHIBIT C**

Comanche Creek, and the Sacramento River are designated as sources of drinking water in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the “Basin Plan.”

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2005. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation. CSPA’s address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Andrew L. Packard  
Erik M. Roper  
Hallie Beth Albert  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Andrew@PackardLawOffices.com

Sincerely,



Andrew L. Packard  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 100 Petaluma Boulevard North, Suite 301, Petaluma, California 94952.

On September 10, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office for delivery by Certified Mail:

C T Corporation System, Agent for Service of Process  
USA Waste of California, Inc.  
818 W. 7<sup>th</sup> Street  
Los Angeles, CA 90017

Proposition 65 Enforcement Reporting  
California Attorney General's Office  
1515 Clay Street, Ste. 2000  
Oakland, CA 94612

On September 10, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** on the following parties by placing a true and correct copy thereof in a sealed envelope, and depositing it in a US Postal Service Office for delivery by First Class Mail:

The Honorable Michael L. Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Jan Scully  
Sacramento County District Attorney  
901 “G” Street  
Sacramento, CA 95814

The Honorable Robert Kochly  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553

The Honorable David W. Paulson  
Solano County District Attorney  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street, Suite 102  
Colusa, CA 95932

The Honorable Carl Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991

The Honorable Jeff W. Reisig  
Yolo County District Attorney  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

Executed on September 10, 2010, in Petaluma, California.

A handwritten signature in black ink that reads "Erik Roper". The signature is written in a cursive style with a horizontal line underneath the name.

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Erik M. Roper  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

**EXHIBIT D – Photographs and Conceptual drawing for Retention Basin**

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**NORTH VALLEY DISPOSAL DETENTION BASIN IMPROVEMENTS**

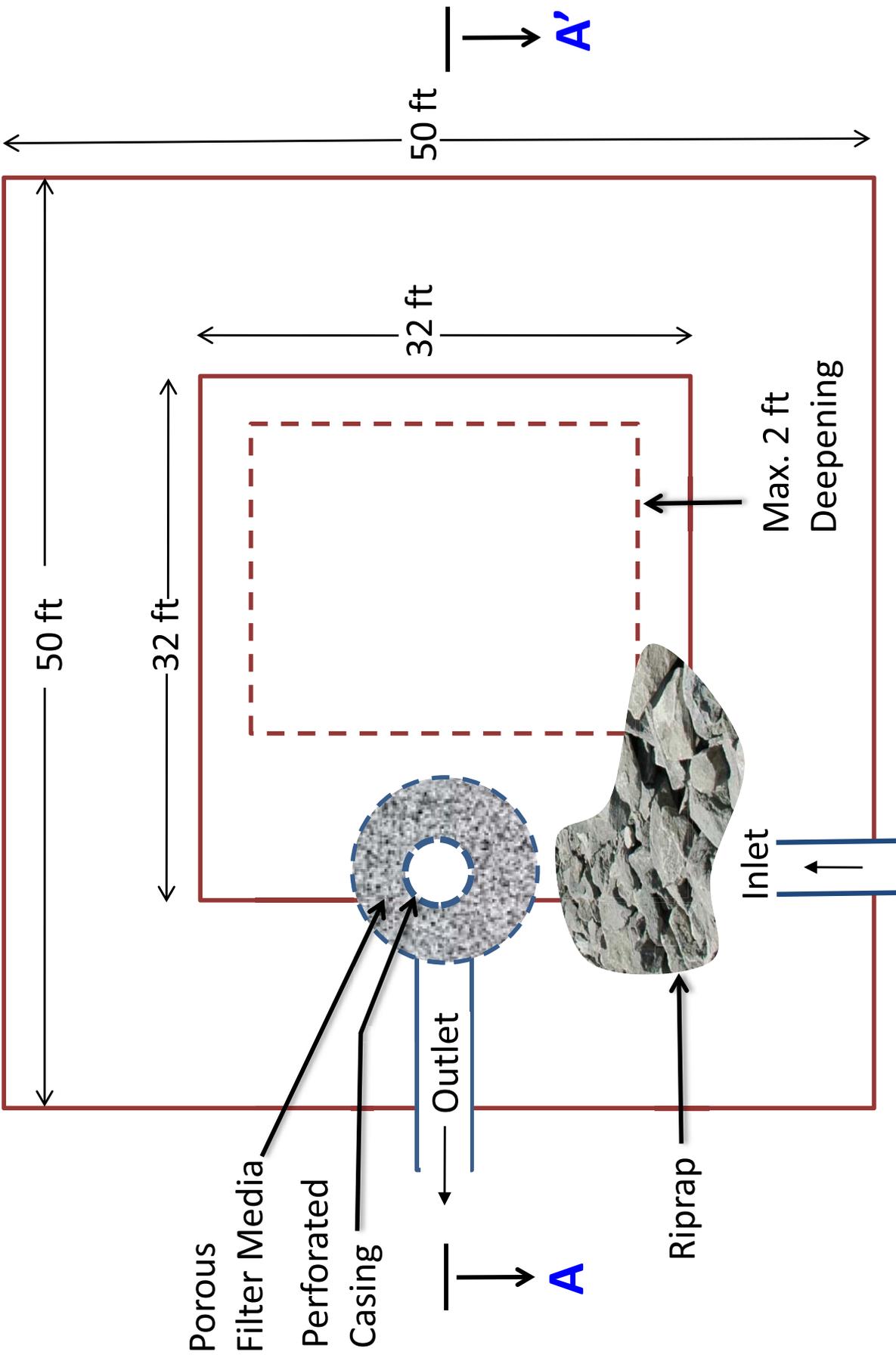
**Fall 2010**







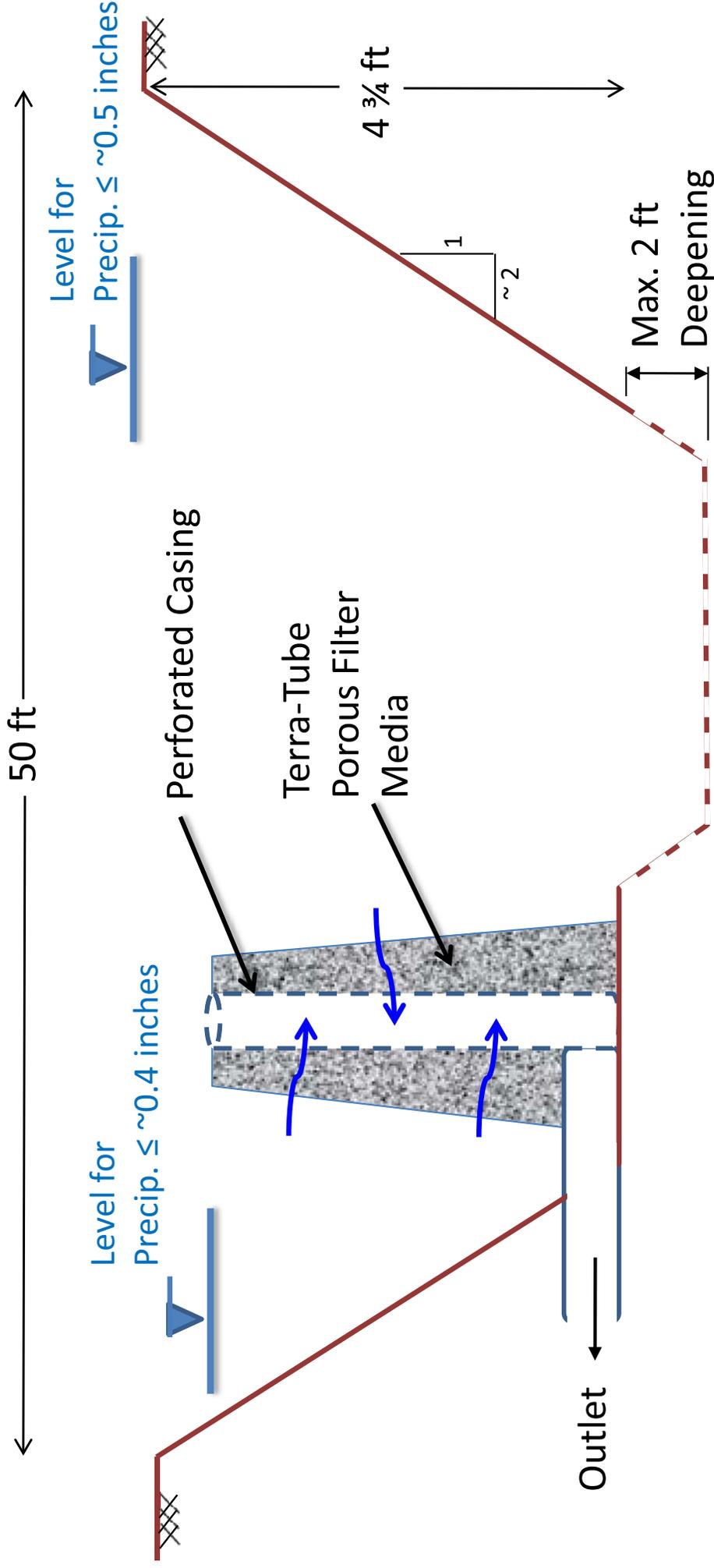
# Chico Site – Conceptual Layout (PLAN VIEW)



**NOT TO SCALE**

**EXHIBIT D**

# Chico Site – Conceptual Layout (Cross Section AA')



**NOT TO SCALE (VERTICAL SCALE IS EXAGGERATED)**

**EXHIBIT D**

**EXHIBIT E**

<b>Parameter</b>	<b>Value</b>
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Iron	1.0 mg/L
Aluminum	0.75 mg/L
Chemical Oxygen Demand	120 mg/L
Copper	0.0636 mg/L
Lead	0.0816 mg/L
Zinc	0.117 mg/L

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