CITIZEN SUIT ENFORCEMENT UNDER THE FEDERAL CLEAN WATER ACT
A Snapshot of the California Experience Based on Notices of Intent to Sue March 2009 through June 2010

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INTRODUCTION AND SUMMARY

The Office of Enforcement (OE) began tracking citizen suit notices under the federal Clean Water Act starting in March 2009. Prior that time, neither the State Water Resources Control Board nor any of the regional water boards tracked these notices on a regular basis. This analysis is prepared for notices received by the Water Boards through June 2010. This report tracks the current status of 60 notices. A summary of these notices is set forth in Attachment A.

In undertaking this project, OE sought to address the question of how citizen suit enforcement under the Clean Water Act affects the enforcement priorities of the Water Boards. Our conclusion, based on this limited sampling, is that citizen suit enforcement generally does not interfere with the enforcement actions sought by the Water Boards enforcement staff. For the most part, citizen suits address violations that the Water Boards do not have the resources to pursue with their own staff.

In some cases, citizens will pursue enforcement even when the Water Boards have initiated an enforcement action for the same violations described in a notice of intent to sue. It remains to be seen whether an independent citizen action in those circumstances provides any material benefits for compliance above those imposed through the Water Boards action.

CITIZEN SUITS ARE ENCOURAGED BY FEDERAL LAW

National Pollution Discharge Elimination System (NPDES) permits establish effluent limitations (treated or untreated wastewater from a treatment plant, sewer, or industrial site), monitoring protocols, and reporting requirements. The United States Environmental Protection Agency (U.S. EPA) and the state's enforce violations of the Clean Water Act through civil enforcement and criminal prosecution. To supplement state and federal enforcement of the Clean Water Act, Congress empowered citizens to bring their own lawsuits to stop illegal pollution discharges. The citizen suit authority can be found in subchapter V, General Provisions, section 505, of the Clean Water Act (33 U.S.C. § 1365).

If a violator does not comply with the Clean Water Act or with the regulatory agency's enforcement actions, then any person or entity that either is or might be adversely affected by any violation has the right to file a citizen suit against the violator. Citizens can seek injunctive relief (court orders prohibiting the pollution from continuing), civil penalties, and reimbursement of legal costs and attorneys' fees. Section 505(b) of the Clean Water Act regulates if and when a citizen can sue a polluter or any regulatory agency for their failure to enforce the Clean Water Act. Before a citizen can file a citizen suit against any alleged violator, the Clean Water Act requires citizen plaintiffs to send a 60-day Notice of (their) Intent to File Suit to the entity for its alleged violation, and copy the state regulatory agency and the U.S. EPA Administrator. Receipt of this notice initiates the 60-day period in which the violator must come into compliance with its permit or Administrative Order in order to avoid a court case. This "grace period" allows

a violator to comply or temporarily comply. Any citizen can file a suit against any violator of the Clean Water Act, only after the 60th day of the period of notification of Intent to Sue and if the following two actions occurred during the 60-day period: (1) the regulatory agency failed to require a violator's compliance with the Clean Water Act's effluent standards or limitations or with an Order requiring compliance with these standards or limitations, and (2) the regulatory agency did not begin, and did not continue, to diligently prosecute a civil or criminal action against the violator.

THE OFFICE OF ENFORCEMENT TRACKS CITIZEN SUIT NOTICES

The status of the matters is based on information received by OE through December 31, 2010. OE staff contacted the citizen organizations and/or the regulated entities periodically for updates on the status of the actions. Where there was a lawsuit initiated or a settlement filed, we asked for the relevant documents. Some citizen organizations were cooperative, others were less cooperative. OE intends to publish periodic updates regarding the outcomes of those notices that have not yet resulted in a final resolution. OE recognizes that the settlements that are first in time relative to the date of the initial "Notice of Intent to Sue" may reflect the degree of complexity in the violations at issue and may not serve as representative samples of the amount of monetary payments that can be obtained by the citizen action.

AUTHORITY FOR REMEDIES AND THE RECOVERY OF CIVIL PENALTIES AND LITIGATION COSTS

Injunctive relief is available pursuant to Clean Water Action sections 505(a) and (d), 33 U.S.C. sections 1365(a) and (d). In addition, citizen groups often seek declaratory relief as well. For violations occurring between March 15, 2004, and January 12, 2009, civil penalties of up to $32,500 are available for each separate violation. For violations occurring after January 12, 2009, civil penalties of up to $37,500 are possible.[1] In addition, citizen groups threaten to recover litigation costs, including attorney fees and expert witness fees pursuant to Clean Water Act section 505(d), 33 U.S.C. section 1365(d).

ANALYSIS

Outcomes of Citizen Enforcement Actions

An overall summary of the status of the 60 Notices of Intent to Sue is set forth in Attachment B. For those Notices of Intent to Sue that were resolved during the report period, summaries of the individual actions are set forth in Attachment C.

Of those sixty (60) notices, we have information on 70 percent of the matters. Eighteen (18) matters settled. An additional twenty-one (21) matters were in active negotiation or litigation. Three (3) notices are not being pursued. Based on the information in the

[1] See sections 505(a) and 309(d) of the Clean Water Act, 33 U.S.C. section 1319(d) and the U.S. EPA Regulation, Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R.section 19.4

settlement documents and the Notices of Intent to Sue, we have made some general observations and conclusions regarding citizen enforcement. All of the consent judgments which memorialize the settlements are set forth in Attachment C and are listed in chronological order.

The greatest numbers of citizen notices were filed in the jurisdictions of the Central Valley Regional Water Board (Region 5) and the San Francisco Bay Regional Water Board (Region 2). Citizen actions were not initiated in four regions during the reporting period: the Central Coast Regional Water Board (Region 3), the Lahontan Regional Water Board (Region 6), the Colorado River Regional Water Board (Region 7), and the San Diego Regional Water Board (Region 9).

Who are the Organizations Filing These Notices?

Orange County Coastkeeper
Northern California River Watch
California Sportfishing Protection Alliance
San Francisco Baykeeper
Global Community Monitor
Santa Monica Baykeeper
Communities for a Better Environment
Ecological Rights Foundation
Environmental World Watch
Our Children's Earth Foundation
TEAM Enterprises
Wild Equity Institute
Wishtoyo Foundation
Ventura Coastkeeper
John and Pauline Loades

Which Firms Represent these Citizen Organizations?

Lawyers for Clean Water, Inc.
The Law Office of Jack Silver
The Law Offices of Andrew Packard
Environmental Advocates
Lozeau Drury LLP
Greben & Associates
Kershaw, Cutter & Ratinoff, LLP
Klamath Environmental Law Center
Law Office of Suma Peesapati

What are the Remedies Sought by Citizen Organizations?

Each of the consent judgments obtained during the review period indicates that the citizen organizations obtain two general types of relief: injunctions and monetary

payments. The more prolific citizen organizations appear to have a "standard" set of requirements that are used as a template by that organization for structuring the desired relief. In addition, some citizen groups have a public initiative that they are pursuing which provides context and guidance for their actions[2].

These actions stand in contrast to the current enforcement culture of the Water Boards which tends to segment enforcement remedies into separate enforcement activities with penalties or liabilities addressed with one distinct action (i.e., administrative civil liability actions) and injunctive or remedial relief in a separate action (i.e., cleanup and abatement orders, cease and desist orders, or time schedule orders)

Injunctive Relief

The injunctive relief obtained is tailored to the violations alleged. For example, injunctions related to sanitary sewer overflow violations are different from those arising out of storm water violations. All injunctions require compliance with the permit at issue or a process for achieving compliance.

Most injunctions add the citizen organization as an additional, overseeing "regulatory" entity by requiring the submission of reports and plans to that organization.

The length of the injunctive provisions varies but no injunction appears to last longer than five (5) years.

Monetary Relief

While the citizen organization could obtain the payment of civil penalties, none of the consent judgments OE reviewed contained any civil penalties. This is likely due to the fact that any civil penalties assessed would be paid by the United States Treasury and would not directly benefit the citizen organization, or even water quality, generally. The threat of civil penalties is leveraged to obtain monetary payments for project and activities of direct interest to the citizen organization.

Instead of penalties, the payments usually fall into several general categories:

1) Reimbursement of the costs of enforcement, including legal fees
2) Environmental Project funding
3) Payments for future compliance monitoring and oversight

In addition, many consent judgments contain provisions for stipulated penalties to be paid to the citizen organization in the event that the Discharger fails to comply with one or more terms of the consent judgment, usually for missing deadlines.

[2] For example, one group is bringing its actions to address sewage spills under a general campaign entitled "Sick of Sewage." See: http://baykeeper.org/priorities/sick-sewage-campaign.

Do Citizen Notices Overlap with Regional Board Enforcement Priorities?

Citizen suits are not authorized until regulatory agencies have the opportunity to evaluate the information in the notice. If the regulatory agency acts on the alleged violations prior to the expiration of the 60-day notice period, the citizen organization may be precluded from pursuing some of the remedies sought.

OE found that only a few of the citizen suit notices addressed violations that the regional boards[3] determined to address with their own enforcement actions. For the most part, the regional enforcement staff evaluated the information in the notices and affirmatively determined that the potential citizen lawsuit would not adversely impact their regulatory or enforcement goals.

In a few cases (not necessarily cases arising from citizen suit notices covered by this report) there are situations where the regional enforcement staff has affirmatively decided to rely on a proposed citizen action to bring about comprehensive compliance at a regulated facility rather than undertake that enforcement itself. This reliance exists even where the consent judgment or settlement agree expressly notes that the settlement does not warrant or guarantee that the defendant's compliance with the agreement will result in compliance with any federal or state law or regulation. The determination has been based on an evaluation of workload versus resources and a confidence in the enforcement abilities of the citizen group, including a reliance on the citizen organization to monitor and enforce ongoing mandatory injunctive provisions. The regional boards' enforcement personnel continue to develop and refine their prioritization guidance for determining which enforcement cases to undertake and such prioritization will guide the response to future citizen suit notices.

The opportunity for regulatory conflicts and overlap exists, however, when a regional board initiates an administrative enforcement action for violations covered by a Notice for Intent to Sue. Specifically, when the citizen organization chooses to continue to pursue a federal lawsuit after a regional board initiates an administrative civil liability enforcement action for alleged violations covered by the Notice of Intent to Sue[4]. As a consequence, this means that the discharger faces two enforcement actions for the same violations, one from the Regional Water Quality Control Board and one from the citizen organization. Although the compliance goals are not materially different between the two enforcement actions, where the citizen organization insists on pursuing its action even in the face of the regional board's enforcement efforts, the transactions costs and the resolution time can significantly increase as the discharger negotiates with both the regional water board enforcement team and the citizen organization.

[3] While the State Water Resources Control Board has the legal authority to respond to a 60-day notice, the enforcement structure of the Water Boards and the allocation of resources empower the regional water boards with the primary enforcement responsibility for NPDES violations.

[4] This potential for regulatory conflict and overlap also exists in a situation where the regional board begins an administrative enforcement action after a federal citizen suite has been filed.

On rare occasions, the Water Boards themselves will utilize citizen suit provisions to pursue enforcement actions against particular defendants or to intervene in an existing citizen lawsuit to work with a citizen organization to obtain remedies of mutual interest. In one case, attorneys with OE, along with attorneys in the Attorney General's Office, represented the San Francisco Bay Regional Board in negotiations with the U.S. Maritime Administration (MARAD) regarding the resolution of water quality violations caused by discharges from the Mothball Fleet in Suisun Bay. These violations, and other hazardous waste claims, were the subject of a citizen's lawsuit brought by ARC Ecology, San Francisco Baykeeper and the Natural Resources Defense Council. The San Francisco Bay Regional Water Board) intervened as a plaintiff and the matter ultimately settled[5].

CONCLUSION

The limited information collected for this report indicates that citizen suit enforcement in California fulfills the role contemplated by the Clean Water Act. For the most part, citizen enforcement does not conflict with the enforcement priorities of the regional water boards but instead acts as an independent complement to the enforcement activities of the Water Boards. Citizen enforcement addresses violations that the regional boards can not pursue due to resource constraints. However, there is a legitimate issue regarding the appropriateness of the regional enforcement staff's reliance on citizen action to enforce post-judgment compliance where the noncompliance (i.e., continued, significant sanitary sewer overflows) indicates in new violations of Water Board permits or requirements.

Should citizen enforcement be expanded to address other water quality violations beyond those regulated under the federal Clean Water Act? The information collected by this report suggests that empowering citizens to protect waters of the State of California will not adversely affect the regulatory programs so long as the standards developed by the Water Boards subject to citizen enforcement are clear and unambiguous. Waste discharge requirements containing numeric effluent limitations are an example of the type of permit limitation that could be easily enforced by citizen action. If the expansion of citizen suit authority to enforce non-NPDES provisions of the Porter-Cologne Water Quality Control Act is seriously considered, there should be a thorough evaluation of the benefits and costs as there are significant issues not addressed by the information in this report, including the potential for abuse of citizen enforcement.

[5] Fifty-two (52) ships are addressed by the settlement. These rusting vessels will be removed and cleaned up locally before they are sent to another location where they will be scrapped. The 25 worst vessels will be addressed within two years and the remainder must be removed by September 2017. In addition, MARAD, within four months of the entry of judgment, will remove hazardous paint chips from vessel decks, will clean the surfaces of the remaining ships every 90 days until the ships are removed to keep paint from dropping into the bay, inspect the ships monthly, and collect runoff samples for testing.

Discharger	Who is Filing 60-Day Notice?
44 noticed parties including: AT&T, T-Mobile, City & County of San Francisco, Verizon, Sprint/Nextel, PG&E, Joint Pole Agreement Parties, etc.	Ecological Rights Foundation represented by Klamath Environmental Law Center
Abernathy Transfer Station & Compost Facility	California Sportfishing Protection Alliance
Adams Steel; Self Serve Auto Dismantlers (owned by George Adams and J. Ganahl) and SA Recycling LLC--owners/operators	Orange County Coastkeeper - Inland Empire Waterkeeper
Air Liquide Industrial U.S. LP	California Sportfishing Protection Alliance
American Metal Recycling, Inc., owners & operators Todd Rubin & George Adams.	Orange County Coastkeeper - Inland Empire Waterkeeper
Anderson Landfill, Inc.	California Sportfishing Protection Alliance
Baldwin Contracting Co., Inc.	California Sportfishing Protection Alliance
BCJ Sand and Rock, Inc.	California Sportfishing Protection Alliance
Cargill Salt Newark facility	California Sportfishing Protection Alliance
Cemex, Inc. & related subsidiaries.	San Francisco Baykeeper
Chico Scrap Metal - South, operated by Chico Scrap Metal, Inc.	California Sportfishing Protection Alliance
Chico Scrap Metal, Inc.	California Sportfishing Protection Alliance
City of Alameda	Our Children's Earth Foundation represented by Environmental Advocates
City of Albany	Our Children's Earth Foundation represented by Environmental Advocates
City of Arcata, Fieldbrook Glendale Community Service District	Northern California River Watch
City of Berkeley	Our Children's Earth Foundation represented by Environmental Advocates
City of Chico	California Sportfishing Protection Alliance
City of Millbrae	San Francisco Baykeeper
City of Oakland	Our Children's Earth Foundation represented by Environmental Advocates
City of Piedmont	Our Children's Earth Foundation represented by Environmental Advocates
City of San Bruno	San Francisco Bay Keeper
City of San Buenaventura, aka Ventura, Ventura County	Wishtoyo Foundation & Ventura Coastkeeper via Chris Sproul, Environmental Advocates
City of San Carlos, and West Bay Sanitary District	San Francisco Baykeeper
City of San Fransisco's Sharp Park	Wild Equity Institute
City of Sebastopol	Northern California River Watch
City of South San Francisco	San Francisco Baykeeper
Contech Construction Products	California Sportfishing Protection Alliance
Cook Concrete Products, Inc.	California Sportfishing Protection Alliance
Cooper Industries	TEAM Enterprises
Custom Alloy Scrap Sales, Inc.	Global Community Monitor
D&M Metals & J Lee's Metals, Inc., owners & operators Joong Lee & Jon Lee.	Orange County Coastkeeper - Inland Empire Waterkeeper

Davis Waste Removal, Co., Inc.	California Sportfishing Protection Alliance
DBW Metals Recycling; DBW & Associates, Inc.; David B. Williams	Orange County Coastkeeper - Inland Empire Waterkeeper
Dow Chemical Company	Northern California River Watch
Dry Creek General Store, LLC and Gina Gallo	Northern California River Watch
El Dorado Irrigation District	California Sportfishing Protection Alliance
Gustafson Auto Wrecking and Towing Inc.	California Sportfishing Protection Alliance
HJ Baker & Bro., Inc.; Ed Reheuser, Facility Operator; Matthew Smith, CEO	Communities for a Better Environment (CBE)
JSGK Inc. aka Nu Way Recycling/Nu Way Auto Dismantling	Communities for a Better Environment (CBE)
K&M Recycling/Waste Management Recycle American LLC	California Sportfishing Protection Alliance
Kramer Metals, Inc.; Spectrum Alloys, Inc.; Continental Truck and Towing Company LLC; R&P Renovators, LLC; Kramer/Spirtas, LLC; Rail Prop, LLC	Santa Monica Baykeeper
Nor-Cal Recyclers, subsidiary of Chico Scrap Metal, Inc.	California Sportfishing Protection Alliance
North State Rendering Tallow Plant	California Sportfishing Protection Alliance
Northstate Recycling (formerly Shorts Scrap)	California Sportfishing Protection Alliance
Novato Disposal Service, Inc.	California Sportfishing Protection Alliance and the Petaluma River Council
Oakland Maritime & Support Services, Inc.	Northern California River Watch
Oliver de Silva, Inc. and Double D Transportation Co.	California Sportfishing Protection Alliance
Pacific International Rice Mills, LLC; Busch Agricultural Resources	California Sportfishing Protection Alliance
Paradise Ready Mix, Inc.	California Sportfishing Protection Alliance
PG&E	Ecological Rights Foundation Environmental Law Center
PG&E	Ecological Rights Foundation represented by Klamath Environmental Law Center
PG&E, AT&T, Comcast, etc.	Ecological Rights Foundation represented by Klamath Environmental Law Center
PSH, LLC	Northern California River Watch
Recology Butte Colusa Counties, fka NorCal Waste Systems of Butte County	California Sportfishing Protection Alliance
Redwood Empire Disposal, Inc/Redwood Empire Disposal Sonoma County Inc.	California Sportfishing Protection Alliance
Remedy Environmental Services; George Caamano (owner-Remedy Environmental Services LLC); SA Recycling LLC, Macoy Resource Corporation, and/or George Caamano (Owners/operators-for Remedy Facility)	Orange County Coastkeeper - Inland Empire Waterkeeper
Republic Services, Inc./Allied Waste Services of Sacramento	California Sportfishing Protection Alliance

Ruby Metals, Inc. and Gold Coast Metals Trading, Inc., owners & operators Peter Chen, Ching Hsiung Chen and/or Chen Ying Hsiung	Orange County Coastkeeper - Inland Empire Waterkeeper
Sierra Pacific Industries--Burney	California Sportfishing Protection Alliance
Sierra Pacific Industries--Burney	California Sportfishing Protection Alliance
Sonoma County Water Agency, Occidental County Sanitation District	John and Pauline Loades
Standard Industries	Wishtoyo Foundation & Ventura Coastkeeper
Stege Sanitary District, and independent Special District of the State of California	Our Children's Earth Foundation represented by Environmental Advocates
Syar Concrete, LLC's	California Sportfishing Protection Alliance
The Walt Disney Company; Disney Enterprises, Inc.; Disney Worldwide Services, Inc.	Environmental World Watch-Kershaw, Cutter & Ratinoff
Tomra Pacific, Inc.; may also name allegedly responsible individuals: Francisco Minjavez, Randall Gusikoski.	California Sportfishing Protection Alliance
USA Waste of California, Inc.	California Sportfishing Protection Alliance
Vallejo Unified School District Transportation	California Sportfishing Protection Alliance
West Central Landfill (County owned, but jointly operated with City of Redding). 1st NOI addressed to City, 2nd NOI addressed to Shasta County.	California Sportfishing Protection Alliance
West Sonoma County Disposal Service, Inc.	California Sportfishing Protection Alliance and the Petaluma River Council

Citizen Suit Evaluation Report	Total # of NOIs =	60
Current as of 1/3/2011	% Settled =	30
	% Ongoing =	35
	% No Response =	30
	% Not Pursued =	5
	% from RB 5 =	38.3
	% from RB 2 =	35
	% from RB 1 =	10
	% from RB 4 =	8.3
	% from RB 8 =	8.3
(#) = Regional Board	% from RBs 3, 6,7 & 9 =	0

Settled with Documentation	Case is in Negotiations or Active Litigation	No Response from NGO/ No Information Beyond NOI	No Plans to Further Pursue Beyond the NOI
(8) American Metals Recycling, Inc.	(2) PG&E, AT&T – Phone Companies	(2) Air Liquide Industrial U.S. LP	(5) Dow Chemical Company
(1) Arcata, City of	(5) Abernathy Transfer Station & Compost Facility	(2) Cargill Salt Newark Facility	(4) HJ Baker & Bro, Inc.
(5) Baldwin Contracting and BCJ Sand & Rock, Inc. (Originally two separate NOIs, but they were settled in the same document)	(5) Anderson Landfill, Inc.	(2) Millbrae, City of	(2) PSH, LLC
(2) Cemex, Inc.	(5) Chico Scrap Metal, Inc.	(2) San Bruno, City of	
(5) Chico, City of – Airport	(2) Alameda, City of	(1) Sebastopol, City of	
(5) Contech Construction Products	(2) Albany, City of	(2) South San Francisco, City of	
(5) Cook Concrete Products, Inc.	(2) Berkeley, City of	(5) Davis Waste Removal, Inc.	
(2) Custom Alloy Scrap Sales, Inc.	(2) Oakland, City of	(5) K&M Recycling	
(8) D&M Metals – J Lee's Metals, Inc.	(2) Piedmont, City of	(2) Novato Disposal Services, Inc.	
(8) DBW & Associates, Inc – DBW Metals	(4) San Buenaventura, City of	(2) Oliver de Silva, Inc.	
(1) Dry Creek General Store – Gina Gallo	(5) Cooper Industries	(5) Pacific International Rice Mills, LLC	
(4) Kramer Metals, Inc.	(5) El Dorado Irrigation District	(1) Redwood Empire Disposal, Inc.	
(5) Redding, City of – Shasta, County of	(5) Gustafson Auto Wrecking and Towing, Inc.	(5) Republic Services, Inc. – Allied waste Services of California	
(8) Remedy Environmental Services – SA Recycling, LLC	(4) JSGK, Inc. – Nu Way Recycling	(1) Sonoma County water Agency	
(8) Ruby Metals, Inc.	(5) North State Rendering Tallow Plant	(5) Syar Concrete, LLC	
(2) San Carlos, City of	(5) Northstate Recycling (formerly Short Scrap)	(4) Disney Enterprises, Inc.	
(2) Tomra Pacific, Inc.	(2) Oakland Maritime & Support Services, Inc.	(2) Vallejo Unified School District	
(5) USA Waste of California, Inc.	(5) Paradise Ready Mix, Inc.	(1) West Sonoma County Disposal Services, Inc.	
	(5) Recology Butte Colusa Counties		
	(5) Sierra Pacific Industries – Burney		
	(2) Stege Sanitary District		

ATTACHMENT C

CASE SUMMARIES

ATTACHMENT C
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AMERICAN METAL RECYCLING, INC.

Organization to File NOI: Orange County Coastkeeper

Date of Notice of Intent: 6/10/2009

Violations Included in the NOI:

- Discharges of Contaminated Storm Water in Violation of the Industrial Storm Water Permit's Receiving Water Limitations
- Failure to Develop and/or Implement BMPs that Achieve Compliance with BAT/BCT
- Failure to Develop and/or Implement an Adequate SWPPP
- Failure to Develop and/or Implement an Adequate MRP
- Failure to Complete and/or Submit Required Reports in Violation of the Storm Water Permit

Date of Civil Complaint: 8/24/2009

Location of Alleged Violation: Region 8

Regional Board Action: Region 8 staff reported no major violations and no need for action on this suit.

Law Firm Handling NOI: Lawyers for Clean Water, Inc.

Attorney: Daniel Cooper, Samantha Williams

End Result: Orange County Coastkeeper and American Metal Recycling, Inc. entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Installation of Storm Water Treatment Devises
- Industrial Storm Water Pollution Control Measures
  - Materials Storage and Industrial Activities
  - Coating
  - Sweeping
  - Harvesting and Storing Runoff
  - Treating Runoff (Sand Filters)
  - Vehicle and Equipment Maintenance and Fueling
  - Routing discharge to the POTW

- Reduction of Pollutants in Discharges
- Storm Water Pollution Prevention Plan
- Monitoring and Reporting Plan (AMR Reports to OCCK)
- Compliance Monitoring (Site Inspections)

II. Monetary Payments

- Compliance Monitoring and Oversight - $10,000
- Environmental Projects and Fees and Costs - $20,000
- Coastkeeper's Fees and Costs - $110,112
- Stipulated Payment - $1,000 per missed deadline

Length of Consent Decree: Dependant upon Completion of the Implementation of All Required Action Plans

ARCATA, CITY OF

Organization to File NOI: Northern California River Watch

Date of Notice of Intent: 8/3/2009

Violations Included in the NOI:

- Collection System Overflows Caused by Underground Exfiltration
- Sewage System Overflows
- Failure to Implement and Enforce the Discharger's Pretreatment Program in Compliance with the Discharger's NPDES Permit
- Effluent Limitations: TSS, Total Coliform, Cyanide, Copper
- Failure to Monitor, Report, or Accurately Describe Violations

Date of Settlement Agreement: 1/29/2010

Location of Alleged Violation: Region 1

Regional Board Action: Majority of the violations cited in the NOI have been addressed in previous RB enforcement actions.

Law Firm Handling NOI: Law Office of Jack Silver

Attorney: Jack Silver

End Result: Northern California River Watch and the City of Arcata Entered a Settlement Agreement

Details of the Settlement Agreement:

I. Injunctive Relief

- CCTV of Gravity Lines within 5 Years
- GIS Mapping
- Spill Reporting and Response
- Private Sewer Lateral Inspections and Repair
- Creation of Website Linkage from the City's Website to CIWQS

- **II. Monetary Payments**
- Reimbursement of Attorney Fees and Costs = $30,000

Length of Settlement Agreement: 5 Years

BALDWIN CONTRACTING CO
AND
BCJ SAND & ROCK, INC.

Organization to File NOI: California Sport Fishing Protection Alliance

Date of Notice of Intent: 2/12/2010

Violations Included in the NOI:

- Pollutant Discharges in Violation of the General Industrial Storm Water NPDES Permit
- Failure to Implement an Adequate Monitoring and Reporting Plan
- Failure to Collect and Analyze Storm Water Samples
- Failure to Implement BAT and BCT
- Failure to Implement a SWPPP
- Failure to File Timely, True and Correct Reports

Date of Civil Complaint: 4/13/2010

Location of Alleged Violation: Region 5

Regional Board Action: No Action

Law Firm Handling NOI: Law Offices of Andrew Packard

Attorney: Andrew Packard

End Result: CSPA and BCCI along with BCJ Sand & Rock, Inc. entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- BMPs Specific to Mining Activities
- SWPPP Amendments/Additional BMPs
- Physical Inspections of the Facility by CSPA
- All Communications to RB and SWB Must be Sent to CSPA

II. Monetary Payments

- Mitigation = $30,000
- Reimbursement of Fees and Costs = $32,500
- Compliance Monitoring = $10,000

Length of Consent Decree: 2 Years

CEMEX, INC.

Organization to File NOI: San Francisco Baykeeper

Date of Notice of Intent: 6/19/2009

Violations Included in the NOI:

- Discharges in Excess of BAT/BCT Levels
- Discharges that Have Impaired Receiving Waters
- Non-Storm Water Discharges
- General Failure to Reduce Storm Water Pollutant Discharge to BAT and BCT Levels
- Failure to Adequately Describe Pollutant Generating Activities
- Failure to Develop and Implement an Adequate Monitoring and Reporting Program and Perform Annual Comprehensive Site Compliance Evaluations as Required by the General Report

Date of Civil Complaint: 8/13/2009

Location of Alleged Violation: Region 2

Regional Board Action: Region 2 staff is already working with the local DA and will contact the AG as an FYI.

Law Firm Handling NOI: Environmental Advocates

Attorney: Christopher Sproul

End Result: San Francisco Baykeeper and Cemex, Inc. entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Implement Appropriate Structural and Non-Structural BMPs
- Employee Training
- Storm Water Pollution Prevention Plan
- Monitoring and Reporting Plan (Results Sent to Baykeeper)
- Compliance Monitoring (Site Inspections)

II. Monetary Payments

- Compliance Monitoring and Oversight - $12,500
- Environmental Mitigation Funding - $45,000
- Reimbursement of Fees and Costs - $70,000
- Stipulated Payment
  - $350/day for Failed Communication

- $1,500/facility per Wet Season for Exceeding Benchmark Levels
- $350/day for Failure to Pay

Length of Consent Decree: Terminates on September 30, 2012

CITY OF CHICO AIRPORT

Organization to File NOI: California Sportfishing Protection Alliance

Date of Notice of Intent: 4/2/2010

Violations Included in the NOI:

- Pollutant Discharges in Violation of the NPDES Permit
- Failure to Implement an Adequate Monitoring and Reporting Plan
- Failure to Implement BAT and BCT
- Failure to Develop and Implement an Adequate SWPPP
- Failure to Address Discharges Contributing to Exceedances of Water Quality Standards

Date of Civil Complaint: 6/1/2010

Location of Alleged Violation: Region 5

Regional Board Action: Regional Board staff sent an Enforcement Letter to the City on December 15, 2009 for exceeding benchmark values for Specific Conductance. The City was requested to evaluate its BMPs and to make necessary improvements, and update their SWPPP.

Law Firm Handling NOI: Law Offices of Andrew Packard

Attorney: Andrew Packard

End Result: City of Chico and CSPA have entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- SWPPP Amendments/ Additional BMPs
- Adjustment of Sampling Frequencies and Parameters
- Site Inspections Allowed per Consent Decree
- All Compliance Communications to be Sent to CSPA

II. Monetary Payments

- Environmental Mitigation Projects = $18,000
- Attorney Fees and Costs = $25,000
- Compliance Monitoring = $6,000

Length of Consent Decree: 2 Years

CONTECH CONSTRUCTION PRODUCTS, INC.

Organization to File NOI: California Sportfishing Protection Alliance

Date of Notice of Intent: 2/8/2010

Violations Included in the NOI:

- Pollutant Discharges in Violation of the NPDES Permit
- Failure to Implement an Adequate Monitoring and Reporting Plan
- Failure to Implement BAT and BCT
- Failure to Develop and Implement an Adequate SWPPP
- Failure to Address Discharges Contributing to Exceedances of Water Quality Standards

Date of Civil Complaint: 4/14/2010

Location of Alleged Violation: Region 5

Regional Board Action: No Action

Law Firm Handling NOI: Law Offices of Andrew Packard

Attorney: Andrew Packard

End Result: Contech Construction Products, Inc. and CSPA have entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- SWPPP Amendments/ Additional BMPs
- Adjustment of Sampling Frequencies and Parameters
- Site Inspections Allowed per Consent Decree
- All Compliance Communications to be Sent to CSPA

II. Monetary Payments

- Environmental Mitigation Projects = $42,500
- Attorney Fees and Costs = $38,025
- Compliance Monitoring = $15,000

Length of Consent Decree: 4 Years

COOK CONCRETE PRODUCTS, INC.

Organization to File NOI: California Sport Fishing Protection Alliance

Date of Notice of Intent: 3/2/2010

Violations Included in the NOI:

- Pollutant Discharges in Violation of the General Industrial Storm Water NPDES Permit
- Failure to Implement an Adequate Monitoring and Reporting Plan
- Failure to Collect and Analyze Storm Water Samples
- Failure to Implement BAT and BCT
- Failure to Implement a SWPPP
- Failure to File Timely, True and Correct Reports

Date of Civil Complaint: 5/3/2010

Location of Alleged Violation: Region 5

Regional Board Action: No Action

Law Firm Handling NOI: Law Offices of Andrew Packard

Attorney: Andrew Packard

End Result: CSPA and Cook Concrete Products, Inc. entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Installation of Storm water Collection and Treatment Devices
- Physical Inspections of the Facility by CSPA
- All Communications to RB and SWB from Cook Shall Also be Sent to CSPA

II. Monetary Payments

- Water Quality Improvement Project = $35,000
- Attorney's Fees and Costs = $28,750
- Compliance Monitoring = $12,500

Length of Consent Decree: 2 Years

COUNTY OF SHASTA, CITY OF REDDING

Organization to File NOI: California Sportfishing Protection Alliance

Date of Notice of Intent: 4/8/2010

Violations Included in the NOI:

- Pollutant Discharges to the Waters of the United States in Without a NPDES Permit
- Failure to Implement an Adequate Monitoring and Reporting Plan
- Failure to Implement BAT and BCT
- Failure to Develop and Implement an Adequate SWPPP
- Failure to Address Discharges Contributing to Exceedances of Water Quality Standards

Date of Civil Complaint: 11/23/2010

Location of Alleged Violation: Region 5

Regional Board Action: No Action

Law Firm Handling NOI: Law Offices of Andrew Packard

Attorney: ndrew Packard

End Result: County of Shasta/City of Redding and CSPA have entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Facility Improvements such as Asphalt Berms, Filtration System, etc.
- SWPPP Amendments/ Additional BMPs
- Adjustment of Sampling Frequencies and Parameters
- Site Inspections Allowed per Consent Decree
- All Compliance Communications to be Sent to CSPA

II. Monetary Payments

- Environmental Mitigation Projects = $30,000
- Attorney Fees and Costs = $32,500
- Compliance Monitoring = $17,500

Length of Consent Decree: 2 Years

CUSTOM ALLOY SCRAP SALES, INC.

Organization to File NOI: Global Community Monitor

Date of Notice of Intent: 6/18/2010

Violations Included in the NOI:

- Discharges in Violation of the Industrial Storm Water Permit
- Failure to Sample, Analyze, and Inspect Storm Water Events
- Failure to Identify and Control Non-Storm Water Discharges
- Failure to Develop and Implement an Adequate Monitoring and Reporting Program
- Failure to Prepare, Implement, Review, and Update an Adequate SWPPP
- Failure to File True and Correct Annual Reports

Date of Civil Complaint: 9/10/2010

Location of Alleged Violation: Region 2

Regional Board Action: No Action

Law Firm Handling NOI: Lozeau Drury LLP

Attorney: Michael R. Lozeau

End Result: Custom Alloy Scrap Sales, Inc. and Global Community Monitor have entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Improvements to Roofing System
- Records and Logs of Sweeping to be Kept
- Additional Feasible BMPs to Reduce Further Exceedances
- Physical Inspections of the Facility
- All Communications to RB and SWB Must be Sent to GCM

II. Monetary Payments

- Mitigation Fees and Costs = $22,500
- Attorney Fees and Costs = $56,500

Length of Consent Decree: 2 Years

D&M METALS/J LEE'S METALS INC.

Organization to File NOI: Orange County Coastkeeper/ Inland Empire Waterkeeper

Date of Notice of Intent: 6/10/2009

Violations Included in the NOI:

- Discharges of Contaminated Storm Water in Violation of the Industrial Storm Water Permit's Receiving Water Limitations
- Failure to Develop and/or Implement BMPs that Achieve Compliance with BAT/BCT
- Failure to Develop and/or Implement an Adequate SWPPP
- Failure to Develop and/or Implement an Adequate MRP
- Failure to Complete and/or Submit Required Reports in Violation of the Storm Water Permit

Date of Civil Complaint: 8/13/2009

Location of Alleged Violation: Region 8

Regional Board Action: Region 8 staff reported no major violations and no need for action on this suit.

Law Firm Handling NOI: Lawyers for Clean Water, Inc.

Attorney: Daniel Cooper, Samantha Williams

End Result: Orange County Coastkeeper and D&M Metals/J Lee's Metals Inc. entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Reduction of Pollutants in Discharges
- Storm Water Pollution Prevention Plan
- Monitoring and Reporting Plan (Including Vadose Zone)
- Compliance Monitoring (Site Inspections)

II. Monetary Payments

- Compliance Monitoring and Oversight - $2,000
- Environmental Projects and Fees and Costs - $4,000
- Coastkeeper's Fees and Costs - $56,000

Length of Consent Decree: 5 Years

DBW & ASSOCIATES, INC. / DBW METALS

Organization to File NOI: Orange County Coastkeeper

Date of Notice of Intent: 7/1/2009

Violations Included in the NOI:

- Discharges of Contaminated Storm Water in Violation of the Industrial Storm Water Permit's Receiving Water Limitations
- Failure to Develop and/or Implement BMPs that Achieve Compliance with BAT/BCT
- Failure to Develop and/or Implement an Adequate SWPPP
- Failure to Develop and/or Implement an Adequate MRP
- Failure to Complete and/or Submit Required Reports in Violation of the Storm Water Permit

Date of Civil Complaint: 9/15/2009

Location of Alleged Violation: Region 8

Regional Board Action: Region 8 staff reported no major violations and no need for action on this suit.

Law Firm Handling NOI: Lawyers for Clean Water, Inc.

Attorney: Layne Friedrich, Daniel Cooper, Drevet Hunt

End Result: Orange County Coastkeeper and DBW & Associates, Inc. / DBW Metals entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Installation of Storm Water Treatment Devises
- Industrial Storm Water Pollution Control Measures
    - Materials Storage and Industrial Activities
    - Coating
    - Sweeping
    - Harvesting and Storing Runoff
    - Treating Runoff
    - Vehicle and Equipment Maintenance and Fueling
    - Discharge Elimination
- Reduction of Pollutants in Discharges
- Storm Water Pollution Prevention Plan
- Employee Training
- Compliance Monitoring

II. Monetary Payments:

- Compliance Monitoring and Oversight - $5,000
- Environmental Projects and Fees and Costs - $15,000
- Coastkeeper's Fees and Costs - $51,500
- Stipulated Payment - $1,000 per missed deadline

Length of Consent Decree: 5 Years from Effective Date

GINA GALLO/DRY CREEK GENERAL STORE

Organization to File NOI: Northern California River Watch

Date of Notice of Intent: 10/23/2009

Violations Included in the NOI:

- Discharges in Violation of the Clean Water Act and Basin Plan without NPDES Permit

Date of Settlement Agreement: 8/19/2010

Location of Alleged Violation: Region 1

Regional Board Action: Staff had already referred site to County Code Enforcement prior to receiving notice of suit.

Law Firm Handling NOI: Law Office of Jack Silver

Attorney: Jack Silver

End Result: Northern California River Watch and Gina Gallo/Dry Creek General Store Entered a Settlement Agreement

Details of the Settlement Agreement:

I. Injunctive Relief

- Before December 31, 2011, the Dry Creek General Store LLC Shall Complete the Implementation of One of the Following Three 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, or a Similar Treatment System.

II. Monetary Payments

- Reimbursement of Attorney Fees and Costs = $10,000

Length of Settlement Agreement: 5 Years

KRAMER METALS, INC.

Organization to File NOI: Santa Monica Baykeeper

Date of Notice of Intent: 3/10/2007

Violations Included in the NOI:

- Effluent Limitation Violation of the General Permit
- Violations of Receiving Water Limitations of the General Permit

Date of Civil Complaint: 6/13/2007

Location of Alleged Violation: Region 4

Regional Board Action: No Action

Law Firm Handling NOI: Lawyers for Clean Water, Inc.

Attorney: Daniel Cooper

End Result: Santa Monica Baykeeper and Kramer Metals, Inc. entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Discharge Minimization Plan
- Develop BMP Plan for Industrial Storm Water Generated at the Kramer Facility
- Kramer is to Revise SWPPP for Baykeeper's Review
- Site Inspections by Baykeeper's Water Quality Engineer
- Kramer Inc. is to Provide Baykeeper with Monthly Compliance and Monitoring Data

II. Monetary Payments

- Compliance Monitoring and Oversight = $10,000
- Environmental Mitigation Project = $95,000
- Baykeeper's Fees and Cost = $345,000
- Stipulated Payments = $1,000 per missed deadline

RUBY METALS, INC.

Organization to File NOI: Orange County Coastkeeper/ Inland Empire Waterkeeper

Date of Notice of Intent: 6/23/2009

Violations Included in the NOI:

- Discharges of Contaminated Storm Water in Violation of the Industrial Storm Water Permit's Discharge Prohibitions and Receiving Water Limitations
- The Ruby Metals Owners and/or Operators' Failure to Obtain Coverage Under the Storm Water Permit for the 2820 Facility
- Failure to Develop and/or Implement BMPs that Achieve Compliance with BAT/BCT
- Failure to Develop and/or Implement an Adequate SWPPP
- Failure to Develop and/or Implement an Adequate MRP
- Failure to Complete and/or Submit Required Reports in Violation of the Storm Water Permit

Date of Civil Complaint: 9/9/2009

Location of Alleged Violation: Region 8

Regional Board Action: Region 8 staff reported no major violations and no need for action on this suit.

Law Firm Handling NOI: Lawyers for Clean Water, Inc.

Attorney: Daniel Cooper, Samantha Williams

End Result: Orange County Coastkeeper and Ruby Metals, Inc. entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Installation of Storm Water Drainage and Capture Devises
- Industrial Storm Water Pollution Control Measures
    - Materials Storage and Industrial Activities
    - Coating
    - Sweeping
    - Harvesting and Storing Runoff
    - Treating Runoff (Sand Filters)
    - Vehicle and Equipment Maintenance and Fueling
    - Routing discharge to the POTW

- Reduction of Pollutants in Discharges
- Storm Water Pollution Prevention Plan
- Monitoring and Reporting Plan (Sent to Waterkeeper)
- Compliance Monitoring (Site Inspections)

II. Monetary Payments

- Compliance Monitoring and Oversight - $5,000
- Environmental Projects and Fees and Costs - $30,000
- Coastkeeper's Fees and Costs - $45,000
- Stipulated Payment - $1,000 per missed deadline

Length of Consent Decree: 5 Years

SA RECYCLING, LLC
AND
REMEDY ENVIRONMENTAL SERVICES

Organization to File NOI: Orange County Coastkeeper

Date of Notice of Intent: 7/1/2009

Violations Included in the NOI:

- Discharges of Contaminated Storm Water in Violation of the Storm Water Permit's Receiving Water Limitations
- Failure to Develop and/or Implement BMPs that Achieve Compliance with BAT/BCT
- Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan
- Failure to Develop and/or Implement an Adequate Monitoring and Reporting Program
- Failure to Complete and/or Submit required Reports in Violation of the Storm Water Permit

Date of Settlement Agreement: 8/9/2010

Location of Alleged Violation: Region 8

Regional Board Action: No Action

Law Firm Handling NOI: Lawyers for Clean Water, Inc.

Attorney: Layne Friedrich, Daniel Cooper, Drevet Hunt

End Result: Orange County Coastkeeper and SA Recycling Entered a Settlement Agreement

Details of the Settlement Agreement:

I. Injunctive Relief

- Storm Water Sampling During the 2010/2011 Wet Season for Each Storm Event
- SA Recycling must Report Sample Data to OCCK
- Continuation of the Storm Water Pollution Prevention Plan
- Employee Training Concerning the Prohibition on Sweeping Storm Water from the Facility onto the Street.

II. Monetary Payments

- Reimbursement of Attorney Fees and Costs = $55,000
- Reimbursement of Direct Costs and Non-Legal Expenses = $14,000

- Environmental Restoration Project = $20,000

Length of Settlement Agreement: 1 Year

SAN CARLOS, CITY OF

Organization to File NOI: San Francisco Baykeeper

Date of Notice of Intent: 9/28/2009

Violations Included in the NOI:

- Discharges of Sewage from the Collection System in Violation of the Clean Water Act
- Discharges of Sewage from the Collection System in Violation of the MS4 Permit and the Clean Water Act

Date of Civil Complaint: 12/2/2009

Location of Alleged Violation: Region 2

Regional Board Action: Not a high priority for Region 2. No action.

Law Firm Handling NOI: Lawyers for Clean Water, Inc.

Attorney: Daniel Cooper, Samantha Williams

End Result: San Francisco Baykeeper and the City of San Carlos entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- SSO Reduction Goals
- Capacity Assurance
- Sewer Condition Assessment/Rehabilitation/Replacement
- Implement a Fat, Oils, and Grease Program
- Sewer Cleaning, Hot Spots, and Lateral Programs
- Private Lateral Inspections Proposed to City Council
- Chemical Root Control Program
- Annual Reporting to Baykeeper

II. Monetary Payments

- Environmental Mitigation Project = $200,000
- Litigation Fees and Costs = $95,000
- Compliance Monitoring = $55,000
- Stipulated Payments = maximum of $18,000/report

TOMRA PACIFIC, INC.

Organization to File NOI: California Sportfishing Protection Alliance

Date of Notice of Intent: 12/1/2009

Violations Included in the NOI:

- Discharges in Violations of the Permit
- Failure to Sample and Analyze Storm Events and Mandatory Parameters
- Failure to Prepare, Implement, Review, and Update an Adequate SWPPP
- Failure to Implement and Develop and Adequate Monitoring and Reporting Program
- Failure to File True and Correct Annual Reports

Date of Civil Complaint: 2/18/2010

Location of Alleged Violation: Region 2

Regional Board Action: No Action

Law Firm Handling NOI: Lozeau Drury

Attorney: Michael Lozeau

End Result: Tomra Pacific, Inc. and CSPA have entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Installation of Collection and Treatment Unit
- Site Inspections
- Additional Sampling and Monitoring
- All Reports and Communication to CSPA

II. Monetary Payments

- Environmental Mitigation Projects = $35,000
- Attorney Fees and Costs = $40,000
- Compliance Monitoring = $1,500

Length of Consent Decree: 3 Years

USA WASTE OF CALIFORNIA, INC.

Organization to File NOI: California Sportfishing Protection Alliance

Date of Notice of Intent: 3/10/2010

Violations Included in the NOI:

- Pollutant Discharges in Violation of the NPDES Permit
- Failure to Implement an Adequate Monitoring and Reporting Plan
- Failure to Implement BAT and BCT
- Failure to Develop and Implement an Adequate SWPPP
- Failure to Address Discharges Contributing to Exceedances of Water Quality Standards

Date of Civil Complaint: 11/5/2010

Location of Alleged Violation: Region 5

Regional Board Action: No Action

Law Firm Handling NOI: Law Offices of Andrew Packard

Attorney: Andrew Packard

End Result: USA Waste of California, Inc. and CSPA have entered a consent decree.

Details of the consent decree:

I. Injunctive Relief

- Additional Feasible BMPs to Reduce Further Exceedances
- Physical Inspections of the Facility
- All Communications to RB and SWB Must be Sent to CSPA
- Additional Sampling of Storm Water

II. Monetary Payments

- Environmental Mitigation Projects = $40,000
- Attorney Fees and Costs = $32,500
- Compliance Monitoring = $7,500

Length of Consent Decree: 2 Years

LAWYERS FOR CLEAN WATER, INC.
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Attorneys for Plaintiff INLAND EMPIRE WATERKEEPER, a program of ORANGE COUNTY COASTKEEPER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE WATERKEEPER, a program of ORANGE COUNTY COASTKEEPER, a non-profit corporation, Plaintiff, v. AMERICAN METAL RECYCLING, INC., a California corporation, Defendant.	Case No. CV 09- 06147 GAF (RZx) **[Proposed] CONSENT DECREE** **(Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq*.)**

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

WHEREAS, Orange County Coastkeeper is a non-profit corporation dedicated to the preservation, protection and defense of the environment, the wildlife, and the natural resources of Orange County area waters, including the Santa Ana River Watershed and its receiving waters;

WHEREAS, Inland Empire Waterkeeper and Orange County Coastkeeper are collectively referred to herein as ("Waterkeeper" or "Plaintiff");

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

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

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

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

WHEREAS, Waterkeeper and American Metal (collectively referred to herein as the "Settling Parties" or "Parties") have agreed that it is in the Parties' mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings; and

WHEREAS, all actions taken by American Metal pursuant to this Consent Decree shall be made in compliance with all applicable federal, state and local rules and regulations;

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

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A);

2. Venue is appropriate in the Central District Court pursuant to Section 505(c)(1) of the Act, 33 U.S.C. §1365(c)(1), because the Facility at which the alleged violations took place is located within this District;

3. The Complaint states a claim upon which relief may be granted against American Metal pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

4. Waterkeeper has standing to bring this action.

5. The Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

I. OBJECTIVES

6. It is the express purpose of the Parties entering into this Consent Decree to further the objectives set forth in Section 101 *et seq*. of the CWA, 33 U.S.C. § 1251 *et seq*., and to resolve those issues alleged by Waterkeeper in its Complaint. In light of these objectives and as set forth fully below, American Metal agrees, *inter alia*, to comply with the provisions of this Consent Decree and to comply with the requirements of the Industrial Permit and all applicable provisions of the CWA at the Facility. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the Facility "not cause or contribute to the exceedance of an applicable water quality

standard." Effluent Limitation B(3) of the Industrial Permit requires that Best Management Practices ("BMPs") be developed and implemented to achieve Best Available Technology ("BAT") and the Best Conventional Pollutant Control Technology ("BCT"). American Metal is required to develop and implement BMPs necessary to comply with the Industrial Permit's requirement to achieve compliance with BAT/BCT standards and with Water Quality Standards. BMPs must continue to be developed and implemented to prevent discharges or to reduce contamination in storm water discharged from the Facility sufficient to achieve the numeric limits detailed in Tables 1 and Table 2 in section II.B below.

II. COMMITMENTS OF THE PARTIES

A. Industrial Storm Water Pollution Control Measures

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

8. American Metal is in the process of developing and implementing a storm water discharge treatment system involving the use of stormwater holding tanks and filters designed to harvest, capture, store, and treat stormwater prior to discharge from the southeast corner of the Facility. In accordance with the requirements of section II.C below, within thirty (30) days of the Effective Date of this Consent Decree, American Metal shall revise the Stormwater Pollution Prevention Plan ("SWPPP") currently in effect at the Facility to fully describe the current features and treatment capacity of this stormwater treatment system. In addition, American Metal agrees to develop,

implement, and/or continue to maintain, as applicable, additional measures as necessary to reduce contamination in storm water discharged from the Facility to levels below the numeric limits set forth in Table 1 and Table 2 in section II.B below. These additional measures may include:

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

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

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

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

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

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

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

(h) Vehicle and Equipment Maintenance and Fueling.

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

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

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

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

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

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

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

B. Sampling, Monitoring, Inspecting, and Reporting

9. Sampling Program. Within thirty (30) days of the Effective Date of this Consent Decree, Defendant shall revise its monitoring and reporting plan ("M&RP") to comply with this section. All storm water discharge locations shall be sampled at the Facility. Storm water samples collected must represent the discharge at the point it leaves the Facility. For example, if storm water is discharging from both sides of a driveway, two separate storm water samples must be collected from each side of the driveway. Additionally, sampling of stored or contained storm water shall occur at the

time the stored or contained storm water is released. Finally, the M&RP shall be revised to include sampling at all new or additional discharge points created in the future.

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

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

12. Defendant shall analyze the samples for the constituents identified in Table 1 and Table 2. A California State certified laboratory shall perform all sample chemical analyses. Defendant shall select laboratories and analytical limits such that, at a minimum, the method detection limits ("MDLs") shall be below both the Table 1 and Table 2 Limits set forth herein, with the exception of PCBs. When testing for PCBs, Defendant shall analyze samples using gas chromatography, SW-486, method 8082. In

addition, Defendant shall perform sampling as required by the Industrial Permit for the Facility.

13. BAT/BCT and Technology Based Limits:[1] The BAT/BCT limits are as follows:

Table 1

Contaminant (All metals are total recoverable)	**Limit (All but pH expressed as Mg/L)**
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	1.00
Mercury	0.0024
Nickel	1.417
Silver	0.0318
Chemical oxygen demand	120
pH	6.0-9.0 units

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

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[1] 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. Defendant shall analyze for hardness when collecting samples and Defendant may adjust limits based on hardness where applicable.

Table 2

Contaminant	Limit (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

15. Action Plan for Table 1 or Table 2 Exceedances. American Metal shall 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. Disputes regarding the action plan shall be subject to the dispute resolution procedures in Section IV 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. Defendant shall provide Waterkeeper with a Benchmark Action Plan within thirty (30) days of American Metal's receipt of storm water sampling data demonstrating an exceedance of a Benchmark Level at the Facility. The Action Plan shall include at a minimum: (1) the identification of the pollutant(s) discharged in excess of the Benchmark Levels, (2) an assessment of the source of each pollutant exceedance, (3) the identification of additional BMPs that will be implemented to achieve compliance with the Benchmark Levels set forth in Table 1, and (4) time schedules for implementation of the proposed BMPs. Waterkeeper shall have thirty (30) days upon receipt of Defendant's Benchmark Action Plan to provide Defendant with comments. Defendant shall have sixty (60) days from the date Waterkeeper comments on Defendant's Benchmark Action Plan to implement any

additional non-structural or structural BMPs recommended by Waterkeeper. Within this sixty (60) day period American Metal shall provide a written explanation if American Metal does not develop and/or implement any of Waterkeeper's recommended additional BMPs. If any structural BMPs require any agency approval, then Defendant shall contact Waterkeeper to request an extension of the deadline to implement the structural BMPs requiring agency approval. Waterkeeper's consent to Defendant's requested extension shall not be unreasonably withheld. Defendant shall notify Waterkeeper in writing when the Action Plan has been implemented.

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

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

16. Development of categorical discharge permit for scrap metal industry. Waterkeeper and certain members of the scrap metal recycling industry are currently involved in a process to develop a proposed categorical storm water permit for the scrap metal recycling industry. In the event that these negotiations result in execution by Waterkeeper of an agreement with American Metal and other scrap metal recyclers establishing a proposed categorical storm water permit that includes BMPs and numeric limits for the contaminants set forth in Table 1 or Table 2 above ("Agreement"), then the applicable terms of the proposed categorical storm water permit shall be substituted for

the Commitments of the Parties in Section II of this Consent Decree, except for the commitments in Paragraphs 11, 12, 19, 20, 21, 22, 23, 24, and 25, which shall remain enforceable. Upon execution of the Agreement by Waterkeeper and American Metal, any storm water discharge sampling at the Facility revealing an exceedance of the limits set forth in the proposed categorical storm water permit developed by the parties and agreed to by Waterkeeper and American Metal shall constitute a violation of this Consent Decree.

C. Storm Water Pollution Prevention Plan

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

18. Waterkeeper's Review of Revised SWPPP. Defendant agrees to submit the revised SWPPP to Waterkeeper for review and comment as soon as it is completed but in any event no later than thirty (30) days from the Effective Date of this Consent Decree. Within thirty (30) days of Waterkeeper's receipt of the revised SWPPP, Waterkeeper shall provide Defendant with comments and suggestions, if any, concerning the revisions to the SWPPP. Within thirty (30) days of Defendant's receipt of Waterkeeper's

comments on the revised SWPPP, Defendant shall incorporate Waterkeeper's comments and re-issue the SWPPP. Any disputes as to the adequacy of the SWPPP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV below.

D. Monitoring and Reporting

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

20. Compliance Monitoring and Oversight. American Metal agrees to help defray Waterkeeper's reasonable costs incurred in conducting Site Inspections and compliance monitoring by reimbursing Waterkeeper Ten Thousand Dollars ($10,000) for these costs within thirty (30) days of the Effective Date of this Consent Decree. American Metal agrees to make compliance monitoring and oversight funds payable to "Lawyers for Clean Water Attorney Client Trust Account" and delivered by certified

mail or overnight delivery to Lawyers for Clean Water, Inc., 1004A O'Reilly Avenue, San Francisco, California 94129 attention Layne Friedrich.

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

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

E. Environmental Projects and Fees and Costs

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

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

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

F. Commitments of Plaintiff

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

27. Review by Federal Agencies**.** Plaintiff shall submit this Consent Decree to EPA and the U.S. Department of Justice ("DOJ") within three days of the final signature of the Parties for review consistent with 40 C.F.R. § 135.5. The agency review period

expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts, copies of which shall be provided to Defendant if requested. In the event that EPA or DOJ object to entry of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

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

III. EFFECTIVE DATE AND TERMINATION DATE

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

30. This Consent Decree will terminate after demonstration by American Metal that it has completed implementation of all required Action Plan(s) provided for under paragraph 15 above. If the proposed categorical storm water permit agreed to under paragraph 16 provides for preparation of an action plan(s) in the event that sampling data reveal an exceedance of any limit for any constituent(s) under the proposed categorical permit, then the Consent Decree will terminate after American Metal has completed implementation of all action plan(s) provided for under the terms of the proposed categorical storm water permit, if agreed to by Waterkeeper and American Metal. To make the demonstration under paragraph 15, or under the action plan(s) required by the

terms of the categorical storm water permit, American Metal shall provide Waterkeeper with a written report showing that all structural and/or non-structural BMPs required by the Action Plan(s) have been implemented and are functioning at the Facility. At its discretion, Waterkeeper, Waterkeeper's Water Quality Engineer, accompanied by Waterkeeper's attorney or other representative, shall have thirty (30) days from receipt of the written report required to make the demonstration that the action plan(s) have been implemented and are functioning at the Facility to conduct a site inspection prior to termination of this Consent Decree.

IV. DISPUTE RESOLUTION

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

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

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

34. If Waterkeeper initiates a motion or proceeding before the Court relating to enforcement of the terms and conditions of this Consent Decree, Waterkeeper shall be

entitled to recover fees incurred to enforce the terms of this Consent Decree consistent with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §1365 and § 1319.

V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

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

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

VI. MISCELLANEOUS PROVISIONS

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

38. Force Majeure. Defendant shall notify Waterkeeper pursuant to the terms of this paragraph, when implementation of the requirements set forth in this Consent Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good-faith efforts of Defendant, due to circumstances beyond the reasonable control of Defendant or its agents, and which could not have been reasonably foreseen and prevented by the exercise of due diligence by Defendant. Any delays due to Defendant's failure to make timely and bona fide applications and to exercise diligent

efforts to obtain any necessary permits, or due to normal inclement weather, shall not, in any event, be considered to be circumstances beyond American Metal's control. Force majeure shall not include economic hardship or inability to pay.

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

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

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

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

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

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

If to Plaintiff:

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

With copies to:

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

If to Defendant:

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

With copies to:

Todd Rubin
American Metal Recycling, Inc.

11150 Redwood Avenue
Fontana, CA 92337

Notifications of communications shall be deemed submitted three days after the date that they are 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. In addition, the Parties may agree to transmit documents electronically or by facsimile.

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

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

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

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

47. Integration Clause. This is an integrated Consent Decree. This Consent Decree 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 Consent Decree.

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

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

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

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

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

LAWYERS FOR CLEAN WATER, INC.

Dated: 3 June ~~May~~ 2010

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

INLAND EMPIRE WATERKEEPER

Dated: 3 June ~~May~~ 2010 by:

Garry Brown
Inland Empire Waterkeeper/
Orange County Coastkeeper

SELMAN BREITMAN, LLP

Dated: 31 May 2010

Jennifer Friend
Attorney for Defendant
American Metal Recycling, Inc.

AMERICAN METAL RECYCLING, INC

Dated: 28 May 2010 by:

Todd Rubin
American Metal Recycling, Inc.

AMERICAN METAL RECYCLING, INC.

Dated: 28 May 2010 by: _____

George Adams
American Metal Recycling, Inc.

IT IS SO ORDERED.

Dated: _____

_____

Honorable Gary A. Feess
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

May 29 2010 10:05 HP LASERJET FAX 18454854720 p.2

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

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~~
jbernhaut@yahoo.com

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

Nancy Diamond
Arcata City Attorney
822 G Street, Suite 3
Arcata, California 95521
Telephone: (707) 826-8540
Facsimile: (707) 826-8541
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

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 E. Bacigalupi
Name: Margaret Bacigalupi
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.

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

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

Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiff, vs. BALDWIN CONTRACTING COMPANY, INC., a California corporation, BCJ SAND AND ROCK, INC., a California corporation, J. BRAD SLENDER, an individual, TED HALE, an individual, MASON RICHARDSON, an individual, and RENE VERCRUYSSEN, 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

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

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

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

WHEREAS, storm water discharges associated with industrial activity are regulated pursuant to the 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 Water Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter "General Permit");

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

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

WHEREAS, CSPA filed a complaint ("Complaint") against Defendants in the United States District Court, Eastern District of California, on April 13, 2010 and filed a First Amended Complaint

on June 28, 2010;

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

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

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

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

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

I. COMMITMENT OF DEFENDANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are are 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.

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

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

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

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

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

II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS

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

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

12. **Payment Schedule.** Pursuant to Paragraphs 10 and 11 herein, Defendants are jointly and severally liable for a total payment of $62,500, all of which shall made payable to the "Law

Offices of Andrew L. Packard Attorney-Client Trust Account" and delivered to Plaintiff's counsel's address pursuant to the Notice provisions herein upon the following schedule: (a) an initial payment in the amount of $22,500 shall be due within twenty-one (21) days of the mutual execution of this Consent Agreement; (b) a second payment in the amount of $20,000 shall be due within forty-five (45) days of the Court Approval Date; and (c) a third payment in the amount of $20,000 shall be due within one hundred thirty-five (135) days of the Court Approval Date.

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

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

III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT

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

values specified on Exhibit C and the Action Memorandum, if a dispute under this Consent Agreement arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet and confer within seven (7) 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, including implementation dates, 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 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 filing a motion with the District Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

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

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

17. **Defendants' Waiver and Release.** Defendants, on their own behalf and on behalf of those Released Defendant Parties under its control, releases CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain to the Action, 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 Action.

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

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

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

IV. MISCELLANEOUS PROVISIONS

19. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Agreement constitute or be construed as an admission by Defendants 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 Consent Agreement.

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

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

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

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

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

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

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

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

With copies sent to:

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

And to:

Michael R. Lozeau
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, CA 94501
Tel: (510) 749-9102
E-mail: Michael@LozeauDrury.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. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

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

And to:

René Vercruyssen
Baldwin Contracting Company, Inc.
1764 Skyway
Chico, CA 95928
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

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.

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

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

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

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

Dated: 22 August 2010

California Sportfishing Protection Alliance

By: _____

Bill Jennings, Executive Director

Dated: 8/20/10

Baldwin Contracting Company, Inc., a California corporation

By: _____
René Vercruysse
BM/VP

Dated: 8-20-10

BCJ Sand and Rock, Inc., a California corporation

By: _____
J. Brad Slender

Dated: _____

By: _____
Ted Hale

Dated: _____

Baldwin Contracting Company, Inc., a California corporation

By: _____
René Vercruyssen

Dated: 8-20-10

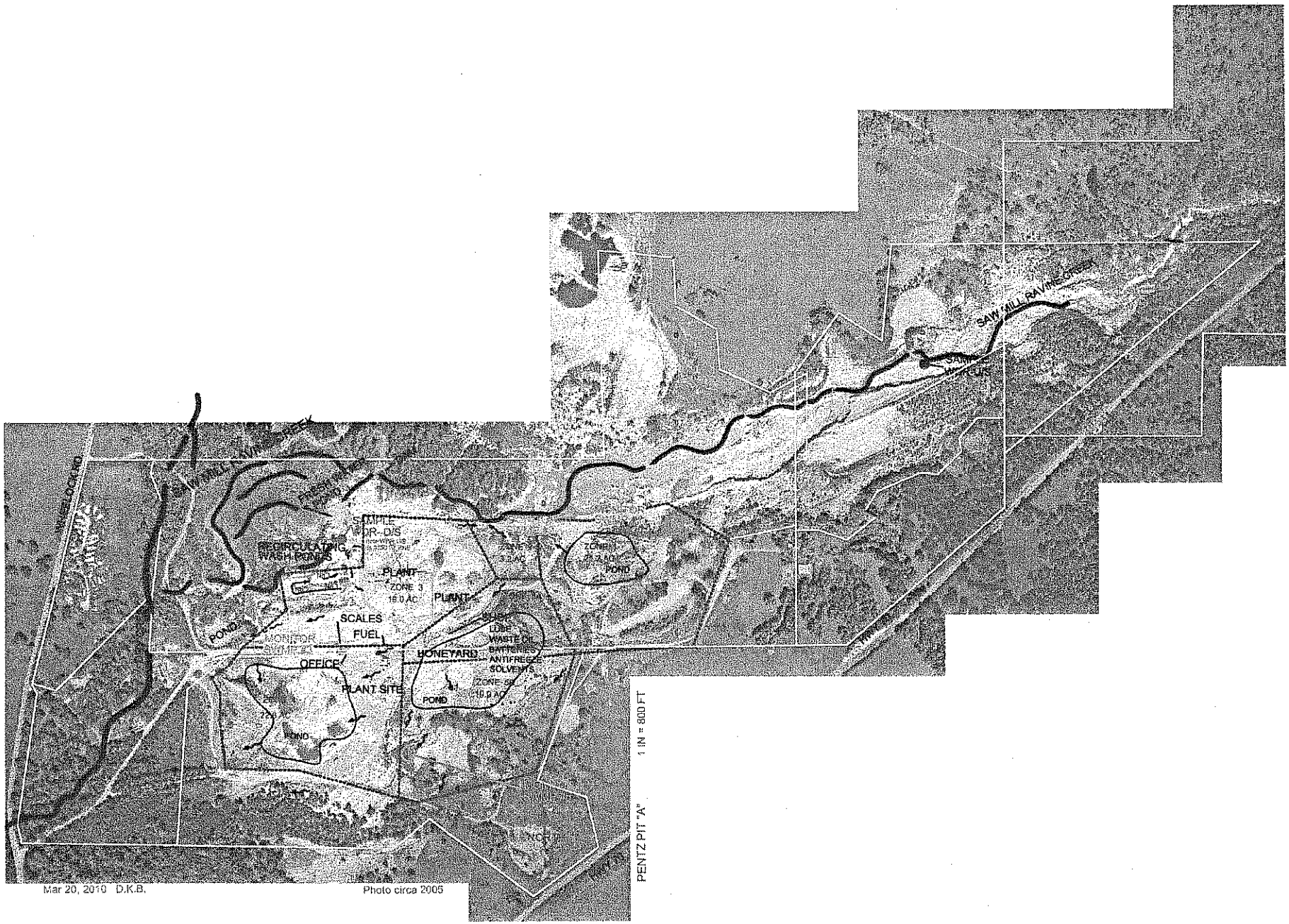
BCJ Sand and Rock, Inc., a California corporation

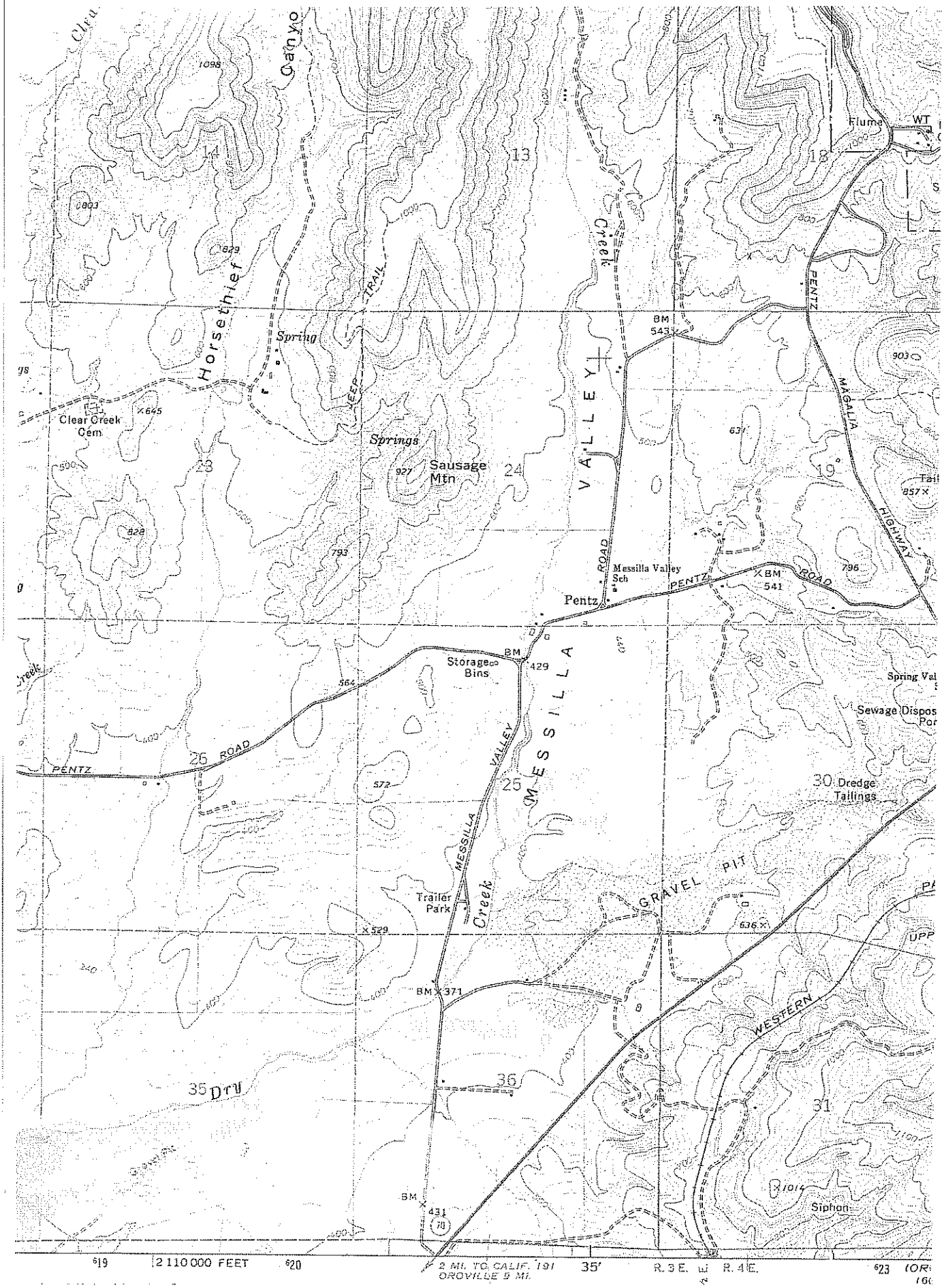
By: _____
J. Brad Slender

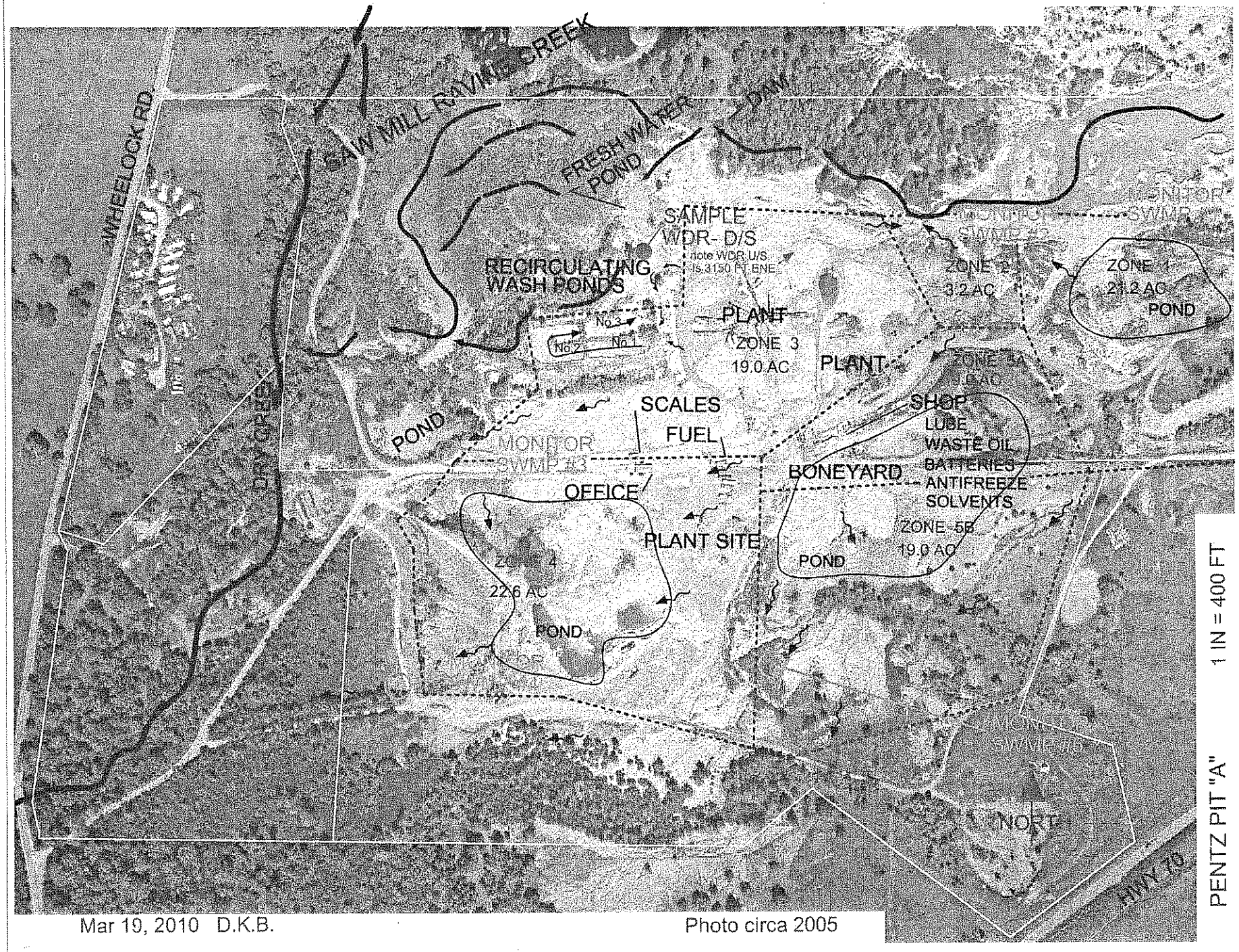
Dated: 8-20-2010

By: _____
Ted Hale

EXHIBIT A – Facility Site Map


SAW MILL RAVINE CREEK
SAW MILL RAVINE CREEK
SAW MILL RAVINE CREEK
WESTGOARD
SIMPLE
DR-D/S
RECIRCULATING WASH RACKS
PLANT
ZONE 3
16.0 AC
PLANT
ZONE 3
3.5 AC
ZONE 3
2.4 AC
POND
POND
SCALES
FUEL
MOTOR
OFFICE
PLANT SITE
POND
POND
HONEYYARD
WASTE OIL
BATTERIES
ANTIFREEZE
SOLVENTS
ZONE 5B
16.0 AC
PENTZ PIT "A"
1 IN = 800 FT
Mar 20, 2010 D.K.B.
Photo circa 2005


Horsethief Canyo
Spring
TRAIL
JEEP
Clear Creek Cem
Springs
Sausage Mtn
VALLEY
Creek
MESSILLA
ROAD
PENTZ
Messilla Valley Sch
Pentz
BM 543
BM 541
MAGALIA
HIGHWAY
Flume
WT
Storage Bins
BM 429
26 ROAD
PENTZ
Sewage Dispos
30 Dredge Tailings
GRAVEL PIT
Trailer Park
MESSILLA VALLEY
Creek
BM X371
WESTERN
35 Dry
36
31
Siphon
BM 431
2 MI. TO CALIF. 191
OROVILLE 5 MI.
2 110 000 FEET
R. 3 E.
R. 4 E.



Mar 19, 2010 D.K.B.

Photo circa 2005

PENTZ PIT "A"

1 IN = 400 FT

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

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.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
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 Vercruyssen 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
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And to:

Robert J. Tuerck, Esq.
Jackson & Tuerck
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Quincy, CA 95971
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Fax: 530-283-0416
E-mail:Bob@JacksonTuerck.com

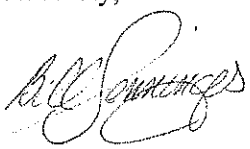
VI. Penalties.

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

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, 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

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.[1] 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

[1] 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[2] 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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[2] 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.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
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.
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100 Petaluma Blvd North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
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And to:

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

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Fax: 530-283-0416
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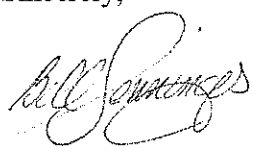
VI. Penalties.

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

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	200 μmho/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Total Nitrates/Nitrites	0.677 mg/l

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 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 15th 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 evaluative 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^{th}) 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

With copies sent to:

Jodene Isaacs
Environmental Advocates
5135 Anza Street
San Francisco, California 94121
E-mail: 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

With copies sent to:

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

Houston, Texas 77024
Email: keith.nicholson@cemex.com

And

Nicole Granquist
Downey Brand LLP
621 Capitol Mall, 18th Fl
Sacramento, California 95814
Email: ngranquist@downeybrand.com

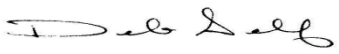
63. **Impossibility of Performance**: No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when performance becomes impossible, despite the timely good faith efforts of the Party, due to circumstances beyond the Party's control, including without 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



_____

by: Deb Self
Executive Director
San Francisco Baykeeper

Date: _____, 2010

_____

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

Approved as to form:

ENVIRONMENTAL ADVOCATES

Date: March 22, 2010

_____

by: JODENE ISAACS
CHRISTOPHER SPROUL
Attorneys for Baykeeper

DOWNEY BRAND, LLP

Date: _____, 2010

_____

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

_____

by: Deb Self
Executive Director
San Francisco Baykeeper

Date: March 22, 2010

Leslie S. White

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

Approved as to form:

ENVIRONMENTAL ADVOCATES

Date: _____, 2010

_____

by: JODENE ISAACS
CHRISTOPHER SPROUL
Attorneys for Baykeeper

DOWNEY BRAND, LLP

Date: _____, 2010

_____

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

_____

by: Deb Self
Executive Director
San Francisco Baykeeper

Approved as to form:

ENVIRONMENTAL ADVOCATES

Date: _____, 2010

_____

by: JODENE ISAACS
CHRISTOPHER SPROUL
Attorneys for Baykeeper

Date: _____, 2010

_____

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

DOWNEY BRAND, LLP

Date: March 22, 2010

Nicole Granquist

by: NICOLE E. GRANQUIST
Attorneys for CEMEX

Exhibit 1

EXHIBIT 1

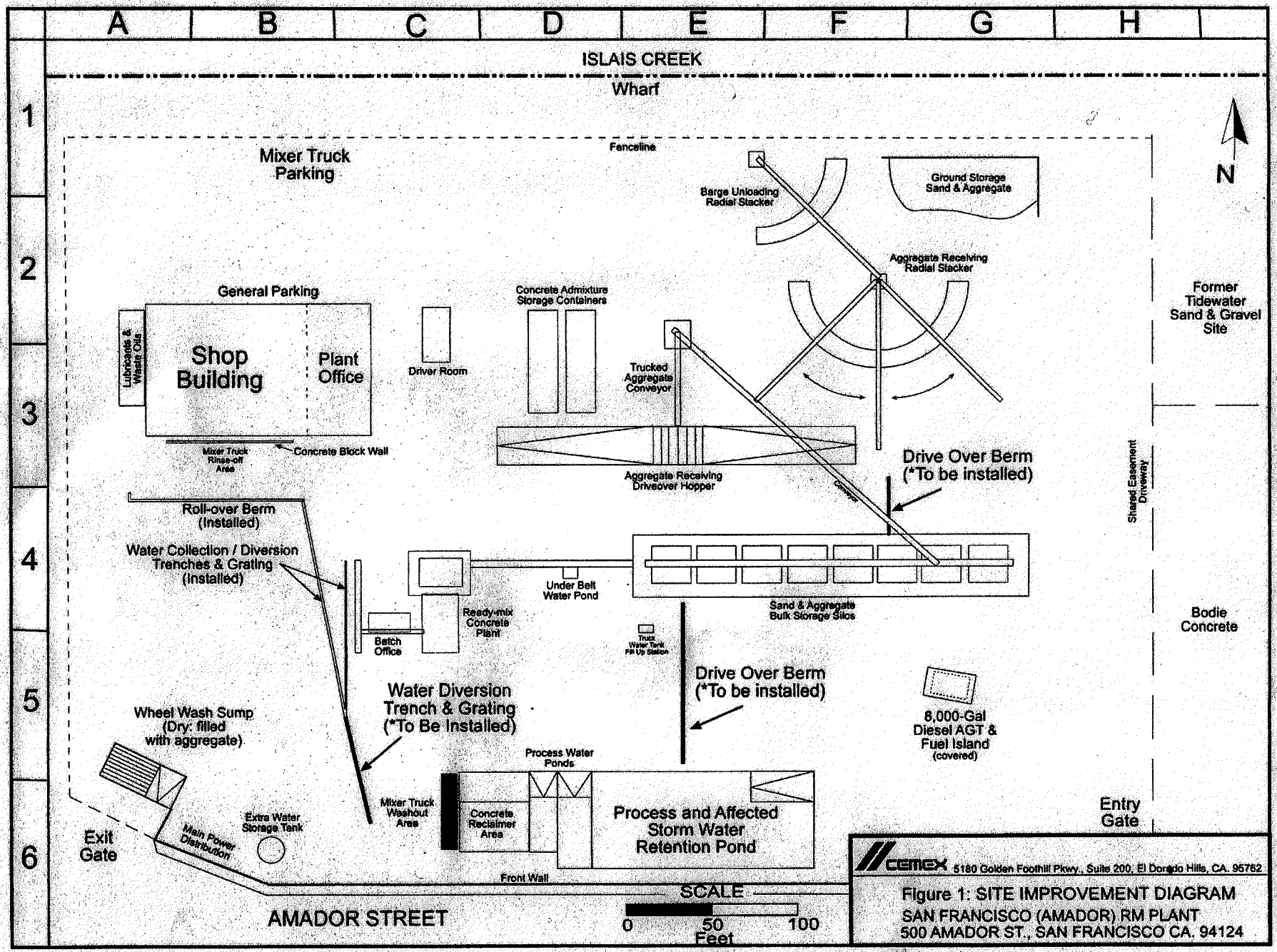
Target Levels and Benchmark Levels for CEMEX's Redwood City and San Francisco Facilities

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

[1] 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



CEMEX 5180 Golden Foothill Pkwy., Suite 200, El Dorado Hills, CA. 95762

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.

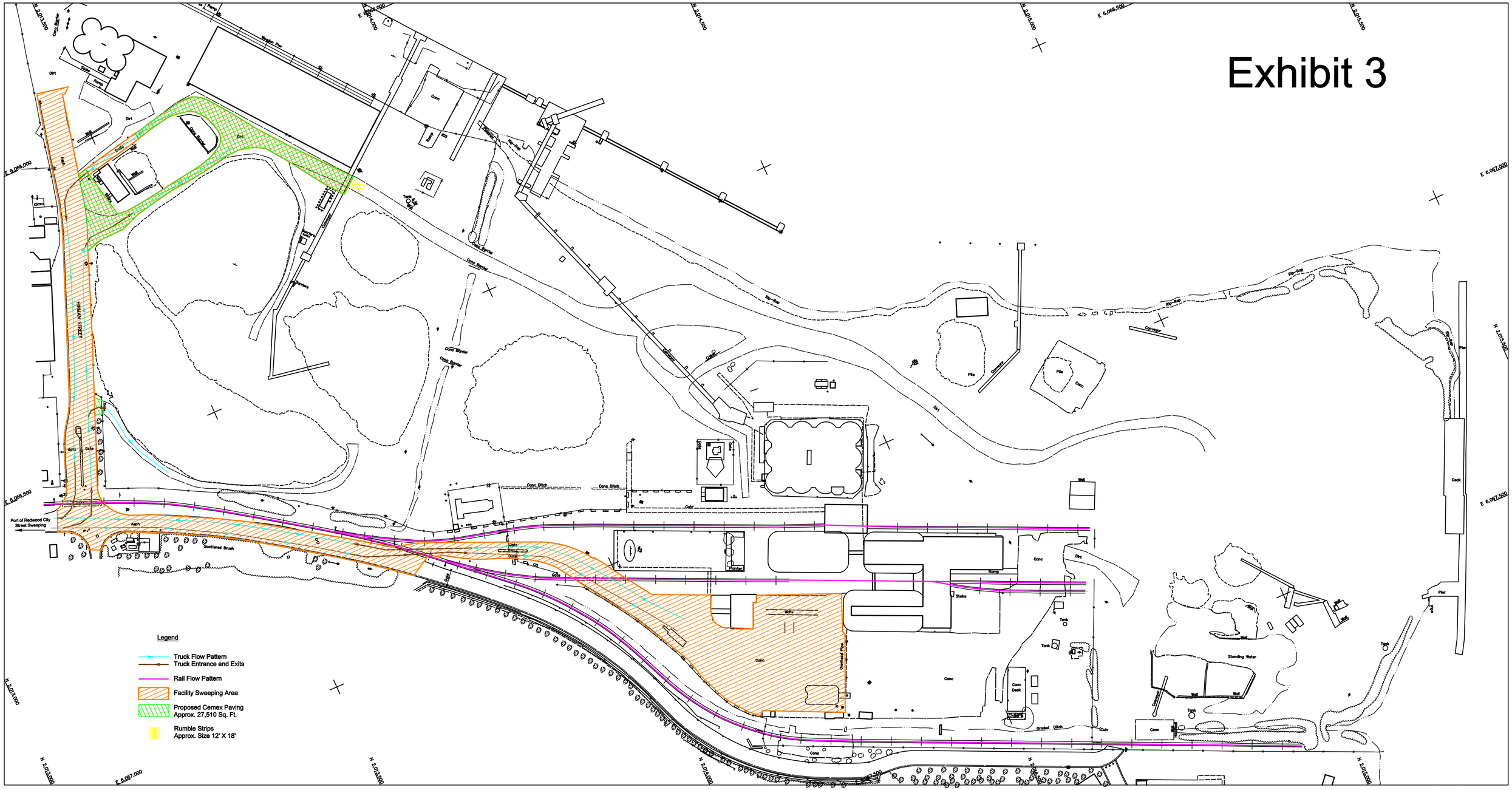
3. Water diversion trenches and surface grating (two sections; Each ~100 feet long by 10 inches wide by 5 inches deep) were installed to collect and route water toward the Facility's process and affected storm water retention pond (water reused in industrial processes). These trenches and surface grating 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



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 structions 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 ½' interval.

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

50 0 50 100 150 FEET

Date of Photography:	October 16, 2009
Scale of Photography:	1:3000
Horizontal Datum:	California Coordinate System, Zone 3 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

Mapping by:
TOWILL, Inc.
Surveying and Mapping
644 Natoma Street
San Francisco, CA 94103-2908

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 l/4 " wall tube
   - End Caps l/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.

ANDREW L. PACKARD (State Bar No. 168690)
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HALLIE B. ALBERT (State Bar No. 258737)
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E-mail: bob@jacksontuerck.com

Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

[Additional Counsel listed on following page]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, 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)

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

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

Attorneys for Defendant City of Chico

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

RECITALS

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

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

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

WHEREAS, on or about April 2, 2010, Plaintiff provided notice of the City's alleged 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 Region IX; the Executive Director of the State Water Resources Control Board ("State

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

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

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

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

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

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

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

WHEREAS, the Parties agree through their authorized representatives and without either adjudication of CSPA's claims or admission by the City of any alleged violation or other

wrongdoing, and have chosen to resolve in full CSPA's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation;

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

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

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

I. COMMITMENT OF THE CITY

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

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

(a) The City shall maintain in good working order all storm water collection and treatment systems currently installed or to be installed pursuant to this Consent

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.

(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.

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

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

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

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

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

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

(e) The City shall amend the maps in the SWPPP to include all of the information required by paragraph 4 of Section A of the General Permit, including but not limited to, the Facility boundaries, delineation of areas where industrial activities occur, the direction of storm water flow and runoff within each drainage area, the location of the storm water collection and conveyance system, the location of structural control measures that affect storm water

discharges, and the areas of soil erosion. These amended maps shall include an amended version of the 1993 map attached hereto as Exhibit A. The City shall ensure that all maps, tables, and text comply with the requirements of the General Permit.

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

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

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

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

[1] "Qualifying Storm Events" means those events in which (i) the samples taken are preceded by at least three (3) working days during which no storm water discharges from the Facility have occurred (the three (3) working days may be separated by non-working days such as weekends and holidays provided that no storm 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.

in the below table by a laboratory accredited by the State of California or by measurement with properly calibrated field instruments. All samples collected from the Facility shall be delivered to the laboratory as soon as possible to ensure that sample "hold time" is not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual constituents at or below the values specified in the below table. Sampling results shall be provided to CSPA within thirty (30) days of the City's receipt of the laboratory report from 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

7. "Action Memorandum" Trigger; CSPA Review Of "Action Memorandum"; Meet-and-Confer. If any sample taken during the two (2) Wet Seasons referenced in Clause 5 above exceeds the evaluation levels set forth in the above table, or if the City fails to collect and analyze samples from four (4) Qualifying Storm Events, the City shall prepare a written statement discussing the exceedance(s) and /or failure to collect and analyze samples from four (4) Qualifying Storm Events, the possible cause and/or source of the exceedance(s), and additional measures, if any, that will be taken to address and eliminate the problem and future exceedances ("Action Memorandum"). The Action Memorandum shall be provided to CSPA not later than July 15 following the conclusion of each Wet Season. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional measures may include, but are not limited to, taking confirmation samples, further material

improvements to the storm water collection and discharge system, changing the frequency of Facility sweeping, changing the type and extent of storm water filtration media or modifying other industrial activities or management practices at the Facility. Such additional measures, to the extent feasible, shall be implemented immediately and in no event later than 60 days after the due date of the Action Memorandum, except where 1) structural changes require longer than 60 calendar days to complete; 2) weather-related conditions render immediate implementation infeasible; or 3) the Parties agree in writing to defer implementation of specific measures in order to effectively meet and confer. Within thirty (30) calendar days of implementation of any such additional measures, the City's SWPPP shall be amended to include all additional BMP measures designated in the Action Memorandum.

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

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

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

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

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

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

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

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

II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS

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

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

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

below.

III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE

16. With the exception of the timelines set forth above for addressing exceedances of values specified within the Clause 6 table above and the Action Memoranda, if a dispute under this Consent Decree arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet and confer within seven (7) 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, including implementation dates, 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 filing a motion with the United States District Court for the Eastern District of California, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent Decree. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and applicable case law interpreting such provision.

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

to the Court Approval Date of this Consent Decree.

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

18. City's Waiver and Release. The City, on its own behalf and on behalf of those Released City Parties under its control, releases CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain to the Action, 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 Action.

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

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

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

IV. MISCELLANEOUS PROVISIONS

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

and costly litigation. Nothing in this Consent Decree shall be construed as, and the City expressly does not intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Decree constitute or be construed as an admission by the City 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 Consent Decree.

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

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

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

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

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

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

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

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

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

With copies sent to:

Erik M. Roper
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel: (707) 763-7227
E-mail: 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

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

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

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

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

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

29. 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 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.

30. Where implementation of the actions set forth in this Consent Decree, within the deadlines set forth above becomes impossible, despite the timely good faith efforts of the Parties, the Party who is unable to comply shall notify the other in writing within seven (7) calendar days of the date that the failure becomes apparent, 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, new performance deadlines shall be established. In the event that the Parties cannot timely agree upon the terms of such a stipulation, either of the Parties shall have the right to invoke the dispute resolution procedure described herein.

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

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

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

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

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

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

Dated: _____ California Sportfishing Protection Alliance

By: _____
Bill Jennings, Executive Director

Dated: _____ City of Chico

By: _____
David Burkland, City Manager

APPROVED AS TO FORM:

LAW OFFICES OF ANDREW L. PACKARD

Dated: December ___, 2010 By: _____
Erik M. Roper
Attorneys for Plaintiff

CITY ATTORNEY FOR THE CITY OF CHICO

Dated: December ___, 2010 By: _____
Lori Barker
Attorneys for Defendant

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429 W. Main Street, Suite C
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Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation,

Plaintiff,

vs.

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

Defendants.

Case No. 2:10–CV–00902–LKK–EFB

[PROPOSED] CONSENT AGREEMENT

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

WHEREAS, Defendant CONTECH CONSTRUCTION PRODUCTS, INC. (hereinafter "CONTECH") owns an approximately 34-acre metal work facility, which manufactures metal

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

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

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

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

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

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

WHEREAS, CSPA filed a complaint ("Complaint") against Defendants in the United States District Court, Eastern District of California, on April 14, 2010 (the "Action");

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

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

WHEREAS, at the time the Consent Agreement is submitted for approval to the United States District Court, CSPA shall request a dismissal of all claims against both Defendants in the Complaint with prejudice and the Parties shall stipulate and request that the Court retain jurisdiction for the enforcement of this Consent Agreement as provided herein;

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

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

I. COMMITMENT OF *CONTECH*

1. **Compliance With General Permit and Clean Water Act.** Beginning immediately, and throughout the Term of this Consent Agreement, (defined below at ¶ 18), Defendant CONTECH shall commence all measures needed to operate the Facility in full compliance with applicable requirements of the General Permit and the Clean Water Act, subject to any defenses available under the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are 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 and scheduled facility operating hours.

6. **"Action Memorandum" Trigger; CSPA Review of "Action Memorandum"; Meet-and-Confer.** If any QSE sample taken during the Wet Seasons occurring during the Term of this Agreement exceeds the evaluation levels set forth in Exhibit C, CONTECH shall prepare a written statement discussing the exceedance(s), the possible cause and/or source of the exceedance(s), and additional measures that will be taken to address and eliminate the problem and future exceedances ("Action Memorandum"). The Action Memorandum shall be provided to CSPA no later than thirty (30) days after CONTECH's receipt of the sample results at issue. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional measures may include, but are not limited to, taking confirmation samples, further material improvements to the storm water collection and discharge system, changing the frequency of Facility sweeping, changing the type and extent of storm water filtration media or modifying other industrial activities or management practices at the Facility. Such additional measures, to the extent feasible, shall be implemented no later than sixty (60) days after the due date of the Action Memorandum. Within fourteen (14) days of implementation, the Facility SWPPP shall be amended to include all additional BMP measures designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum and suggest any additional pollution prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA, CONTECH agrees to meet and confer in good faith (at the Facility, if requested by CSPA) regarding the contents and sufficiency of the Action Memorandum.

7. **Inspections During the Term of this Agreement.** In addition to any site inspections conducted as part of the meet-and-confer process concerning an Action

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

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

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

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

II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS

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

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

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

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

III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT

13. With the exception of the timelines set forth above for addressing exceedances of values specified on Exhibit C and Action Memoranda, if a dispute under this Consent Agreement arises, or either CSPA or CONTECH believes that a breach of this Consent Decree has occurred, CSPA and CONTECH shall meet and confer within seven (7) 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, including implementation dates, to resolve the dispute. If CSPA and CONTECH 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 CSPA or CONTECH shall be entitled to all rights and remedies under the law, including filing a motion with the District Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in

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

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

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

(b) For the period beginning on the Court Approval Date and ending on the Termination Date, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against Defendants seeking relief for the alleged violations of the Clean Water Act or violations of the General Permit occurring at the Facility. CSPA further agrees that, beginning on the Court Approval Date and ending on the Termination Date, CSPA will not support

other lawsuits, by providing financial assistance, personal time or other affirmative actions, against Defendants that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge Defendants' compliance with the Clean Water Act or the General Permit.

15. **Defendants' Waiver and Release.** Defendants, on their own behalf and on behalf of those Released Defendant Parties under its control, releases CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain to the Action, 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 Action.

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

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

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

IV. MISCELLANEOUS PROVISIONS

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

or violation of law, nor shall compliance with this Consent Agreement constitute or be construed as an admission by Defendants 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 Consent Agreement.

18. The Term of this Consent Agreement shall be from the Court Approval Date until May 30, 2014, except as provided in Paragraph 2(e) whereby the Term may be extended until May 30, 2015. The Termination Date shall be May 30, 2014 unless extended pursuant to Paragraph 2(e) of this Agreement to May 30, 2015.

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

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

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

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

23. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Consent Agreement are contained herein. This Consent Agreement and its attachments are made for the sole benefit of

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

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

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

With copies sent 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

And to:

Andrew L. Packard
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
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.

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

If to CONTECH:

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

With copies sent to:

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

If to Dan Moody:

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

With copies sent to:

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

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

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

26. 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 circumstances beyond the Party's reasonable 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 form presented, the Parties shall use reasonable efforts to work together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall become null and void.

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

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

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

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

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

Dated: December 15, 2010

California Sportfishing Protection Alliance

By: Bill Jennings
cn=Bill Jennings, o=California Sportfishing Protection Alliance, ou, email=deltakeep@aol.com, c=US
2010.12.15 16:01:50 -08'00'

Bill Jennings, Executive Director

Dated: 12/15/10

Contech Construction Products Inc.

By: Thomas D. Singer, Vice President

Dated: 12/15/10

Dan Moody

By: Dan Moody

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

1
2
3
4
5
6
7
8
9
10
11
BIOSWALE
CONTECH Construction Products CMP Plant
Redding, CA

CONTECH Construction Products CMP Plant
Redding, CA

LEGEND AND NOTES:

Map Reference No.	Description
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

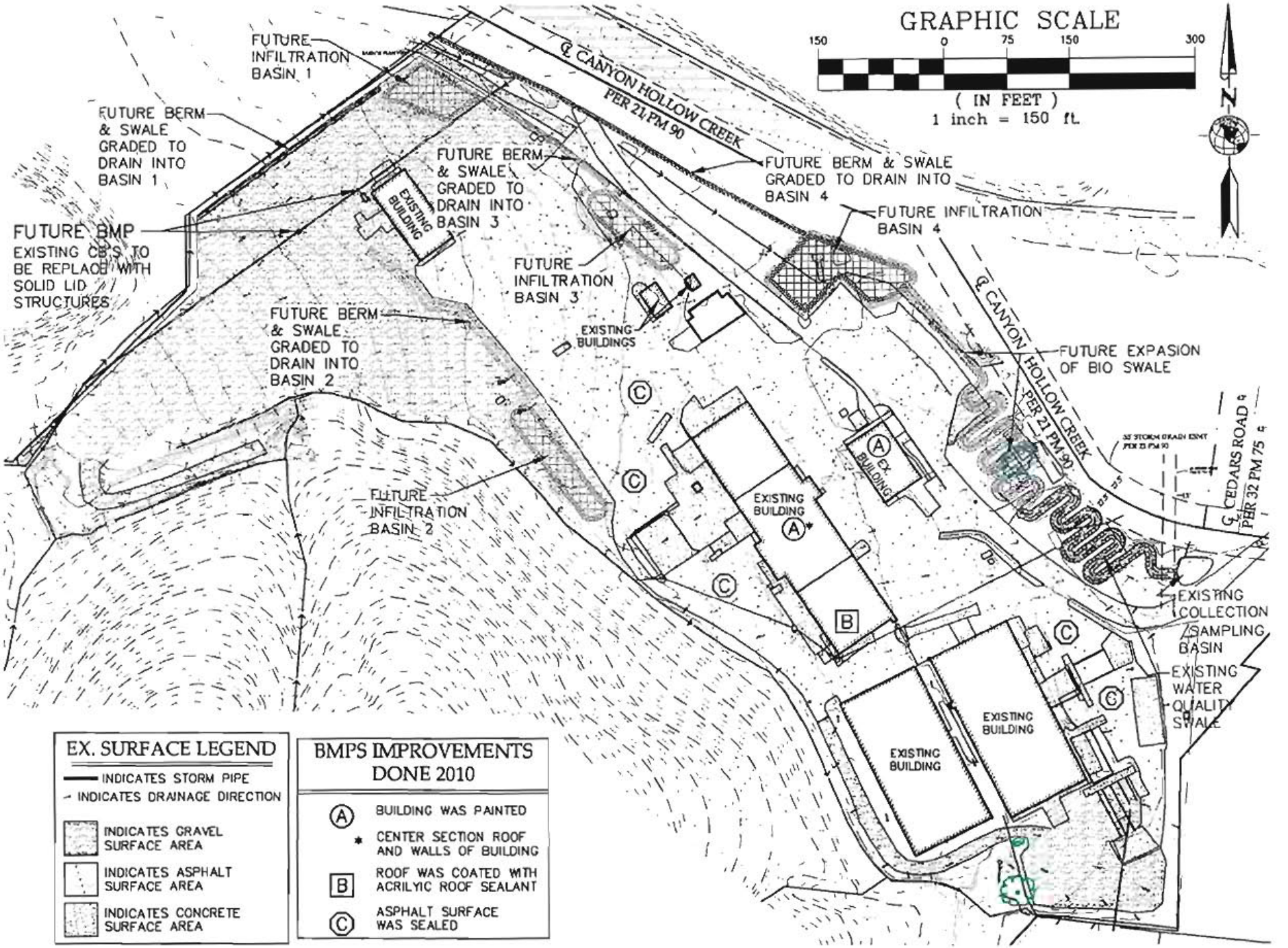

GRAPHIC SCALE
150 0 75 150 300
(IN FEET)
1 inch = 150 ft.
N
FUTURE INFILTRATION BASIN 1
FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 1
FUTURE BMP
EXISTING CB'S TO BE REPLACE WITH SOLID LID STRUCTURES
FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 2
FUTURE INFILTRATION BASIN 2
FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 3
EXISTING BUILDING
FUTURE INFILTRATION BASIN 3
EXISTING BUILDINGS
℄ CANYON HOLLOW CREEK PER 21 PM 90
FUTURE BERM & SWALE GRADED TO DRAIN INTO BASIN 4
FUTURE INFILTRATION BASIN 4
FUTURE EXPASION OF BIO SWALE
EXISTING BUILDING
EX BUILDING
EXISTING BUILDING
EXISTING BUILDING
EXISTING BUILDING
℄ CEDARS ROAD PER 32 PM 75
EXISTING COLLECTION & SAMPLING BASIN
EXISTING WATER QUALITY SWALE
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
A BUILDING WAS PAINTED
* CENTER SECTION ROOF AND WALLS OF BUILDING
B ROOF WAS COATED WITH ACRILYIC ROOF SEALANT
C ASPHALT SURFACE WAS SEALED

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, though 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 (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 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 µmho/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

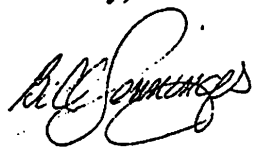
VI. Penalties.

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

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

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.

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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.

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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.

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Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiff, vs. COOK CONCRETE PRODUCTS, INC., a California corporation, and L. EDWARD SHAW, an individual, Defendants.	Case No. 2:10-CV-01083-JAM-DAD **[PROPOSED] CONSENT AGREEMENT** (Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387)

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

WHEREAS, Defendants COOK CONCRETE PRODUCTS, INC. (hereinafter "COOK") and

L. EDWARD SHAW (collectively, "Defendants") own and/or operate an approximately 5-acre precast concrete manufacturing facility located at 5461 Eastside Road in Redding, California (the "Facility"). Defendant L. EDWARD SHAW is the Owner and President of COOK;

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

WHEREAS, the Facility collects and discharges storm water to a system of irrigation ditches which may ultimately flow into the Sacramento River, and the Sacramento-San Joaquin Delta (a map of the Facility, together with drawings demonstrating related storm water management features of the Facility, are attached hereto as Exhibit A and incorporated herein by reference);

WHEREAS, storm water discharges associated with industrial activity are regulated pursuant to the 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 Water Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act ("the Act"), 33 U.S.C. § 1342 (hereinafter "General Permit");

WHEREAS, on or about March 2, 2010, Plaintiff provided notice of Defendants' violations of the Act ("Notice Letter"), and of its intention to file suit against Defendants, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a true and correct copy of CSPA's Notice Letter is attached as Exhibit B and incorporated herein by reference);

WHEREAS, Defendants deny the occurrence of the violations alleged in the Notice Letter and maintain that they have complied at all times with the provisions of the General Permit and the Act;

WHEREAS, CSPA filed a complaint ("Complaint") against Defendants in the United States District Court, Eastern District of California, on May 3, 2010;

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

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

WHEREAS, at the time the Consent Agreement is submitted for approval to the United States District Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall stipulate and request that the Court retain jurisdiction for the enforcement of this Agreement through September 30, 2012, as provided herein;

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

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

I. COMMITMENT OF DEFENDANTS

1. **Compliance With General Permit & Clean Water Act.** Defendants shall at all times operate the Facility in full compliance with the requirements of the General Permit and the Clean Water Act, subject to any defenses available under the law.

2. **Defendants' Implementation of Specific Storm Water Best Management Practices On or Before October 15, 2010.** On or before October 15, 2010, Defendants shall complete the implementations of the following storm water control measures/best management practices ("BMPs"):

(a) Defendants shall install two new precast concrete boxes referred to as Storm Water Discharge Point Boxes ("SWDP #1") and ("SWDP #2") as set forth on Exhibit A, just north of the southern border of the Facility over the Facility's two underground storm water drainage pipes at each of the points over the pipe on Cook property prior to going offsite. SWDP #1 and SWDP #2 will have straw bale filters and serve as the Facility's new storm water monitoring and sampling locations;

(b) Defendants shall install, as set forth on Exhibit A, Sediment Trap & Oil Water Separators ("ST/OWS # 1") and ("ST/OWS #2 "), a sediment trap ("ST"), two catch basin

sediment traps ("CB/ST #1") and ("CB/ST # 2"), catch basins with wattle filters ("CBFs"), and two concrete trench sediment traps ("CT/ST") with wheat straw wattles or wheat straw bale filters as needed (and either grates or removable lids to better facilitate maintenance), to eliminate or reduce the concentration of pollutants in the Facility's storm water discharges to a level at or below EPA benchmark levels;

(c) Defendants shall engage in enhanced maintenance of the treatment control BMPs discussed in subsection (b). Pursuant to this Agreement, Defendants agree to an enhanced maintenance schedule whereby the Facility's treatment control BMPs will be inspected at least once a week during the Wet Season to ensure they are continuing to function as intended. All written records of these maintenance inspections shall be kept with the SWPPP. In the event that Defendants' weekly inspection results in a finding that any of these BMPs are no longer functioning as intended, Defendants shall repair (e.g., by cleaning it) and/or replace the malfunctioning BMP as needed to ensure compliance with the Act and the General Permit;

(d) Defendants shall monitor the level of sludge and sediment accumulation in the Facility's concrete wash water collection and sediment settling structure ("Settling Basin") and remove and properly dispose of it as needed to ensure the Facility does not discharge unauthorized non-storm water (e.g., "wash water") in violation of the General Permit;

(e) Defendants shall daily collect all concrete waste having accumulated on the floors of the Facility's concrete production areas and deposit all such wastes in one of the four (4) fabricated steel hoppers located in the active production areas, and emptied as needed at the west end of the Facility's Settling Basin. The concrete waste deposited at the west end of the Facility's Settling Basin shall be properly disposed of off-site as needed to ensure the Settling Basin retains sufficient capacity to properly contain storm water and non-storm water generated at the Facility;

(f) Defendants shall require Facility personnel to wash tools which have accumulated concrete waste from the manufacturing process in one of the four fabricated steel

hoppers located in the active production areas to prevent concrete residue from entering the Facility's storm water drainage system;

(g) Defendants shall employ a regenerative sweeper to sweep all impervious surfaces at the Facility the week prior to the onset of each Wet Season for the term of this Agreement. During the Wet Seasons within the term of this Agreement, Defendants shall daily monitor the 5-day national weather service forecast to anticipate when the Facility will most likely next be subjected to a storm event likely to result in discharges from the Facility. In the event that Defendants learn through their monitoring of national weather service forecasts that the Facility is likely to be subjected to a storm event likely to result in discharges from the Facility, Defendants shall make good faith efforts to arrange to lease a regenerative sweeper, consistent with the use described above, at a time one to three days prior to the commencement of such anticipated storm event. CSPA is mindful that the scarcity of available regenerative sweepers in the Redding area may result in Defendants not being able to arrange to have a regenerative sweeper employed at the Facility prior to the commencement of the anticipated qualifying storm event, notwithstanding Defendants having made a good faith effort to do so. In the event Defendants' good faith efforts to lease a regenerative sweeper prior to the commencement of the anticipated storm event are unsuccessful, Defendants shall lease a mechanical sweeper and/or have Facility personnel manually sweep the Facility's impervious surfaces prior to the commencement of the anticipated storm. Consistent with the rationale for employing a regenerative sweeper, the objective of this mechanical and/or manual sweeping would be to remove pollutants from the Facility's impervious surfaces to the greatest extent feasible prior to the storm to prevent such pollutants from discharging in the Facility's storm water discharge;

(h) Defendants shall use shop vacuums and/or sweep within the covered production areas of the Facility as needed to collect any dry waste (e.g., Styrofoam, concrete dust, iron dust, etc.) produced as a result of manufacturing processes that accumulates on floors in these areas so that the floors are efficiently cleaned up;

(i) Defendants shall replace the limestone gravel formerly covering the ground near the Facility's high traffic product storage and staging areas outside the paved driveway along the south side of the Facility with a much harder 1.5" washed crushed granite gravel. The parties believe the use of this harder, washed granite gravel may significantly reduce the amount of dust entering the Facility's storm drain system;

(j) Defendants shall install a roof over the entire rebar rack in front of the Facility's rebar fabrication shop such that all materials on the rebar rack are prevented from coming into contact with storm water at the Facility;

(k) Defendants shall remove and properly dispose of obsolete rusty materials from the Facility;

(l) Defendants shall daily ensure Facility shop/production personnel contemporaneously sweep up dust, metal filings, welding slag and any other potential pollutant generated as a result of manufacturing processes in the Facility's production and fabrication areas to prevent these materials from entering the Facility's storm water drainage system;

(m) Defendants shall update the Facility SWPPP and the SWPPP map to reflect storm water flow vectors, the new sampling locations described above in subsection (a) and the location and type of BMPs employed throughout the Facility;

(n) Defendants shall create storm water monitoring and inspection checklist forms and include these as appendices to the updated SWPPP;

(o) Defendants shall update the Facility SWPPP to include a detailed discussion of the storm water management training provided to Facility personnel and the storm water monitoring and sampling regimen adhered to by Facility personnel;

(p) Defendants shall annually re-train all Facility personnel within the month of September on how to properly manage storm water and how to properly follow and implement the Facility SWPPP. This training will require Facility personnel to receive training in, among other subjects, the proper use of spill kits and the location of such materials within the Facility. Defendants shall maintain a record of these trainings with the Facility SWPPP;

3. **SWPPP Amendments/Additional BMPs.** Within 30 days of mutual execution of this Consent Agreement, Defendants shall transmit to CSPA the formally amended SWPPP for the Facility. This amended SWPPP shall incorporate all of the relevant requirements of this Consent Agreement, as well as the revised Facility map attached hereto as Exhibit A.

4. **Sampling Frequency.** Defendants shall collect and analyze samples from four (4) storm events, as qualified in the General Permit[1] for sampling purposes, in each of the two Wet Seasons occurring during the term of this Consent Agreement (2010-2011 and 2011-2012). The storm water sample results shall be compared with the values set forth in Exhibit C, attached hereto, and incorporated herein by reference. If the results of any such samples exceed the parameter values set forth in Exhibit C, Defendants shall comply with the "Action Memorandum" requirements set forth below. In addition, if by March 1, 2011, Defendants have not sampled and analyzed storm water discharges from four (4) qualifying storm events, Defendants shall sample and analyze two (2) additional storm water discharges, regardless of whether they originate from qualifying storm events as set forth in the General Permit.

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

6. **"Action Memorandum" Trigger; CSPA Review Of "Action Memorandum"; Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4 above exceeds the evaluation levels set forth in Exhibit C, or if Defendants fail to collect and analyze

[1] "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are 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.

samples from four (4) storm events, Defendants shall prepare a written statement discussing the exceedance(s) and/or failure to collect and analyze samples from four (4) storm events, the possible cause and/or source of the exceedance(s), and additional measures that will be taken to address and eliminate the problem and future exceedances ("Action Memorandum"). The Action Memorandum shall be provided to CSPA upon completion and in any case no later than 30 days after Defendants' receipt of the sample results at issue. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional measures may include, but are not limited to, taking samples, further material improvements to the storm water collection and discharge system, changing the frequency of Facility sweeping, changing the type and extent of storm water filtration media or modifying other industrial activities or management practices at the Facility. Such additional measures, to the extent feasible, shall be implemented immediately and in no event later than 60 days after the due date of the Action Memorandum. Within seven (7) days of implementation, the Facility SWPPP shall be amended to include all additional BMP measures designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum and suggest any additional pollution prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA, Defendants agree to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the contents and sufficiency of the Action Memorandum.

7. **Inspections During The Term Of This Agreement.** In addition to any site inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as set forth above, Defendants shall permit representatives of CSPA to perform up to three (3) physical inspections of the Facility during the term of this Consent Agreement. These inspections shall be performed by CSPA's counsel and consultants and may include sampling, photographing, and/or videotaping and CSPA shall provide Defendants with a copy of all sampling reports, photographs and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical inspection, except that Defendants shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations or any

party/attorney, or the safety of individuals. In such case, Defendants shall specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. Defendants shall not make any alterations to Facility conditions during the period between receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that Defendants would not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws or regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

8. **Defendants' Communications with Regional and State Boards.** During the term of this Consent Agreement, Defendants shall provide CSPA with copies of all documents submitted to the Regional Board or the State Board concerning storm water discharges from the Facility, including, but not limited to, all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to the Notice provisions herein (at ¶ 24) and contemporaneously with Defendants' submission to such agencies.

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

II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS

10. As mitigation of the Clean Water Act violations alleged in CSPA's Complaint, Defendants agree to pay the sum of $35,000 within seven (7) days after the Court Approval Date to the Rose Foundation for Communities and the Environment for projects to improve water quality in the Sacramento River and/or the Sacramento-San Joaquin River Delta. The Rose Foundation shall provide notice to the SETTLING PARTIES setting forth the recipient and purpose of the funds.

11. Defendants agree to reimburse CSPA in the amount of $28,750 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred as a result of investigating the activities at the Facility, bringing the Action and negotiating a

resolution in the public interest. Such payment shall be made to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within seven (7) days after the Court Approval Date.

12. **Compliance Monitoring Funding.** To defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs associated with monitoring Defendants' compliance with this Consent Agreement, Defendants agree to contribute $6,250 for each of the two years covered by this Consent Agreement, to a compliance monitoring fund maintained by CSPA. Compliance monitoring activities may include, but shall not be limited to, site inspections, review of water quality sampling reports, review of annual reports, discussions with representatives of Defendants concerning the Action Memoranda referenced above, and potential changes to compliance requirements herein, preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and compliance-related activities. The first such payment in the amount of $6,250 shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within seven (7) days of the Court Approval Date, with the second installment of $6,250 due on June 1, 2011.

III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT

13. With the exception of the timelines set forth above for addressing exceedances of values specified on Exhibit C and Action Memoranda, if a dispute under this Consent Agreement arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet and confer within seven (7) 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, including implementation dates, 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 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 filing a motion with the District Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

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

15. **Defendants' Waiver and Release.** Defendants, on their own behalf and on behalf of those Released Defendant Parties under its control, releases CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain to the Action, 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 Action.

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

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

b. the Court shall retain and have jurisdiction over the Parties with respect to disputes arising under this Agreement through September 30, 2012. Nothing in this Consent Agreement shall be construed as a waiver of any party's right to appeal from an order that arises from an action to enforce the terms of this Consent Agreement.

IV. MISCELLANEOUS PROVISIONS

17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Agreement constitute or be construed as an admission by Defendants 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 Consent Agreement.

18. The Consent Agreement shall terminate on September 30, 2012.

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

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

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

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

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

24. **Notices.** Any notices or documents required or provided for by this Consent Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement

shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

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

With copies sent to:

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

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

L. Edward Shaw
Cook Concrete Products, Inc.
5461 Eastside Road
Redding, CA 96001
Tel: (530) 243-2562
Fax: (530) 243-6881

With copies sent to:

Diane G. Kindermann
Abbott & Kindermann, LLP
2100 Twenty First Street
Sacramento, CA 95818
Tel: (916) 456-9595

Fax: (916) 456-9599
E-mail: dkindermann@aklandlaw.com

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

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

26. 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 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 form presented, the Parties shall use their best efforts to work together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall become null and void.

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

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

30. Except in case of an emergency but subject to the regulatory authority of any applicable governmental authority, any breach of or default under this Consent Agreement capable of being cured

shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default, or within such other period approved in writing by the Party making such allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or, if the breach or default can be cured but is not capable of being cured within such five (5) day period, has commenced and is diligently pursuing to completion such cure.

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

Dated: 17 Sept 2010

California Sportfishing Protection Alliance

By: _____
Bill Jennings, Executive Director

Dated: _____

Cook Concrete Products, Inc. and L. Edward Shaw

By: _____
L. Edward Shaw, President

shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default, or within such other period approved in writing by the Party making such allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or, if the breach or default can be cured but is not capable of being cured within such five (5) day period, has commenced and is diligently pursuing to completion such cure.

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

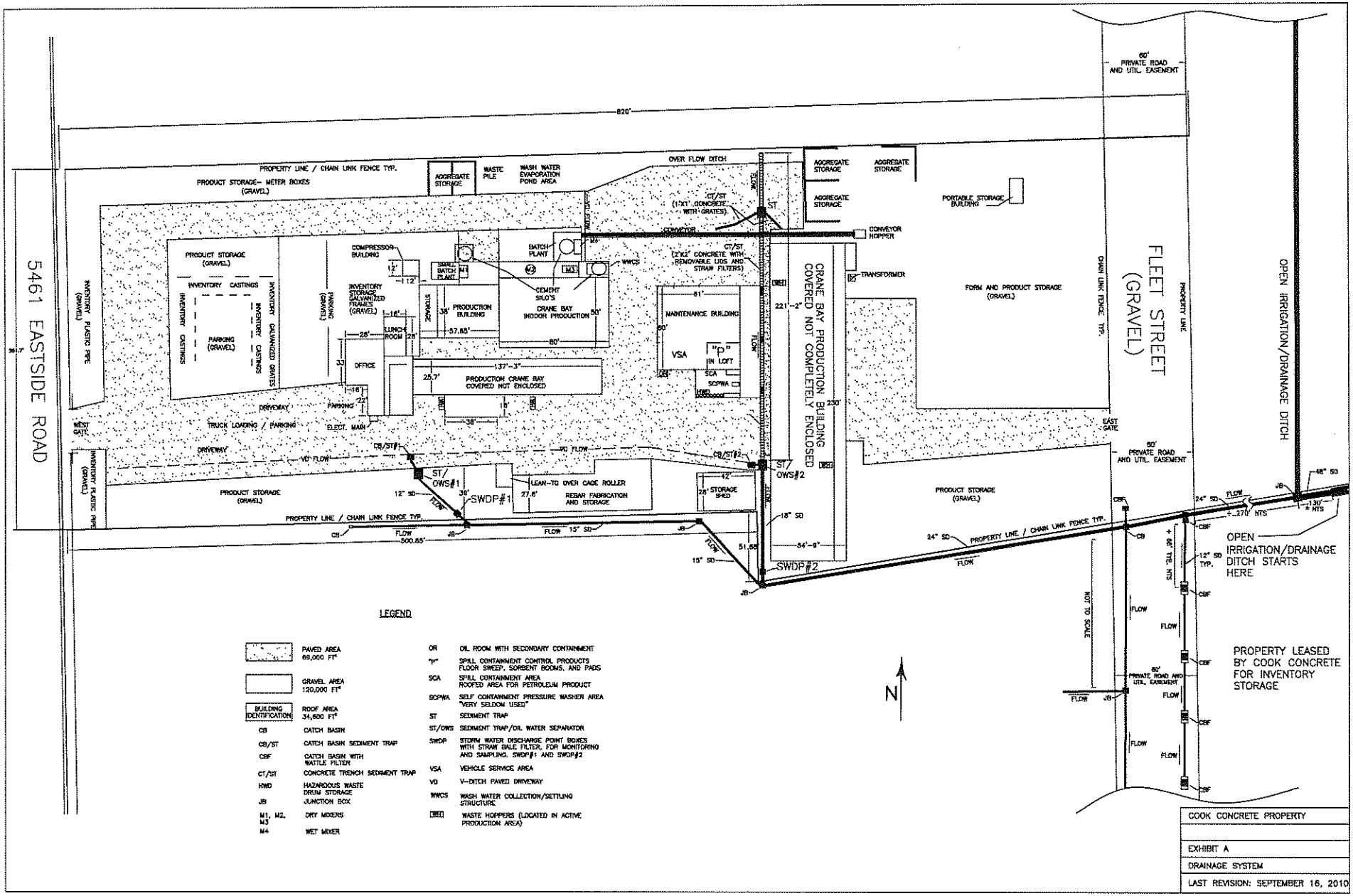
Dated: _____ California Sportfishing Protection Alliance

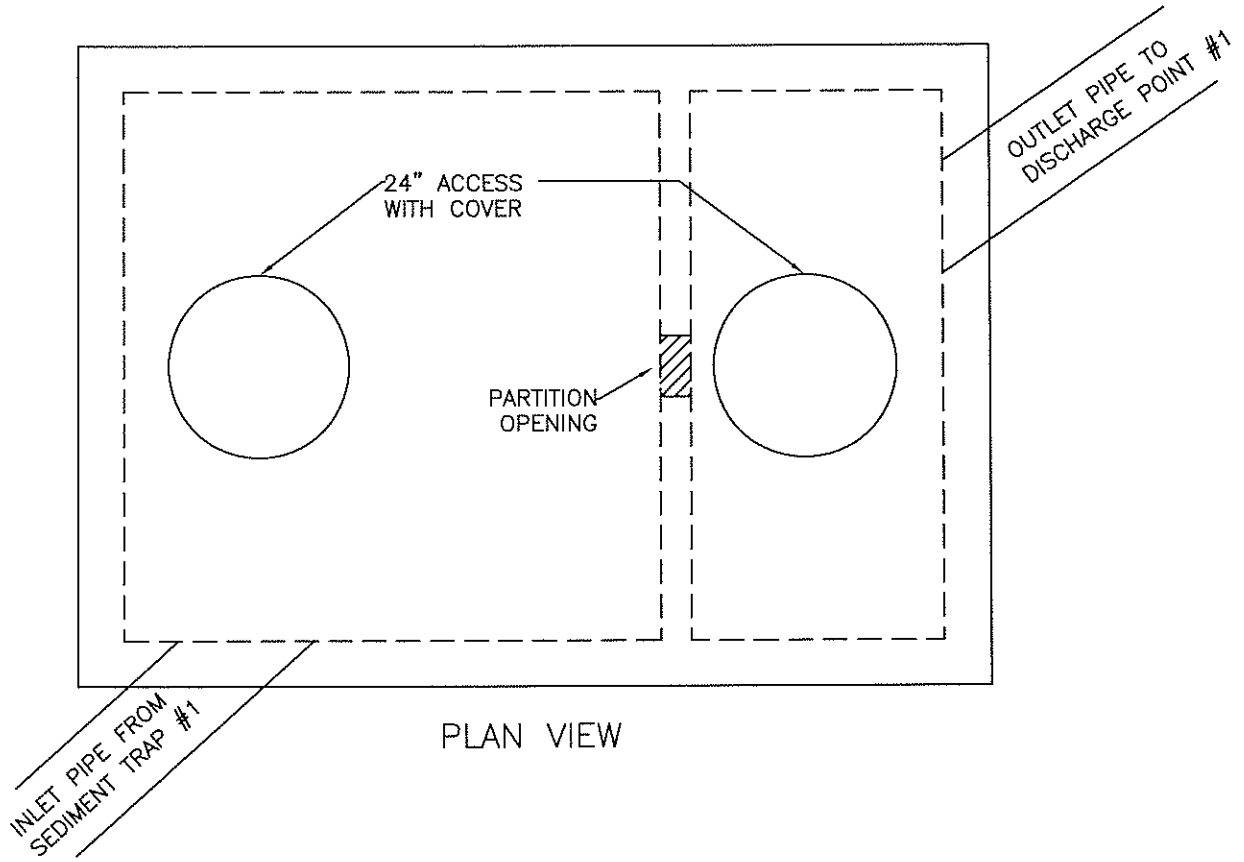
By: _____
Bill Jennings, Executive Director

Dated: September 17, 2010 Cook Concrete Products, Inc. and L. Edward Shaw

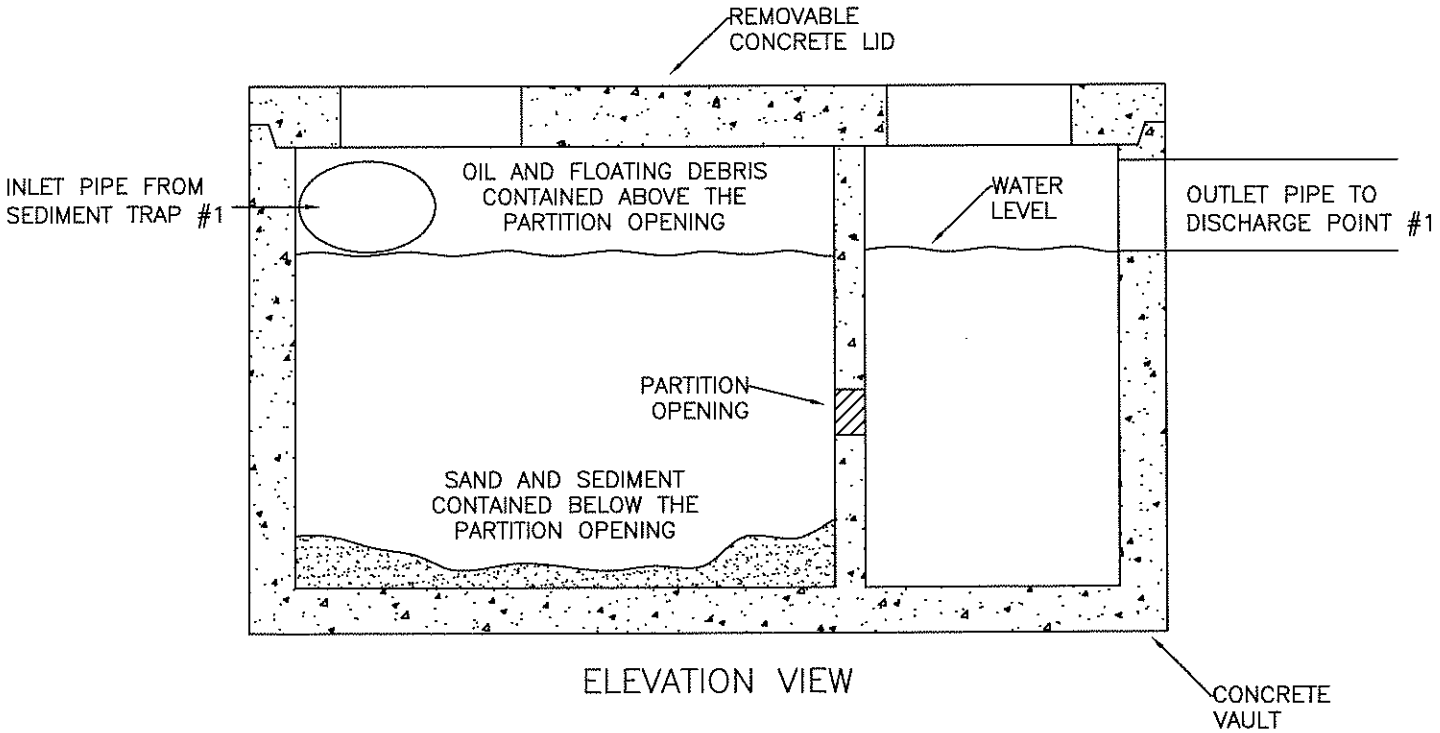
By: _____
L. Edward Shaw, President

EXHIBIT A – Facility Site Map & Related BMP Drawings


5461 EASTSIDE ROAD
820'
PROPERTY LINE / CHAIN LINK FENCE TYP.
PRODUCT STORAGE- METER BOXES (GRAVEL)
AGGREGATE STORAGE
WASTE PILE
WASH WATER EVAPORATION POND AREA
OVER FLOW DITCH
CT/ST (1'X1' CONCRETE WITH GRATES)
ST
AGGREGATE STORAGE
AGGREGATE STORAGE
AGGREGATE STORAGE
PORTABLE STORAGE BUILDING
CONVEYOR
CONVEYOR HOPPER
60' PRIVATE ROAD AND UTIL. EASEMENT
FLEET STREET (GRAVEL)
OPEN IRRIGATION/DRAINAGE DITCH
PRODUCT STORAGE (GRAVEL)
INVENTORY CASTINGS
INVENTORY CASTINGS
INVENTORY GALVANIZED GRATES
PARKING (GRAVEL)
INVENTORY PLASTIC PIPE (GRAVEL)
COMPRESSOR BUILDING
BATCH PLANT
SMALL BATCH PLANT
M1
M2
M3
M4
WWCS
CEMENT SILO'S
CRANE BAY INDOOR PRODUCTION
CT/ST (2'X2' CONCRETE WITH REMOVABLE LIDS AND STRAW FILTERS)
TRANSFORMER
INVENTORY STORAGE GALVANIZED FRAMES (GRAVEL)
STORAGE
PRODUCTION BUILDING
LUNCH ROOM
OFFICE
PRODUCTION CRANE BAY COVERED NOT ENCLOSED
MAINTENANCE BUILDING
VSA
"P" IN LOFT
SCA
SCPWA
CRANE BAY PRODUCTION BUILDING COVERED NOT COMPLETELY ENCLOSED
FORM AND PRODUCT STORAGE (GRAVEL)
CHAIN LINK FENCE TYP.
PROPERTY LINE
WEST GATE
EAST GATE
DRIVEWAY
TRUCK LOADING / PARKING
ELECT. MAIN
VD FLOW
CB/ST#1
CB/ST#2
ST/ OWS#1
ST/ OWS#2
SWDP#1
SWDP#2
LEAN-TO OVER CAGE ROLLER
REBAR FABRICATION AND STORAGE
28' STORAGE SHED
50' PRIVATE ROAD AND UTIL. EASEMENT
PROPERTY LINE / CHAIN LINK FENCE TYP.
12" SD
15" SD
18" SD
24" SD
48" SD
FLOW
500.65'
51.65'
54'-9"
+-270' NTS
+-130' NTS
+-90' TYP. NTS
12" SD TYP.
OPEN IRRIGATION/DRAINAGE DITCH STARTS HERE
NOT TO SCALE
N
PROPERTY LEASED BY COOK CONCRETE FOR INVENTORY STORAGE
LEGEND
PAVED AREA 69,000 FT²
GRAVEL AREA 120,000 FT²
BUILDING IDENTIFICATION
ROOF AREA 34,600 FT²
CB CATCH BASIN
CB/ST CATCH BASIN SEDIMENT TRAP
CBF CATCH BASIN WITH WATTLE FILTER
CT/ST CONCRETE TRENCH SEDIMENT TRAP
HWD HAZARDOUS WASTE DRUM STORAGE
JB JUNCTION BOX
M1, M2, M3 DRY MIXERS
M4 WET MIXER
OR OIL ROOM WITH SECONDARY CONTAINMENT
"P" SPILL CONTAINMENT CONTROL PRODUCTS FLOOR SWEEP, SORBENT BOOMS, AND PADS
SCA SPILL CONTAINMENT AREA ROOFED AREA FOR PETROLEUM PRODUCT
SCPWA SELF CONTAINMENT PRESSURE WASHER AREA "VERY SELDOM USED"
ST SEDIMENT TRAP
ST/OWS SEDIMENT TRAP/OIL WATER SEPARATOR
SWDP STORM WATER DISCHARGE POINT BOXES WITH STRAW BALE FILTER, FOR MONITORING AND SAMPLING. SWDP#1 AND SWDP#2
VSA VEHICLE SERVICE AREA
VD V-DITCH PAVED DRIVEWAY
WWCS WASH WATER COLLECTION/SETTLING STRUCTURE
WASTE HOPPERS (LOCATED IN ACTIVE PRODUCTION AREA)
COOK CONCRETE PROPERTY
EXHIBIT A
DRAINAGE SYSTEM
LAST REVISION: SEPTEMBER 16, 2010

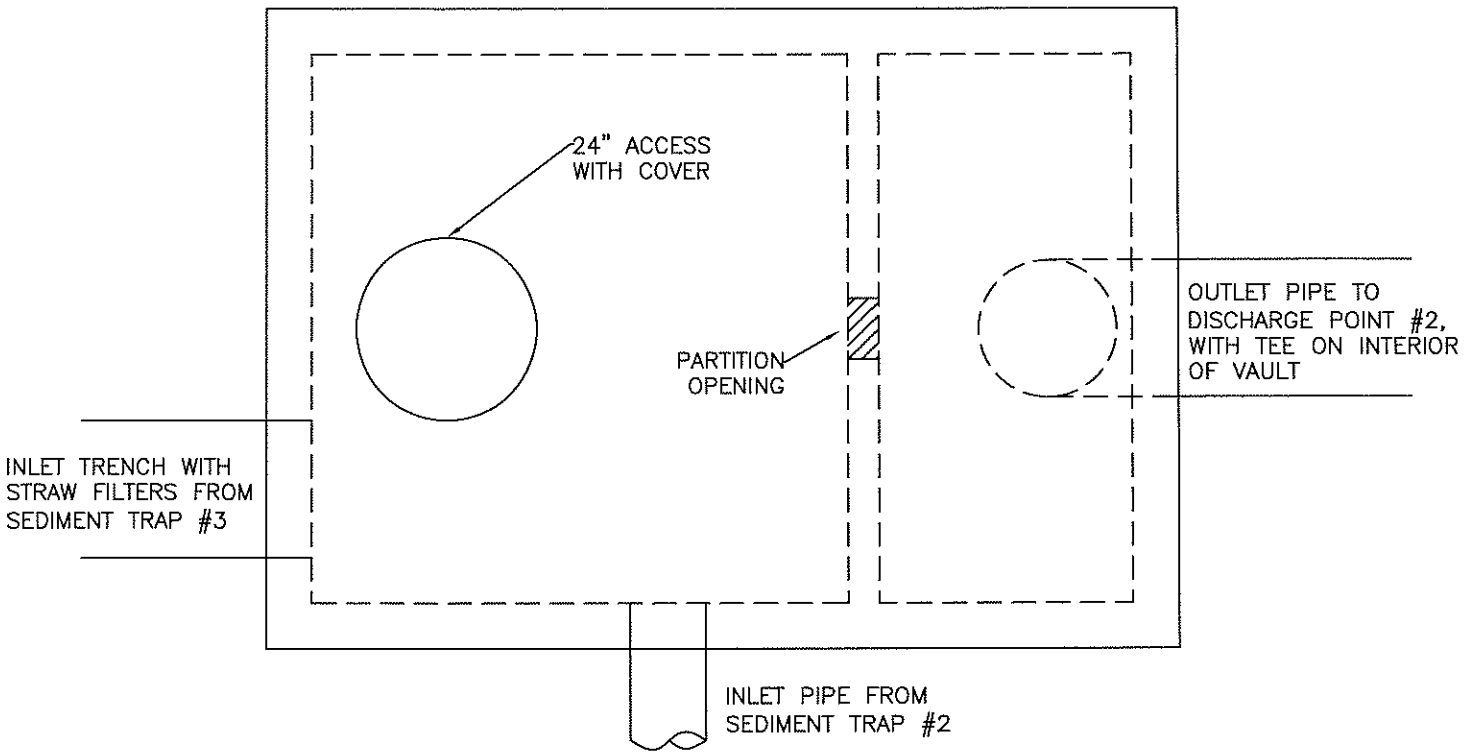


PLAN VIEW

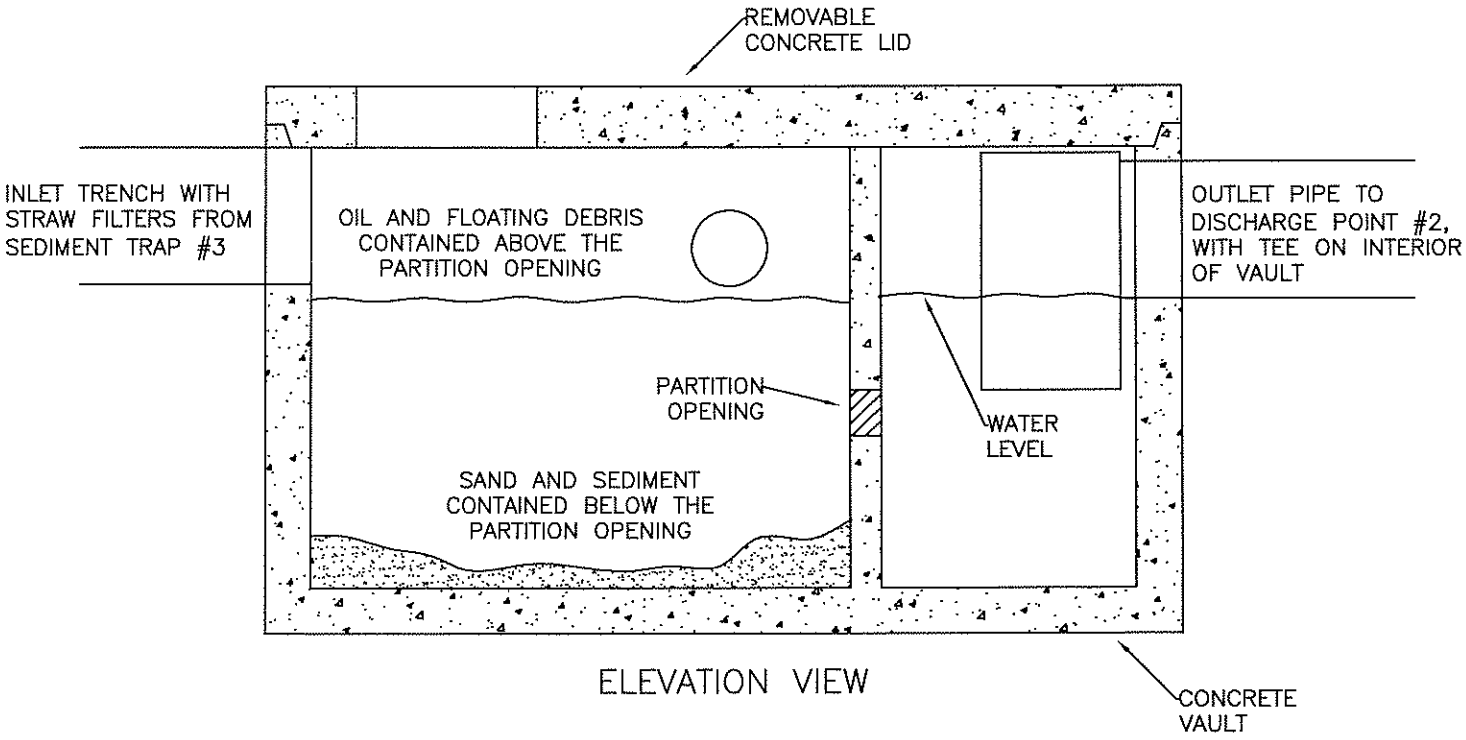


ELEVATION VIEW

SEDIMENT TRAP/OIL WATER SEPARATOR #1 (ST/OWS #1)

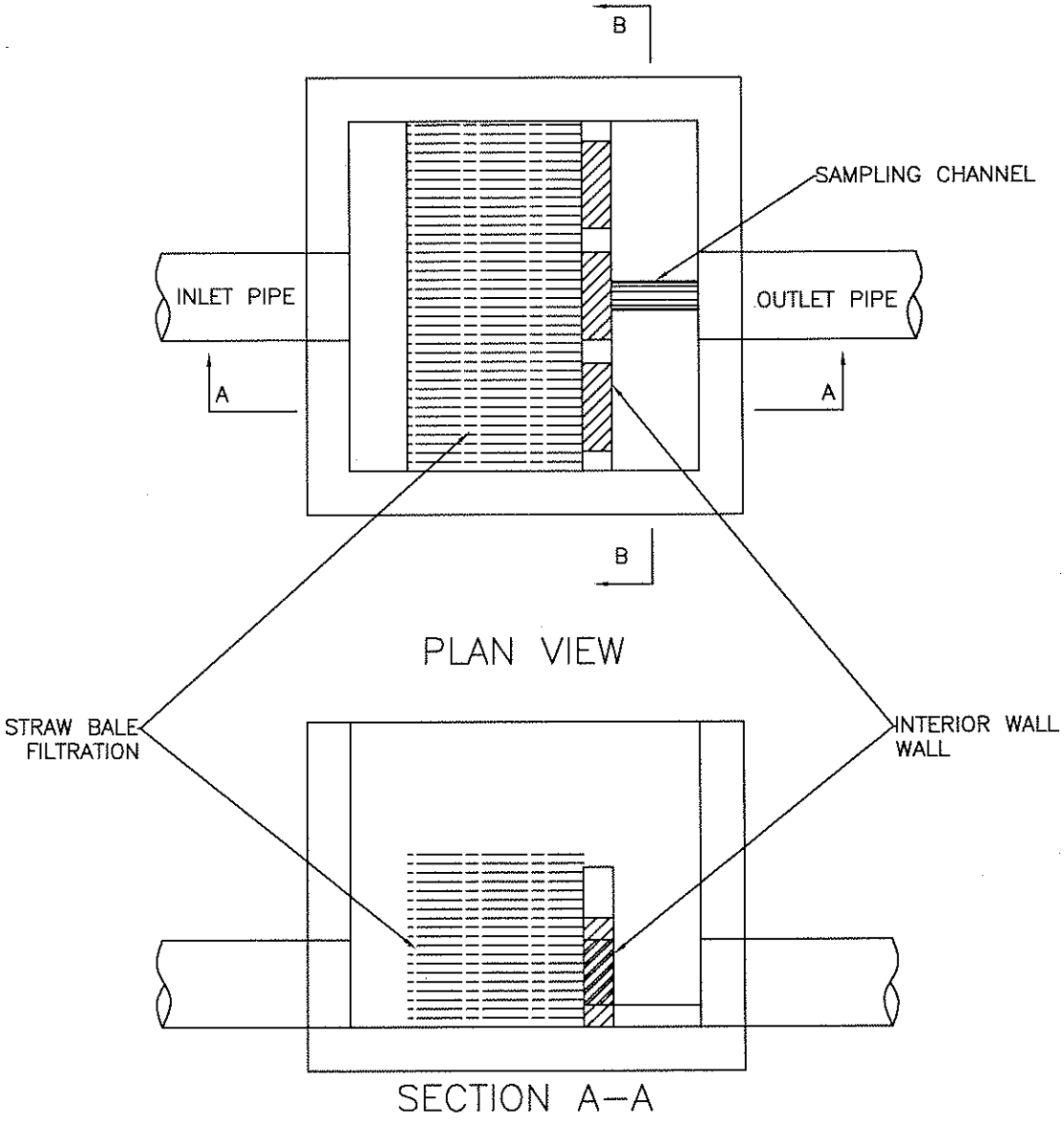


PLAN VIEW



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: deltakeep@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 IIII-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 exceedences, 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:

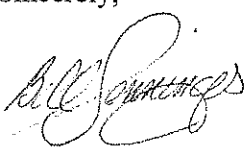
Robert J. Tuerck
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail:Bob@JacksonTuerck.com

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,



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

Parameter	Value
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

Michael R. Lozeau (State Bar No. 142893)
Richard T. Drury (State Bar No. 163559)
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Attorneys for Plaintiff
GLOBAL COMMUNITY MONITOR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GLOBAL COMMUNITY MONITOR, a non-profit corporation,

Plaintiff,

vs.

CUSTOM ALLOY SCRAP SALES, INC., a corporation,

Defendant.

Case No. CO9-04186 MHP

[PROPOSED] CONSENT DECREE

WHEREAS, Plaintiff Global Community Monitor (hereinafter "GCM" 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;

WHEREAS, Defendant Custom Alloy Scrap Sales, Inc. ("CASS") is a corporation organized under the laws of the State of California;

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

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

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

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

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

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

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

WHEREAS, GCM and Defendant (hereinafter, collectively referred to as the "Settling Parties") have agreed that it is in the parties' mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings;

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

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

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

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

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

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

IMPROVEMENTS TO THE FACILITY'S STORM WATER POLLUTION CONTROL MEASURES

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

work areas beneath the new roof will remain in place.

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

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

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

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

8. CASS agrees to vacuum sweep the areas in front of the gates to the Furnace/Gardener Area located at the corner of Poplar Street and 28th Street and in the middle of the west side of the Furnace/Gardener Area exiting onto Polar Street, respectively. CASS agrees to hand-vacuum these gates at least once per day during the rainy season (October 1 through May 30) on non-rain event days. If these areas or portion of these areas are roofed and fully enclosed so that storm water does not fall on the areas or portions of the areas, CASS need not conduct vacuum sweeping any such covered areas.

SAMPLING, MONITORING, INSPECTION AND REPORTING

In addition to, or in conformance with, any recordation, sampling, monitoring or inspecting activities described above, or otherwise required by law, CASS agrees to perform the additional monitoring described herein during the 2010-2011 and 2011-2012 wet seasons (October 1 – May 30, each year):

9. CASS shall maintain logs of all sweeping activities at the Facility, including the date and location of any sweeping, as part of the facility's annual report.

10. CASS shall collect samples from the Facility's existing monitoring locations. CASS shall analyze each storm water sample taken from the existing monitoring locations in accordance with the General Permit and this Agreement for, at a minimum, the following constituents: total suspended solids, pH, oil and grease or total organic carbon, specific conductance, chemical oxygen demand, aluminum, zinc, iron, copper, lead, nickel, manganese, magnesium, chromium, and arsenic. In regard to analyzing for manganese, magnesium, chromium, and arsenic, if the analytical results of two consecutive sampling events for one of these metals at a specific outfall are measured below the Levels of Concern set forth in Paragraph 15 below, then that specific metal at the relevant outfall can be deleted from the monitoring program consistent with the General Permit's requirements.

11. In addition, during the 2010-2011 rainy season, CASS agrees to take at least one sample of storm water from a downspout discharging runoff from the roof of the Furnace/Gardener Area during a qualifying storm event. CASS further agrees to analyze that roof sample for aluminum.

12. All samples collected from the CASS Facility shall be delivered to a California state accredited environmental laboratory and shall be analyzed in accordance with the provisions of the General Permit.

13. Analytical methods used by CASS or its analytical laboratory shall be adequate to detect the individual constituents at or below the Levels of Concern set forth in Paragraph 15.

14. Results from CASS's sampling and analysis shall be provided to GCM within fourteen (14) days of receipt of the final written laboratory report from each sampling event.

MEET AND CONFER REGARDING EXCEEDANCE OF LEVELS OF POTENTIAL CONCERN

15. If analytical results of storm water samples taken by CASS during the 2010-2011 and/or 2011-2012 wet season indicate that storm water discharges from the Facility exceed the following Levels of Concern – pH – 6.0-9.0 units; total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; chemical oxygen demand ("COD") – 120 mg/L; aluminum – 0.75 mg/L; zinc – .117 mg/L, 0.090 mg/L; iron – 1 mg/L; copper – .0636 mg/L, 0.0048 mg/L, lead – 0.0816 mg/L, nickel – 1.417 mg/L, 0.074 mg/L, manganese – 1.0 mg/L, magnesium – 0.0636 mg/L, chromium VI – 1.1 mg/L, and arsenic – 0.16854 mg/L – CASS agrees to take additional feasible measures aimed at reducing pollutants in the Facility's storm water to levels at or below these levels.

16. In furtherance of that objective, when one or more analytical results of storm water samples taken by CASS during the 2010-2011 and/or 2011-2012 wet season indicate that storm water discharges from the Facility exceed the following Levels of Concern, CASS shall prepare a written statement ("Memorandum") discussing:

(1) Any exceedance or exceedances of any Level of Concern;

(2) An explanation of the possible cause(s) and/or source(s) of any exceedance; and

(3) Additional feasible best management practices ("BMPs") that will be taken to further reduce the possibility of future exceedance(s).

17. Such Memorandum shall be e-mailed and sent via first class mail to GCM not later than July 30th following the conclusion of each wet season. Any additional measures set forth in the

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

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

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

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

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

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

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

MITIGATION FEES AND COSTS

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

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

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

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

DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE

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

27. Except as specifically noted herein, any disputes with respect to any of the provisions of this Consent Decree shall be resolved through the following procedure. The parties agree to first meet and confer to resolve any dispute arising under this Consent Decree. The Parties shall meet and confer within fourteen (14) days of receiving written notification from the other Party of a request for a meeting to determine the merits of the dispute or whether a violation has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the violation or dispute. In the event that such disputes cannot be resolved through this meet and confer process or the Parties fail to meet and confer, the Parties agree to request a settlement meeting before a magistrate judge of the District Court or a Court-appointed mediator. In the event that the Parties cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge or mediator, the Parties may submit the dispute via motion to the District Court Judge. The prevailing party may seek recovery of reasonable attorney fees and costs incurred in bringing any such motion, 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) or any other legal authority, and applicable case law interpreting such provisions. The parties expressly consent to have all disputes arising from this Consent Decree resolved by the District Court, and the parties waive any appeal or judicial review of a decision entered by the District Court Judge made within the parameters of this Consent Decree.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

28. In consideration of the above, and except as otherwise provided by this Consent Decree, the Settling Parties hereby forever and fully release each other and their respective successors, assigns, officers, agents, 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, which the Settling Parties have against each other arising from GCM's allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of this Consent Decree.

29. The Settling 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.

Except as otherwise provided by this Consent Decree, the Settling 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 Letter and Complaint up to and including the Termination Date of this Consent Decree.

30. The Parties enter into this Consent Decree for the purpose of avoiding prolonged and costly litigation. Nothing in this Consent Decree shall be construed as, and CASS 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 Consent Decree constitute or be construed as an admission by CASS 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 Consent Decree.

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

MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

Denny Larson
Global Community Monitor
P.O. Box 1784
El Cerrito, CA 94530
denny@gcmonitor.org

With copies sent to:

Michael R. Lozeau
Lozeau Drury LLP
1516 Oak Street, Suite 216
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 CASS pursuant to this Consent Decree shall be sent by e-mail and U.S. Mail, postage prepaid, and addressed as follows:

Edward Kangeter
Custom Alloy Scrap Sales, Inc.
2730 Peralta Street
Oakland, CA 94607
cass@customalloy.com

With copies sent to:

Ruben Castellon
Castellon & Funderburk LLP
3200 Danville Boulevard, Suite 100
Alamo, CA 94507
rcastellon@candffirm.com

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

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.

40. 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.

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

42. 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: 6/4/10

Global Community Monitor

By: _____
Denny Larson, Executive Director

Dated: 6/7/10

Custom Alloy Scrap Sales, Inc.

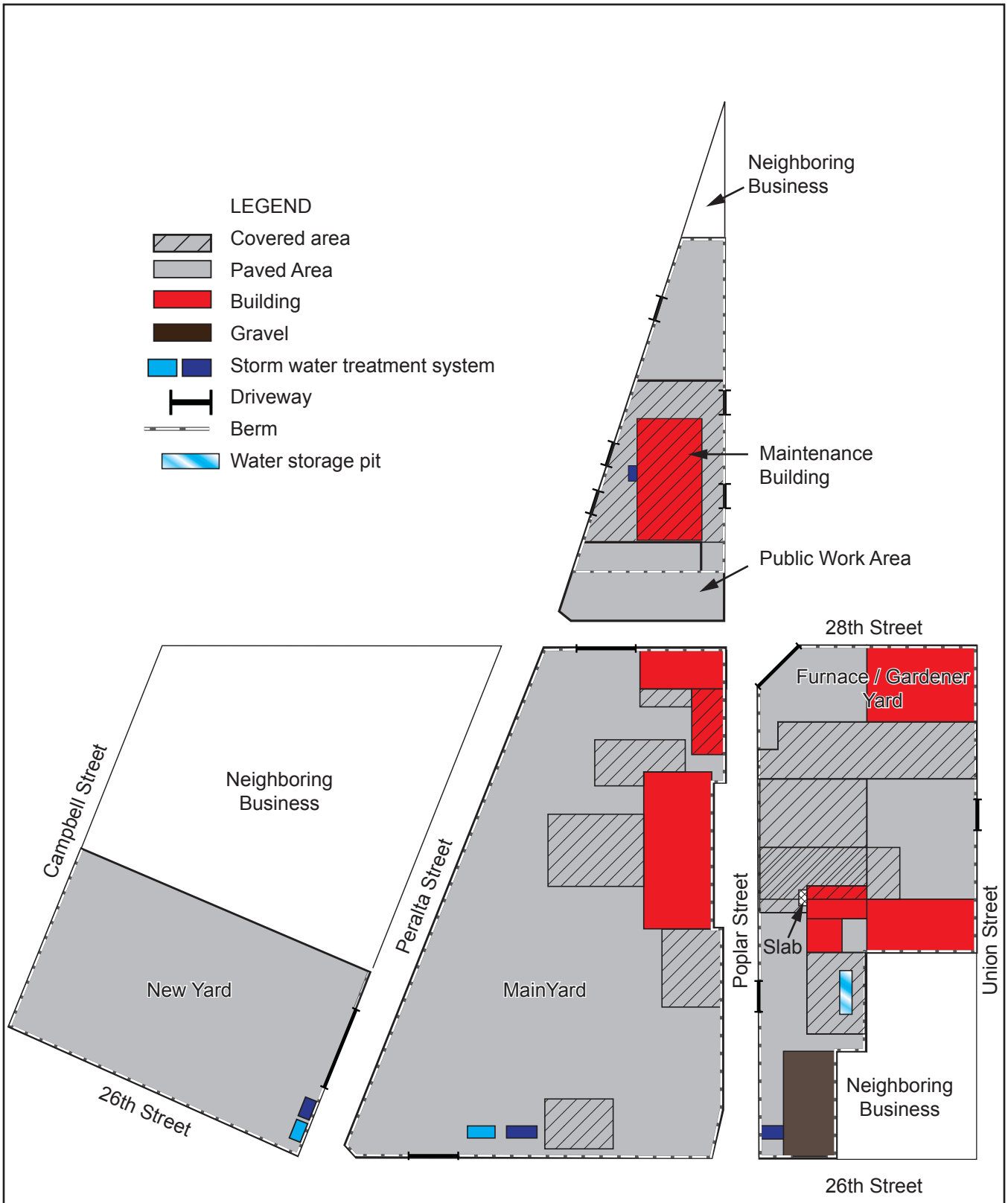
By: _____
Chal Sulpizio, President

APPROVED AND SO ORDERED.

Date: _____

_____
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 1



FACILITY DIAGRAM
CASS, Inc.
2730 Peralta Street
Oakland, California

By: JH	Date: 11/13/09	Project No. 15301.000
AMEC Geomatrix		Figure 1

S:\15300\15301\15301.000\task_2_fig_01.ai

EXHIBIT 2

E-filing

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Richard T. Drury (State Bar No. 163559)
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Attorneys for Plaintiff
GLOBAL COMMUNITY MONITOR

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GLOBAL COMMUNITY MONITOR, a non-profit corporation,

Plaintiff,

vs.

CUSTOM ALLOY SCRAP SALES, INC., a corporation,

Defendant.

Case No. C09-04186 MHP ADR

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

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

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

I. JURISDICTION AND VENUE

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

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

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

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

II. INTRODUCTION

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

and the Act are ongoing and continuous.

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

III. PARTIES

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

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

Plaintiff caused by Defendant's activities.

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

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

IV. STATUTORY BACKGROUND

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

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

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

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

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

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

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

17. 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.

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

19. EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established Parameter Benchmark Values for the following parameters, among others: 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 Board has proposed a Benchmark Value for electrical conductance of 200 μmhos/cm.

20. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply with the BAT and BCT standards. The General Permit requires that an initial SWPPP have been developed and implemented before October 1, 1992. 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 (Section A(2)). The SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (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 (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and 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 (Section A(6)). The SWPPP 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 (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Section A(9),(10)).

21. Section C(3) of the General Permit 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 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. Section C(4)(a).

22. Section C(11)(d) of the General Permit's Standard Provisions requires dischargers to report any noncompliance to the Regional Board. *See also* Section E(6). Section A(9) of the General 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.

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

24. As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report. Dischargers must also collect and analyze storm water samples from at least two storms per year. Section B(5)(a) of the General 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) requires dischargers to sample and analyze during the wet season for basic parameters, such as pH, total suspended solids, electrical conductance, and total organic content or oil & grease, certain industry-specific parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii) requires discharges to sample for parameters dependent on a facility's standard industrial classification ("SIC") code. Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution. Section B(7)(a) indicates that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event." Section B(7)(c) requires that "if visual observation and sample collection locations are difficult to observe or sample…facility operators shall

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

25. Section B(14) of the General Permit requires dischargers to submit an annual report by July 1 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. Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

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

27. The Regional Board has 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.

28. 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."

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

30. 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."

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

concentrations that cause nuisance or adversely affect beneficial uses."

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

33. 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).

34. 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).

V. STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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	#1 WM

			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

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

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

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

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

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

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

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

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

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

51. The electrical conductance levels detected by the Facility in its storm water have been greater than the numeric water quality standards applicable to electrical conductance in California. The electrical conductance levels detected by the Facility in its storm water have been greater than the benchmark value of 200 µmho/cm proposed by the State Board. For example, on January 4, 2008, the electrical conductance level measured by Defendant in the Facility's discharged storm water was 283 µmho/cm. That electrical conductance level is almost one and a half times the State Board's proposed benchmark value. The Facility also has measured levels of electrical conductance in storm water discharged from the Facility in excess of the proposed benchmark value of 200 µmho/cm on

February 20, 2008 and October 19, 2004.

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

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

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

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

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

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

58. Plaintiff is informed and believes, and thereupon alleges that Defendant has discharged unauthorized non-storm water at the Facility, including discharges from pipes located on the westernmost edge of the facility abutting Union Street, since at least September 10, 2004. Plaintiff is informed and believes, and thereupon 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 since at least September 10, 2004.

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

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

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

continuing.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Failure to Implement the Best Available and Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

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

63. The General Permit's SWPPP requirements and Effluent Limitation B(3) require 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. Defendant has failed to implement BAT and BCT at the Facility for its discharges of TSS, O&G, COD, aluminum, nickel, zinc, lead, iron, copper, pH, electrical conductance, and other un-monitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

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

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

SECOND CAUSE OF ACTION
Discharges of Contaminated Storm Water in Violation of Permit Conditions and the Act (Violations of 33 U.S.C. §§ 1311, 1342)

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

67. Discharge Prohibition A(2) of the General Permit requires that storm water 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

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

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

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

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

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

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

THIRD CAUSE OF ACTION
Failure to Prepare, Implement, Review, and Update an Adequate Storm Water Pollution Prevention Plan (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.

74. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

75. 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 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials without appropriate best management practices; the continued exposure of significant quantities of various materials to storm water flows; the continued exposure and tracking of waste resulting from the operation or maintenance of vehicles at the site, including trucks and forklifts; the failure to either treat storm water prior to discharge or to implement effective containment practices; and the continued discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark values.

76. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

77. Each day since September 10, 2004, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

78. Defendant has been in violation of the SWPPP requirements every day since September 10, 2004. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

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

79. Plaintiff re-alleges and incorporates Paragraphs 1-78, inclusive, as if fully set forth herein.

80. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

81. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, its failure to analyze storm water samples from each discharge location and its failure to identify and control non-storm water discharges.

82. Each day since September 10, 2004, that Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

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

83. Plaintiff re-alleges and incorporates Paragraphs 1-82, as if fully set forth herein.

84. Defendant has falsely certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least July 1, 2005.

85. Each day since at least July 1, 2005 that Defendant has falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of the General Permit's certification requirement each day that it maintains its false certification of its compliance with the General Permit.

VII. RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

a. Declare Defendant to have violated and to be in violation of the Act as alleged herein;

b. Enjoin Defendant from discharging polluted storm water from the Facility unless authorized by the Permit;

c. Enjoin Defendant from further violating the substantive and procedural

requirements of the Permit;

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

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

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

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

h. Order Defendant to pay civil penalties of $32,500 per day per violation for all violations occurring through January 12, 2009, and $37,500 per day per violation for all violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections 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;

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

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

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

Dated: September 10, 2009

Respectfully submitted,

LOZEAU DRURY LLP

By: _____

Douglas J. Chermak
Attorneys for Plaintiff
GLOBAL COMMUNITY MONITOR

EXHIBIT A

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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 201I007363. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

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

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

I. Background.

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

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

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

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

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

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

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

CASS has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40

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

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

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

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

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

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

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

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

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

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

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

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

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

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

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

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

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

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

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

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

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

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *Id*. "All storm water discharge locations shall be sampled." *Id*. "Facility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Failure to File True and Correct Annual Reports.

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

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

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:

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VII. Penalties.

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

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

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

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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

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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	

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Attorney for Plaintiff
INLAND EMPIRE WATERKEEPER, a program of
ORANGE COUNTY WATERKEEPER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION - RIVERSIDE

INLAND EMPIRE WATERKEEPER, a program of ORANGE COUNTY WATERKEEPER, a non-profit corporation, Plaintiff, v. J LEE'S METALS, INC., dba D&M METALS, and J LEE'S METALS, INC., a California corporation, Defendants.	Civil Case No.: EDCV 09-1549 VAP (OPx) **[Proposed] CONSENT DECREE** **(Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*)**

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WHEREAS, Inland Empire Waterkeeper, a program of Orange County Coastkeeper ("Waterkeeper" or "Plaintiff") is a non-profit corporation dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of Orange County and Inland Empire area receiving waters;

WHEREAS, J Lee's Metals, Inc., dba D & M Metals, Inc., and J. Lee's Metals, Inc. (collectively "Defendants"), operate a scrap metals recycling operation located at 840 E. State Street, in Ontario, California 91761 (hereinafter the "D & M Metals Facility," "Site," or "Facility").

WHEREAS, Waterkeeper contends that the operations at the D & M Metals Facility result in discharges of pollutants into storm drains, West Cucamonga Creek, Cucamonga Creek, the Santa Ana River, and ultimately the Pacific Ocean (collectively referred to as the "Receiving Waters"); and that discharges from the Facility are regulated by the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act", "CWA" or "Act"), Sections 301 (a) and 402, 33 U.S. C. §§ 1311 (a), 1342;

WHEREAS, on June 10, 2009, Waterkeeper served Defendants, the United States Environmental Protection Agency ("EPA"), EPA Region IX, the State Water Resources Control Board ("State Board") and the Regional Water Quality Control Board ("Regional Board"), with a notice of intent to file suit ("60-Day Notice") under Sections 505 (a) and (b) of the CWA, 33 U.S.C. § 1365 (a) and (b). The 60-Day Notice alleged that the recipients had in the past and continues to violate Sections 301 (a) and 402 of the Act, 33 U.S.C. §§ 1311 (a) and 1342, by discharging pollutants into Receiving Waters in violation of National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS0000001 [State Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Permit") and the Act;

WHEREAS, on August 13, 2009,Waterkeeper filed a complaint against Defendants in the United States District Court, Central District of California (Civil Case No. EDCV 09-1549 VAP (OPx)) entitled *Inland Empire Waterkeeper et al. v. J Lee's Metals, Inc. et al. ("Complaint");*

WHEREAS, on August 24, 2009, Waterkeeper filed a corrected complaint against Defendants with the same caption set forth in the preceding paragraph, which corrected a typographical error in the Complaint ("Corrected Complaint");

WHEREAS, Defendants deny all allegations of the Complaint and Corrected Complaint and the contentions of Waterkeeper, as set forth in these Recitals and in the 60-Day Notice;

WHEREAS, Waterkeeper and Defendants (collectively referred to herein as the "Settling Parties" or "Parties") have agreed that it is in the Parties' mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings and without any admission of liability on the part of the Defendants;

WHEREAS, Defendants intend to continue their industrial activities at the D & M Metals Facility and will therefore undertake additional measures to control stormwater pollution associated with continuing industrial activities;

WHEREAS, this Consent Decree shall be submitted to the United States Department of Justice and EPA for the statutory review period pursuant to 33 U.S.C. § 1365 (c) and 40 C.F.R. § 135.5;

WHEREAS, all actions taken by Defendants pursuant to this Consent Decree shall be made in compliance with all applicable Federal and State laws and local rules and regulations.

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

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505 (a)(1)(A) of the Act, 33 U.S.C. § 1365 (a)(1)(A);

2. Venue is appropriate in the Central District Court pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365 (c)(1), because the D & M Metals Facility at which the alleged violations took place is located within this District;

3. The Complaint and Corrected Complaint state a claim upon which relief may be granted pursuant to Section 505 of the Act, 33 U.S.C. § 1365.

4. Waterkeeper has standing to bring this action.

5. The Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

I. CONSENT DECREE OBJECTIVES

6. It is the express purpose of the Parties entering into this Consent Decree to further the objectives set forth in Sections 101 *et seq*. of the CWA, 33 U.S.C. §§ 1251 *et seq*., and to resolve those issues alleged by Waterkeeper in its Complaint. In light of these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply with the provisions of this Consent Decree and to comply with the requirements of the Industrial Permit and all applicable provisions of the CWA at the D & M Metals Facility. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the D & M Metals Facility "not cause or contribute to the exceedance of an applicable water quality limit." Effluent Limitation B(3) of the Industrial Permit requires that Best Management Practices ("BMPs") be developed and implemented to achieve Best Available Technology ("BAT") and the Best Conventional Pollutant Control Technology ("BCT"). Defendants are required to develop and implement BMPs necessary to comply with the Industrial Permit's requirement to achieve compliance with Water Quality Standards and BAT/BCT standards. BMPs must be developed and implemented to prevent discharges or to reduce contamination in storm water discharged from the D & M Metals Facility sufficient to achieve the numeric action limits detailed in paragraph 12 below.

II. COMMITMENTS OF THE PARTIES

A. Industrial Stormwater Pollution Control Measures

7. Design Storm Event. The Parties agree that the Design Storm Event for the D & M Metals Facility is a 25-year 24-hour return period rain event as defined by the County of San Bernardino Hydrology Manual (August 1986) with an assumed dry antecedent condition and 5.87 total inches of rainfall over a 24-hour period; or any single event exceeding a rainfall intensity of 1.67 inches in one hour.

8. BMP Plan. The BMP Plan attached as Exhibit A hereto is designed to capture and infiltrate stormwater generated during rain events up to and including the Design Storm Event (the "Infiltration Unit") within the D & M Metals Facility Containment Zone (set forth on and attached hereto as Exhibit B). The BMPs set forth in the plan shall be implemented to ensure that no stormwater discharges occur from the D & M Metals Facility Containment Zone during rain events up to and including the Design Storm Event, and so that no pollutants from the D & M Metals Facility's stormwater infiltration system cause degradation of groundwater. As set forth on the attached BMP Plan (Exhibit A), the location and design of the Infiltration Unit shall be accessible for future inspection and maintenance. Defendants shall also ensure that the soils and groundwater conditions at the installation site of the Infiltration Unit are at least as conducive to effective infiltration as those on the property owned and/or operated by Defendants directly to the east of the D & M Metals Facility operations yard, shown on Exhibit B as area "YY". If the proposed site of the Infiltration Unit does not provide equally effective infiltration capacity, Defendants and Waterkeeper shall meet and confer to determine an alternate site for the Infiltration Unit. Defendants shall continue to properly implement the BMP Plan during the life of this Consent Decree.

9. Stormwater discharges from the D & M Metals Facility that do occur shall be monitored as described in Section B below of this Consent Decree during the life of this Consent Decree, and discharges from the D & M Metals Facility Containment Zone during storm events less than the Design Storm Event shall constitute a breach of this Consent Decree.

10. Non-stormwater discharges from the D & M Metals Facility Containment Zone during the life of this Consent Decree not authorized by the Industrial Permit shall be considered breaches of this Consent Decree.

B. Stormwater Sampling and Numeric Action Levels

11. Sampling. During the life of this Consent Decree, Defendants shall sample every offsite discharge from the D & M Metals Facility Containment Zone and shall provide the results of such sampling to Waterkeeper in accordance with the provisions set forth below. Samples shall be evaluated consistent with the requirements of the Industrial Permit and shall have detection limits sufficiently sensitive to evaluate compliance with the Numeric Action Levels set forth in paragraph 12.

12. Numeric Action Levels. During the life of this Consent Decree, contaminants in discharges occurring during storm events smaller than the Design Storm Event from the D & M Metals Facility Containment Zone shall not exceed the Numeric Action Levels set forth in Table 1, consistent with paragraphs 13 and 14 below.

Table 1. Numeric Action Levels for D & M Facility Discharges

Contaminant	Numeric Action Level
Total suspended solids	100 mg/L
Copper	0.0636 mg/L
Lead	0.0816 mg/L
Zinc	0.117 mg/
Oil and grease	15 mg/L
Aluminum	0.750 mg/L
Arsenic	0.16854 mg/L
Cadmium	0.0159 mg/L
Iron	1.0 mg/L
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

13. Comparing Analytical Monitoring Results to Numeric Action Levels: Following each sampling event, discharge data for storm events smaller than the Design Storm Event will be compared to the Numeric Action Levels in paragraph 12 above. In the event that one or more of the pollutant concentrations exceed the Numeric Action Levels, Defendants shall prepare an Action Plan as described below in paragraph 15, unless Defendants can demonstrate that contaminant mass for that parameter has been reduced through onsite stormwater infiltration and/or diversion of runoff from existing or newly installed roofs or canopies to avoid contact with industrial contaminants consistent with the requirements of paragraph 14 below.

14. Comparing Analytical Monitoring Results to Numeric Action Levels Considering Mass Reduction Through Infiltration and/or Diversion: In the event that onsite infiltration and/or diversion are implemented to reduce the mass of contaminants discharged from the D & M Metals Facility, the following method will be used to assess compliance with the Numeric Action Levels described in paragraph 12 for any discharge point where stormwater discharges occur during storm events smaller than the Design Storm Event.

a. Based on existing site conditions (100 percent impervious surfaces and no stormwater infiltration or diversion) and the amount of rainfall that falls on the D & M Metals Facility during each of the monitored storm events described in paragraphs 11 and 12, the volume of water that would have discharged from the D & M Metals Facility prior to installation of the infiltration and/or diversion measures shall be calculated.

b. Using the Numeric Action Levels described in paragraph 12, the mass of "allowable" pollutants will be calculated (volume of water assuming no infiltration/diversion multiplied by the Numeric Action Levels) for each constituent listed in paragraph 12.

c. The actual contaminant mass discharged for each of the pollutants listed in paragraph 12 will be calculated (volume of water actually discharged multiplied by the analytical results for storm events where discharges occur);

d. For each of the monitored storm events, the calculated mass of actual contaminants discharged under subparagraph (c) above will be compared to the mass of allowable contaminants calculated under subparagraph b above. If the mass of actual contaminants is above the allowable mass of contaminants, an Action Plan shall be prepared as described in paragraph 15 below.

15. Numeric Action Level Action Plan. In the event that one or more of the Numeric Action Levels in Table 1 are found to be exceeded using the procedures set forth in paragraphs 13 and 14 above during storms of intensity less than the Design Storm, Defendants shall produce an Action Plan within 45 days of receipt of laboratory reports demonstrating the exceedance. The Action Plan shall include additional BMPs designed to achieve compliance with the Numeric Action Levels set forth in Table 1 and include deadlines for implementation of the proposed BMPs that will be as soon as practicable, but in no event later than the beginning of the next wet season as defined by the Industrial Permit. Defendants agree to submit the Action Plan to Waterkeeper for review and comment as soon as it is completed but in any event no later than 45 days following receipt of laboratory reports for the data demonstrating the exceedance. Waterkeeper shall provide comments, if any, to the Defendants within 30 days of receipt. Defendants shall incorporate Waterkeeper's comments into the Action Plan and implement the revisions within 14 days of receiving Waterkeeper's comments. If any of Waterkeeper's comments are not utilized, Defendants shall justify in writing why any comment is not being incorporated within 14 days of receiving comments. Any disputes as to the adequacy of the Action Plan shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at paragraphs 28 through 31 below. Defendants shall notify Waterkeeper in writing when the Action Plan has been implemented.

C. Vadose Zone Sampling

16. Sampling. During the first two years of the Consent Decree, Defendants shall collect samples of infiltrating stormwater in areas where significant stormwater infiltration occurs. During the first and second wet seasons, vadose zone samples will be collected after at least three storm events from a minimum of one lysimeter or similar device. At least two lysimeters shall be installed in mutually agreed locations on the edge of the infiltration field. The lysimeter samples will be analyzed for the metals (both total and dissolved) presented in Table 1.

17. Vadose Zone Results Evaluation. The vadose zone sampling results from the first wet season under this Consent Decree (October 1, 2010-May 31, 2011) will be used to prepare a Stormwater Infiltration Evaluation Report, which will evaluate the potential for infiltrating stormwater to degrade groundwater below the D & M Metals Facility. The evaluation of potential impacts to groundwater will include a comparison of the vadose zone sample results to Maximum Contaminant Levels (MCLs) established by US EPA for the metals in Table 1 in groundwater. If any MCL is exceeded, Defendants shall inform Waterkeeper within 48 hours of receiving the result and shall prepare a plan to perform additional assessments to evaluate the potential for MCL exceedances in groundwater itself (Contingency Plan) to be ready and available to implement if the wet season mean of sampling results from the lysimeter exceeds the MCL for any metal listed on Table 1. The Contingency Plan, if necessary, will be included as part of the Stormwater Infiltration Evaluation Report and may include literature research regarding background concentrations of metals in soil and groundwater; collection and analysis of background soil, pore water, and groundwater samples; additional monitoring of the existing lysimeter; installation and monitoring of deeper lysimeters; installation and monitoring of upgradient/downgradient groundwater wells; vadose zone modeling; additional pretreatment BMPs, or other methods as appropriate to assess or to mitigate the potential for exceedances of MCLs in groundwater. Defendants shall prepare for the

Stormwater Infiltration Evaluation Report, including potential vadose zone modeling, by collecting appropriate soils and hydrogeologic data when the lysimeters are installed.

18. Defendants agree to submit the Contingency Plan, if required under paragraph 17, to Waterkeeper as part of the Stormwater Infiltration Evaluation Report for Waterkeeper's review and comment no later than 60 days following the end of the 2010/2011 wet season. In addition to evaluating the potential for infiltrating stormwater to degrade groundwater, the report will provide recommendations for additional pretreatment BMPs as appropriate to protect groundwater. The report will also establish "trigger levels" for infiltrating stormwater collected from the lysimeters, which if exceeded, will require Defendants to prepare Stormwater Infiltration Evaluation Reports at the completion of the second wet season under this Consent Decree. Waterkeeper shall provide comments, if any, to Defendants within 30 days of receipt. Defendants shall incorporate Waterkeeper's comments into the contingency plan, if any, and into the Stormwater Infiltration Evaluation Report, and re-issue this Report to Waterkeeper within 14 days of receiving Waterkeeper's comments. If any of Waterkeeper's comments are not utilized, Defendants shall justify in writing why any comment is not being incorporated within 14 days of receiving comments. Any disputes as to the adequacy of the contingency plan, if any, and the Stormwater Infiltration Evaluation Report, shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at paragraphs 28 through 31 below. If the wet season mean of vadose sampling results exceeds the MCL or background if background exceeds the MCL for any metal, Defendants shall implement the contingency plan immediately upon its finalization.

D. Monitoring and Reporting

19. Site Inspections. Waterkeeper's Water Quality Engineer, accompanied by Waterkeeper's attorney or other representative approved by Defendants, may conduct up to one Site Inspection per year at the D & M Metals Facility during the life of this Consent Decree. The Site Inspections shall occur during normal business hours and Waterkeeper shall provide Defendants with 48 hours notice prior to each inspection.

During the Site Inspections, Waterkeeper and/or its representatives shall be allowed access to the D & M Metals Facility's SWPPP and monitoring records and to all monitoring reports and data for the Facility. During the Site Inspections, Waterkeeper and/or its representatives may collect samples of stormwater discharges from the D & M Metals Facility, if any. A certified California laboratory shall analyze stormwater samples collected by Waterkeeper and copies shall be provided to Defendants within ten (10) business days of receipt. At the request of Defendants, the samples shall be split and one half provided to Defendants to allow Defendants to have their own certified California laboratory analyze stormwater samples collected by Waterkeeper, in which case Defendants shall provide their laboratory results to Waterkeeper within ten (10) business days of receipt. Waterkeeper shall make all reasonable efforts to ensure that its inspections are scheduled in such a manner as to allow Defendants' compliance officer to be present at all inspections.

20. Compliance Monitoring and Oversight. Defendants agree to help defray Waterkeeper's monitoring costs by reimbursing Waterkeeper Two Thousand Dollars ($2,000.00) within 60-days of the Effective Date of this Consent Decree. Defendants agree to make compliance monitoring and oversight funds payable to "Lawyers for Clean Water Attorney Client Trust Account" and deliver them by certified mail or overnight delivery to Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San Francisco, California 94129, attention Layne Friedrich. Waterkeeper shall provide copies of any invoicing for Site Inspections and compliance oversight within 30-days of receiving a written request by Defendants. Any compliance monitoring money remaining when this Consent Decree terminates shall be refunded to Defendants.

21. Reporting. During the life of this Consent Decree, each January 15 and July 15, Defendants shall provide Waterkeeper with a copy of all stormwater-related compliance and monitoring data, including inspection reports, related to the D & M Metals Facility for the wet season. The reports shall be submitted every January 15 for the period from October 1 to December 31, and on July 15 for the period from January 1

through April 30th. During the life of this Consent Decree, Defendants shall provide Waterkeeper with all laboratory analyses related to the D & M Metals Facility within 7 business days of Defendants' receipt of such information.

22. Document Provision. During the life of this Consent Decree, Defendants shall copy Waterkeeper on all documents related to water quality at the D & M Metals Facility that are submitted to the Regional Board, the State Board, and/or any State or local agency or municipality. Such reports and documents shall be provided to Waterkeeper concurrently as they are sent to the agencies and/or municipalities.

E. ENVIRONMENTAL PROJECTS AND FEES

23. Environmental Mitigation Project. Defendants agree to pay Four Thousand Dollars ($4,000.00) to the Public Interest Green Fund at the Orange County Community Foundation, 30 Corporate Park, Suite 410 Irvine, California 92606, www.oc-cf.org. The Public Interest Green Fund is a nonprofit organization that uses its funds to support environmental advocacy by area law students, either via stipends or scholarships. This mitigation payment shall be used to support student advocacy in projects that reduce or mitigate the impacts of storm water pollution in Orange County and the Inland Empire. Defendants shall make the mitigation payment within 60-days of the Effective Date of this Consent Decree and mail the payment via certified mail or overnight delivery to the Public Interest Green Fund. Defendants shall provide Waterkeeper with a copy of such payment.

24. Waterkeeper's Fees and Costs. Defendants agree to reimburse Waterkeeper for Waterkeeper's investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and other costs incurred as a result of investigating and preparing the lawsuit, and negotiating a resolution of this matter, totaling Fifty-six Thousand Dollars ($56,000.00). Such payment shall be made within sixty (60) days of the Effective Date, payable to "Lawyers for Clean Water Attorney Client Trust Account" and delivered by certified mail or overnight delivery to: Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San Francisco, California 94129, attention Layne Friedrich.

F. COMMITMENTS OF PLAINTIFF

25. Within 10-days of the execution of this Consent Decree by the Parties, Waterkeeper shall file a Notice of Tentative Settlement and Notice of 45-Day Review in the United States District Court for the Central District of California ("District Court").

26. Review by Federal Agencies. Plaintiff shall submit this Consent Decree to the United States Environmental Protection Agency ("EPA") and the United States Department of Justice ("DOJ") within three days of the execution of this Consent Decree for review consistent with 40 C.F.R. § 135.5. In the event that EPA or DOJ comments negatively on the provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

27. Plaintiff shall lodge this Consent Decree with the District Court within forty-eight (48) days after receipt by EPA and DOJ of the Consent Decree for the review set forth in paragraph 26 above. Waterkeeper is responsible for notifying Defendants of the District Court's entry of the Order dismissing these claims with prejudice. Such notification can be satisfied by the Central District of California's Case Management/Electronic Case Filing ("CM/ECF") notification to the Parties that the Order was executed and entered by the District Court.

G. DISPUTE RESOLUTION

28. This Court shall retain jurisdiction over this matter for a period of five years from the date of entry of the Consent Decree for the purposes of implementing and enforcing the terms and conditions of this Consent Decree, and adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree. The Court shall have the power to enforce this Consent Decree with all available legal and equitable remedies, including contempt.

29. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of the party's intention to resolve the dispute under this Section. The Parties shall then meet and confer in good faith (either telephonically or in person)

in an attempt to resolve the dispute informally over a period of 14-calendar days from the date of the notice.

30. If the Parties cannot resolve a dispute by the end of meet and confer informal negotiations, the party invoking the dispute resolution provision shall provide notice to the other party that it intends to invoke formal dispute resolution by filing a motion before the United States District Court for the Central District of California.

31. If Waterkeeper initiates a motion or proceeding before the Court relating to enforcement of the terms and conditions of this Consent Decree, and is determined by the Court to be the prevailing party, Waterkeeper shall be entitled to recover fees incurred to enforce the terms of this Consent Decree consistent with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §1365 and § 1319.

III. RETENTION OF JURISDICTION AND TERMINATION

32. During the life of this Consent Decree, the Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree filed within 60-days after completion of the obligations set forth in the Consent Decree. This Consent Decree and the Court's jurisdiction shall terminate five years from the Effective Date.

IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

33. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties hereby fully release, except for claims for the Defendants' failure to comply with this Consent Decree and as expressly provided below, each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all alleged CWA violations claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

34. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the Regional Board, EPA, or any other judicial or

administrative body on any other matter relating to stormwater discharges from the D & M Metals Facility occurring or arising after the Effective Date of the Consent Decree but specifically excluding the discharges and all other matters addressed by this Consent Decree.

V. MISCELLANEOUS PROVISIONS

35. No Admission of Liability. Neither this Consent Decree, the implementation of additional BMPs nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding, adjudication, admission or acknowledgment of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. Defendants maintain and reserve all defenses they may have to any alleged violations that may be raised in the future.

36. Force Majeure. Force Majeure includes any act of God, war, fire, earthquake, windstorm, flood or natural catastrophe; civil disturbance, vandalism, sabotage or terrorism; restraint by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency. Force Majeure shall not include normal inclement weather, economic hardship or inability to pay. Any party seeking to rely upon this paragraph to excuse or postpone performance, 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 failure of performance. Defendants shall exercise due diligence to resolve and remove any force majeure event.

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

38. Choice of Law. The laws of the United States shall govern this Consent Decree.

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

40. Correspondence. All notices required herein or any other correspondence pertaining to this Consent Decree shall be sent by overnight mail or courier as follows:

If to Plaintiff:

Daniel Cooper
Martin McCarthy
Lawyers for Clean Water, Inc.
1004 A O'Reilly Ave.
San Francisco, CA 94129

With copies to:

Garry Brown
Orange County Waterkeeper
3151 Airway Ave, Suite F-110
Costa Mesa, CA 92626

If to Defendants:

Wayne S. Rosenbaum
Foley & Lardner LLP
402 W. Broadway, Suite 2100
San Diego, CA 92101

With copies to:

Albert Lee
D & M Metals/ J. Lee's Metals, Inc.
840 E. State Street
Ontario, CA 91761

Notifications of communications shall be deemed submitted the next business day 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

communicated in the manner described above for giving notices. In addition, the Parties may agree to transmit documents electronically or by facsimile.

41. Effect of Consent Decree. Except as provided herein, Plaintiff does not, by its consent to this Consent Decree, warrant or aver in any manner that Defendants' compliance with this Consent Decree will constitute or result in compliance with any Federal or State law or regulation. Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of the Defendants to comply with all Federal, State, and local laws and regulations governing any activity required by this Consent Decree.

42. Counterparts. This Consent Decree may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, email of a .pdf signature and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

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

44. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

45. Integration Clause. This is an integrated Consent Decree. This Consent Decree 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 Consent Decree.

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

47. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns, upon execution of the Consent Decree. The Parties

certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

48. The Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the Defendants do not admit liability for any purpose as to any allegation or matter arising out of this Action.

49. The term "Effective Date," as used in this Consent Decree, shall mean the tenth (10^{th}) calendar day after the date that Waterkeeper lodges the Consent Decree with the District Court for approval, or the date the District Court signs the Consent Decree, whichever date occurs earlier.

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

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

LAWYERS FOR CLEAN WATER, INC.

Dated: 7 April 2010

By: _____

Martin McCarthy
Daniel Cooper
Lawyers for Clean Water, Inc.
Attorneys for Plaintiff
Inland Empire Waterkeeper/
Orange County Coastkeeper

INLAND EMPIRE WATERKEEPER/
ORANGE COUNTY COASTKEEPER

Dated: 5 April 2010

By: _____
Garry Brown
Inland Empire Waterkeeper/
Orange County Coastkeeper

FOLEY & LARDNER, LLP

Dated: _____ April 2010

By: _____
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

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)

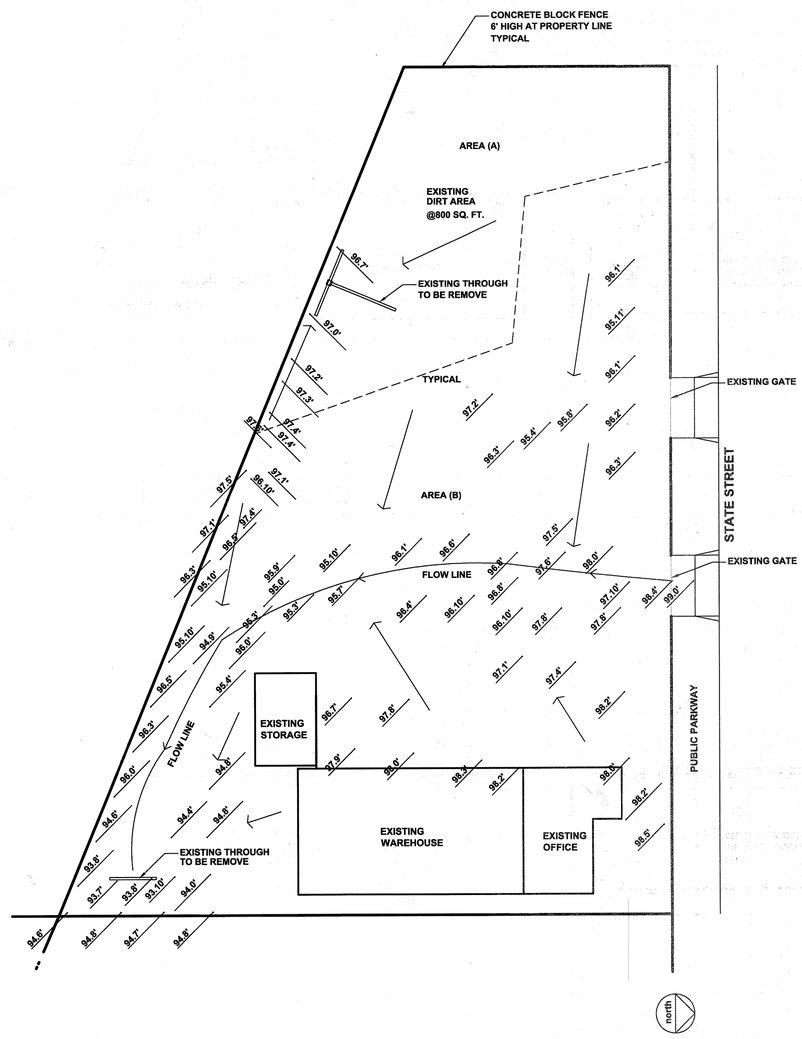
D & M METALS

840 E. STATE STREET
ONTARIO, CA. 91761

NOTE:
EXCAVATION DEPTH CAN NOT EXCEED 5'-0" BELOW EXISTING GRADE

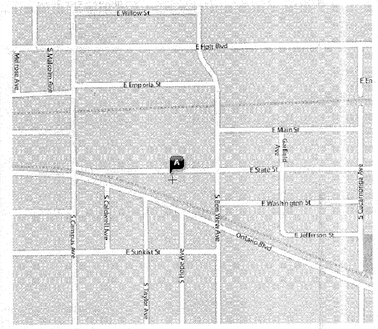
APPROXIMATE AREA

60,100 SQ FT.
1.38 ACRES



EXISTING SITE PLAN / TOPO

SCALE: 1" - 30'-0"



"A" PROJECT LOCATION

PROPERTY ADDRESS: D & M METALS
840 E. STATE STREET
ONTARIO, CA. 91761

APN #

LEGAL DISCRIPTION:

ZONING:

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 BATCH 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.

REGISTERED PROFESSIONAL ENGINEER
MAGDI S. ABADIR
No. C-46990
Expires 12-31-2009
CIVIL
STATE OF CALIFORNIA

11/20/09

PROJECT SUMMARY

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

REVISIONS

PES ENGINEERING
9060 TELSTAR AVE #225
EL MONTE, CA. 91731
phone (626) 288-2844
fax (626) 268-2771

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

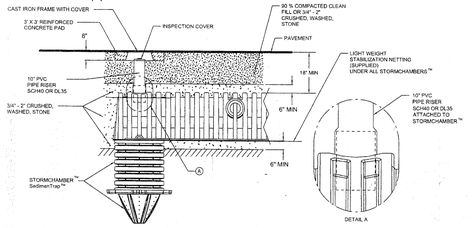
Exhibit A

INSTALLING THE SEDIMENTRAPS™

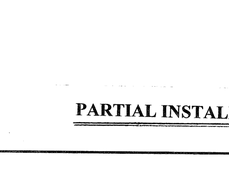
ADDENDUM TO INSTALLATION BROCHURE

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.

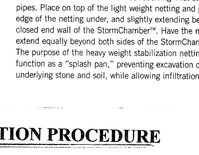
1. Prepare the StormChamber™ system trench as described on page 3.
2. StormChamber™ systems typically incorporate SedimenTraps™ at the first and last chamber of the row receiving the storm water inflow (see page 5). StormChamber™ systems are installed by placing all start units first, then building each 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 ¾" – 2" non-calcarious stone base, only the top corrugation of the 30" HDPE pipe will be exposed above the finished trench stone base (about 3").

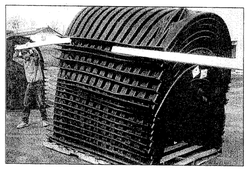


5. Fill around the SedimenTrap™ with the crushed, washed 3/4" - 2" non-calcarious stone up to the level of the surrounding stone base.
6. Cut the plastic netting to fit snuggly around the exposed portion of the SedimenTrap™.



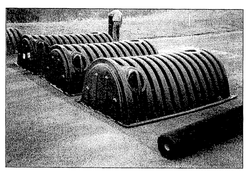
7. Place the chamber over the SedimenTrap™ and install the 10" PVC riser pipe as instructed on page 7.

STORMCHAMBER™ INSTALLATION

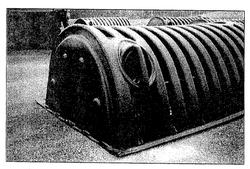


You may need to use 2x4's to separate chambers.

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.

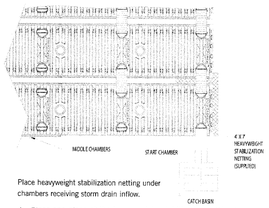


Place lightweight stabilization netting under StormChambers™.



Row placement begins at inflow end of chamber system with Start Model StormChambers™.

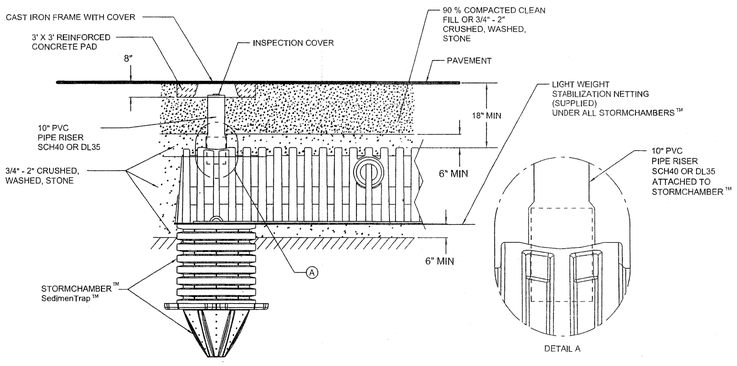
2. Start building the StormChamber™ system with the Start Model StormChamber™ at the inflow end of the StormChamber™ system. The Start Models are completely closed at the end with the two side portals.
3. Roll out two rows of the light weight stabilization netting (provided with the StormChambers™) perpendicular 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.



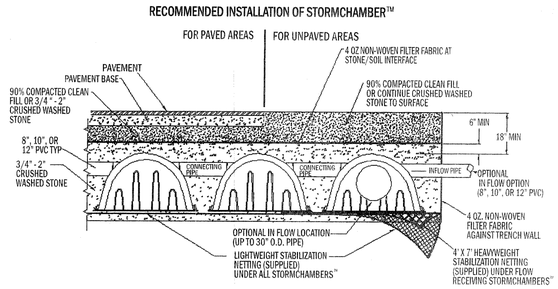
Place heavyweight stabilization netting under chambers receiving storm drain inflow.

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

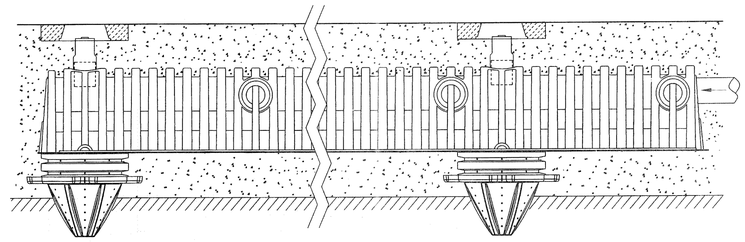


SECTION

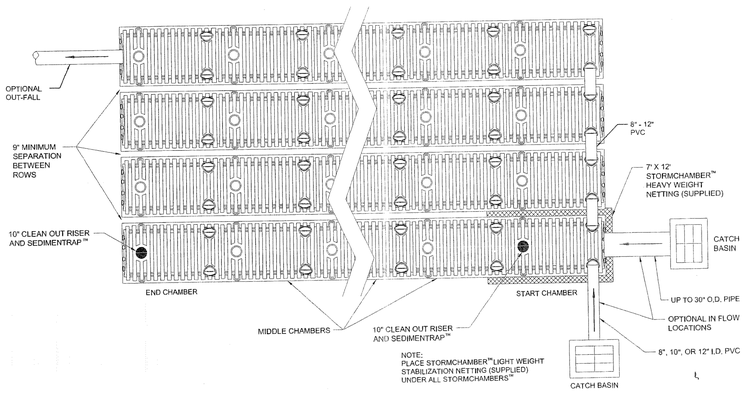


SEDIMENT TRAP AND STORM CHAMBERS DETAILS

FIRST ROW OF STORMCHAMBER™ SYSTEM



STORMCHAMBER™ EXAMPLE CONFIGURATION



REGISTERED PROFESSIONAL ENGINEER
MAGDI S. ABDOU
No. C-46990
Expires 12-31-2009
CIVIL
STATE OF CALIFORNIA

11/19/09

REVISIONS

PES ENGINEERING
9060 TELSTAR AVE #225
EL MONTE, CA. 91731
phone (626) 258-2744
fax (626) 258-2771

JOB TITLE

D & M METALS
840 E. STATE STREET
ONTARIO, CA. 91761

JOB TITLE

DRAWN BY

DATE

JOB NO.

SHEET

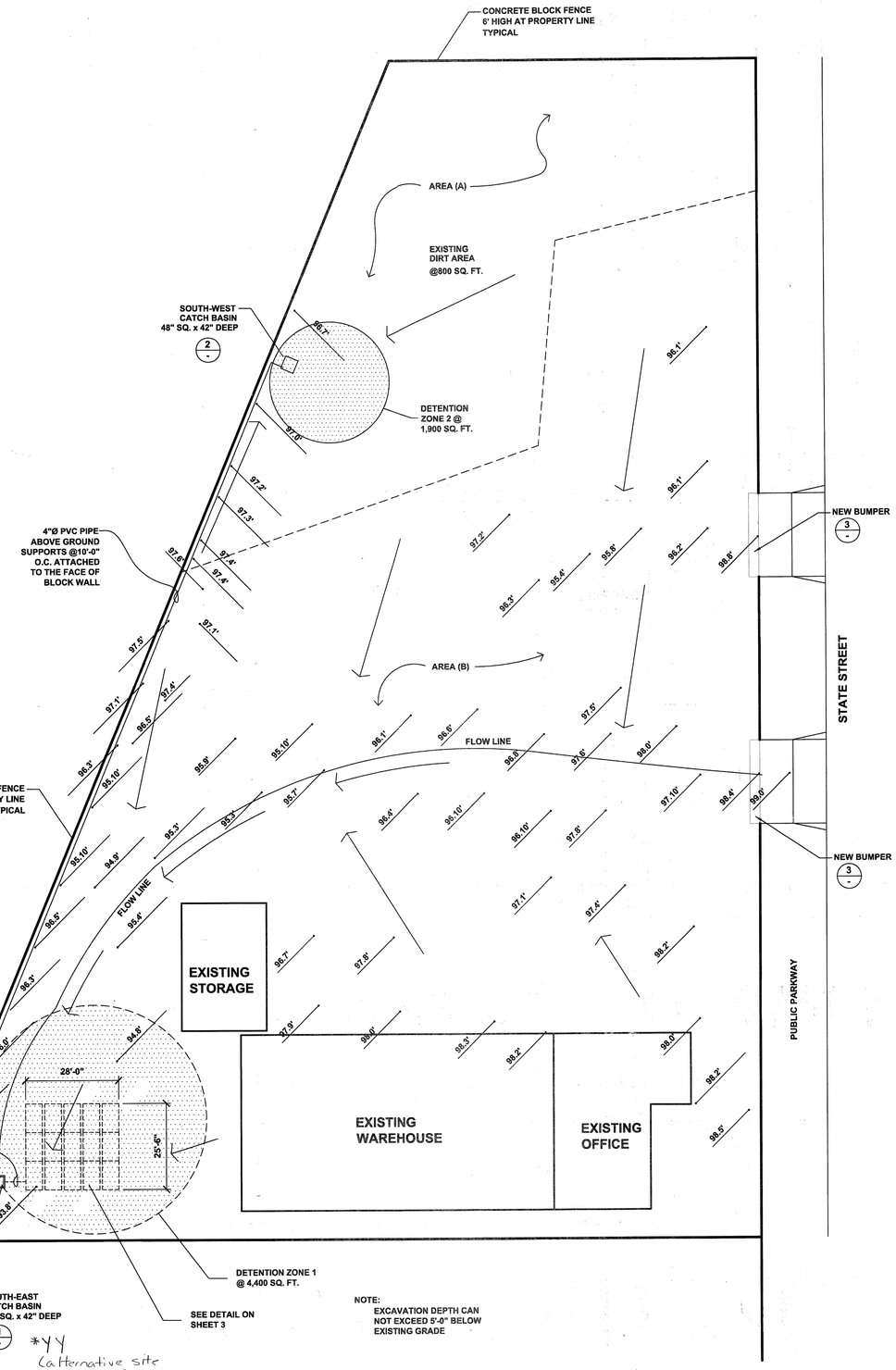
OF

Exhibit A

EXHIBIT B

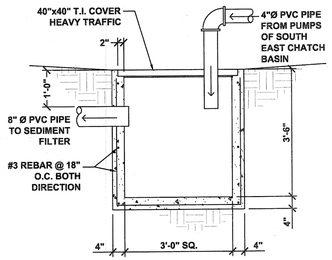
To Consent Decree

Inland Empire Waterkeeper et al. v. J Lee's Metals, Inc., et al., EDCV 09-1549 VAP (OPx)



DRAINAGE PLAN

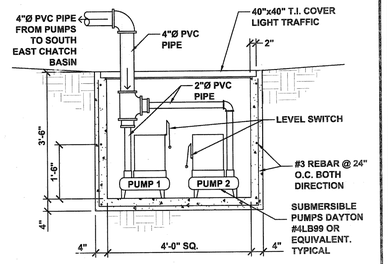
SCALE: 1" - 20'-0"



SOUTH-EAST

CONCRETE: 2500 PSI MIN.

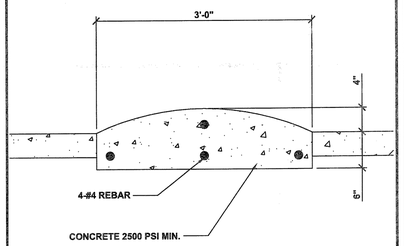
CATCH BASIN DETAIL 1



SOUTH-WEST

CONCRETE: 2500 PSI MIN.

CATCH BASIN DETAIL 2



NOTE:
CONTRACTOR OR OWNER CAN BUILD
THE BUMPER USING ASPHALT OR CONCRETE

BUMER DETAIL 3

XX.X — ELEVATION IN FEET

APPROXIMATE BOUNDARY OF DETENTION AREAS.

HYPOTHETICAL BOUNDARIES OF DETENTION AREA A

SURFACE FLOW

LEGEND 4

REGISTERED PROFESSIONAL ENGINEER
MAGDI S. ABDOU
No. C-46990
Expires 12-31-2009
CIVIL
STATE OF CALIFORNIA

11/30/09

REVISIONS

PES ENGINEERING
9060 TELSTAR AVE #225
EL MONTE, CA. 91731
phone (626) 238-2864
fax (626) 285-2771

JOB TITLE: DRAINAGE PLAN

D & M METALS
840 E. STATE STREET
ONTARIO, CA. 91761

JOB TITLE

DRAWN BY

DATE

JOB NO.

SHEET 2 OF

Exhibit B

Daniel Cooper (Bar No. 153576)
daniel@lawyersforcleanwater.com
Drevet Hunt (Bar No. 240487)
drev@lawyersforcleanwater.com
Lawyers for Clean Water, Inc.
1004 O'Reilly Avenue
San Francisco, California 94129
Tel: (415) 440-6520
Fax: (415) 440-4155

Attorneys for Plaintiff Orange County Coastkeeper

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ORANGE COUNTY COASTKEEPER, a non-profit corporation,

Plaintiff,

v.

DBW & ASSOCIATES, INC., a California corporation, and DBW & ASSOCIATES, INC., dba DBW 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*.)

WHEREAS, Orange County Coastkeeper is a non-profit corporation dedicated to the preservation, protection and defense of the environment, the wildlife, and the natural resources of Orange County area waters, including the Santa Ana River Watershed and its receiving waters;

WHEREAS, Orange County Coastkeeper is referred to herein as ("Coastkeeper" or "Plaintiff");

WHEREAS, DBW & Associates, Inc. is an owner and/or operator of the scrap metal recycling facility located at 3250 East Frontera Street, Anaheim, California, 92806 ("Facility");

WHEREAS, DBW & Associates, Inc. dba DBW Metals is an owner and/or operator of the scrap metal recycling facility located at 3250 East Frontera Street, Anaheim, California, 92806;

WHEREAS, DBW & Associates, Inc., and DBW & Associates, Inc. dba DBW Metals are collectively referred to herein as "Defendants" or "DBW Metals";

WHEREAS, on July 1, 2009, Coastkeeper served Defendants, the United States Environmental Protection Agency ("EPA"), EPA Region IX, the State Water Resources Control Board ("State Board") and the Regional Water Quality Control Board ("Regional Board"), with a notice of intent to file suit for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA"). The notice letter alleged violations of the Clean Water Act for Defendants' discharges of pollutants into receiving waters in violation of National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS0000001 [State Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Permit");

WHEREAS, on September 15, 2009, Coastkeeper filed a complaint against Defendants in the United States District Court, Central District of California (Civil Case No. SACV 09-1063-DOC (MLGx)) entitled *Orange County Coastkeeper v. DBW & Associates, Inc., and DBW & Associates, Inc. dba DBW Metals* ("Complaint");

WHEREAS, Defendants deny all allegations of the Complaint;

WHEREAS, Plaintiff and Defendants (collectively referred to herein as the "Settling Parties" or "Parties") have agreed that it is in the Parties' mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings;

WHEREAS, all actions taken by Defendants pursuant to this Consent Decree shall be made in compliance with all applicable federal, state and local rules and regulations;

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

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

2. Venue is appropriate in the Central District Court pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility at which the alleged violations took place is located within this District;

3. The Complaint states a claim upon which relief may be granted against Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

4. Plaintiff has standing to bring this action;

5. The Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

I. OBJECTIVES

6. It is the express purpose of the Parties entering into this Consent Decree to further the objectives set forth in Section 101 *et seq*. of the CWA, 33 U.S.C. § 1251 *et seq*., and to resolve those issues alleged by Coastkeeper in its Complaint. In light of these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply with the provisions of this Consent Decree and to comply with the requirements of the

Industrial Permit and all applicable provisions of the CWA at the Facility. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the Facility "not cause or contribute to the exceedance of an applicable water quality limit." Effluent Limitation B(3) of the Industrial Permit requires that Best Management Practices ("BMPs") be developed and implemented to achieve Best Available Technology ("BAT") and the Best Conventional Pollutant Control Technology ("BCT"). Defendants are required to develop and implement BMPs necessary to comply with the Industrial Permit's requirement to achieve compliance with Water Quality Standards and BAT/BCT standards. BMPs must be developed and implemented to prevent discharges or to reduce contamination in storm water discharged from the Facility sufficient to achieve the numeric limits detailed in paragraphs 12 and 13 below.

II. COMMITMENTS OF THE PARTIES

A. Installation of Treatment Train Prior to Curb Discharge Point

7. DBW Metals currently discharges through pipes in the curb between the two driveways on East Frontera Street leading into and out of the Facility. DBW Metals will add a treatment train including a filtration device prior to discharging. The treatment train will include primary filtration, a four stage clarifier, settling tanks and in-line plumbing. For at least the first hour of any discharge, water from the treatment train will be delivered to the adjacent facility to be recycled for use in the adjacent facility's operations. Records of the volume and timing of any discharge to the adjacent facility shall be maintained by DBW Metals and made available to Coastkeeper within seven (7) days of receipt of a request for them. Discharges from the treatment train through the inline pipe(s) between the two DBW Metals driveways on East Frontera Street shall be sampled (subject to the requirements of this Consent Decree and the Industrial Permit).

B. Industrial Storm Water Pollution Control Measures

8. The storm water pollution control measures and contaminant reduction provisions of this Consent Decree shall only apply to rainfall events up to and including the 5-year, 24-hour return period rain event ("Compliance Storm Event"), as defined by

the County of Los Angeles Hydrology Manual (January, 2006) with an assumed dry antecedent condition, a total of 3.4 inches of rainfall over a 24-hour period and an assumed triangular runoff hydrograph. The Parties agree that any discharge of stormwater and/or stormwater pollutants from the Facility in connection with a rainfall event that exceeds a Compliance Storm Event is not a violation of this Consent Decree.

9. Defendants shall, by the Effective Date of this Consent Decree, develop a BMP Plan to capture, filter, evaporate, harvest, treat and/or store to prevent off-site discharge of industrial storm water generated during rain events up to and including the Compliance Storm Event at the Facility. The BMP Plan may contain the following measures listed herein, as appropriate, and Defendant shall develop and implement additional measures, if necessary, to reduce contamination in storm water discharged from the Facility to levels below the numeric limits set forth in Table 1 and Table 2 below:

a. Materials Storage and Industrial Activities. Placing sources of contamination in covered containers or under cover with such areas contained by berming or other containment sufficient to prevent the exposure of pollutants to storm water and non-stormwater, and to therefore prevent the discharge of pollutants;

b. Coating. Coating structural sources of contamination (e.g. galvanized building roofs and siding);

c. Sweeping. Employing high efficiency sweeping in order to prevent the exposure of pollutants to storm water flows;

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

e. Treating Runoff. Treating runoff discharging from the site with devices such as sand filters evaluated in the Caltrans Retrofit Study ("CRS") or equivalent treatment devices at appropriate locations;

f. Vehicle and Equipment Maintenance and Fueling.

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

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

iii. Berming or otherwise containing the surface of the area where vehicle maintenance and fueling occurs in order to prevent the exposure of pollutants to storm water and non-storm water, and to therefore prevent the discharge of pollutants;

iv. Cleaning the maintenance and fueling area as necessary to control track-off of pollutants;

v. Dispensing with all petroleum products within the maintenance and fueling area only;

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

vii. Constructing secondary containment adequate to capture all drips, spills, and leaks around the vehicle fueling area and for all other areas where 55-gallon drums are stored for on-site use;

g. While Defendants may employ some combination of the measures listed above to achieve compliance with the numeric limits in Table 2 by the end of the Consent Decree period, they agree to immediately install a separation (settling) tank and filtration system to manage storm water from a 5-year, 24-hour rainfall event. The Facility will also be bermed to divert stormwater onsite during Compliance Storm Events through the filtration system. These systems will be operational within thirty (30) days of the Effective Date of this Decree.

h. Discharge Elimination: Developing and implementing a plan to prevent the discharge of storm water to surface waters, including a recordkeeping program to track the destination of storm water that is transferred from the Facility, if any.

10. Defendants shall complete and provide the BMP Plan to Coastkeeper for review and comment within thirty (30) days of the Effective Date of this Consent Decree. Coastkeeper shall respond with comments within 30 days of receiving the BMP Plan. Within twenty-one (21) days of receiving Coastkeeper's comments, if any, Defendants shall submit a final BMP Plan to Coastkeeper, incorporating Coastkeeper's comments into the BMP Plan, or justifying in writing why any comment is not being incorporated. Defendants shall implement all BMPs in the BMP Plan at the Facility within 90 days of the Effective Date of this Consent Decree. Any disputes as to the adequacy of the BMP Plan shall be resolved pursuant to the dispute resolution procedures of this Consent Decree, set out at Section IV below.

C. Reduction of Pollutants in Discharges

11. Numeric Limits and Contaminant Reduction. During the 2009/2010 Wet Season, Defendants' preparation and compliance with the BMP Plan and monitoring plan required under this Consent Decree and completing the system described in Paragraph 9(g) shall constitute compliance with this Section II.C of the Consent Decree. Beginning in the 2010/2011 Wet Season, Defendants shall achieve compliance by demonstrating (a) that concentrations of the contaminants listed in Tables 1 and 2 discharged from the Facility are at or below the limits listed in Tables 1and 2; or (b) the pollutant concentrations in such discharges are at or below the numeric limits set forth in Table 2, or the corresponding potential mass emission reductions described in paragraphs 16-18 below are achieved. Non-stormwater discharges from the Facility not authorized by the Industrial Permit shall be considered a breach of this Consent Decree, subject to the Force Majeure provisions set forth in Paragraph 44 below.

12. BAT/BCT and Technology Based Limits:[1] 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)

Contaminant (All metals are total recoverable)	**Limit** (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

[1] 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.

13. 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[2] limits:

Table 2: WQS Based Limits

Contaminant	Limit (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

14. Action Plan for Table 1 or Table 2 Exceedances. When sampling demonstrates discharges of storm water containing concentration of pollutants exceeding a Table 1 or 2 limit, Defendants agree to submit an action plan according to, and in compliance with, the schedule and 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. Action Plan for Exceedences of BAT/BCT Levels. If sample results from the first storm event sampled in a Wet Season exceed Table 1 limits, then Defendants shall provide Coastkeeper with a BAT/BCT Action Plan within fourteen (14) days of Defendants' receipt of such data. If sample results from a storm event within thirty (30)

[2] 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 are analyzing hardness when collecting samples and Defendants can adjust limits based on hardness where applicable.

days of submission of the first BAT/BCT Action Plan exceed Table 1 limits, Defendants are not obligated to submit a BAT/BCT Action Plan to address these exceedences, but must include measures to address these exceedences in a BAT/BCT Action Plan due by June 30 following the Wet Season. If sample results from the next storm event sampled in a Wet Season occurring before March 1 (not including those from an event occurring within thirty (30) days of submission of the first BAT/BCT Action Plan) exceed Table 1 limits, Defendants shall provide a BAT/BCT Action Plan within fourteen (14) days of Defendants' receipt of such data. If any other sample results exceed a Table 1 limit Defendants shall submit a BAT/BCT Action Plan by June 30 following each Wet Season, which may be incorporated into the WQS Action Plan described below. Any BAT/BCT Action Plan submitted pursuant to this paragraph shall include at a minimum (1) the identification of the pollutant(s) discharged in excess of the BAT/BCT Levels, (2) an assessment of the source of each pollutant exceedance, (3) the identification of additional BMPs that will be implemented to achieve compliance with the BAT/BCT Levels set forth in Table 1, and (4) time schedules for implementation of the proposed BMPs. Coastkeeper shall have fourteen (14) days upon receipt of Defendants' BAT/BCT Action Plan to provide Defendants with comments. Defendants shall have twenty-one (21) days from the date Coastkeeper comments on Defendants' BAT/BCT Action Plan to implement any additional non-structural or structural BMPs recommended by Coastkeeper. Defendants shall provide a written explanation if Defendants refuse to develop and/or implement any of Coastkeeper's recommended additional BMPs. If any structural BMPs require any agency approval, then Defendants shall contact Coastkeeper to request an extension of the deadline to implement the structural BMPs requiring agency approval. Coastkeeper's consent to Defendants' requested extension shall not be unreasonably withheld. Defendants shall notify Coastkeeper in writing when the Action Plan has been implemented.

b. WQS Action Plan. Defendants shall provide Coastkeeper with a WQS Action Plan by June 30 following each Wet Season if storm water sampling data

demonstrating an exceedance of a WQS Level at the Facility. The objective of the WQS Action Plan is to set forth additional BMPs designed to achieve compliance with Table 2 limits. The Action Plan shall include at a minimum (1) the identification of the pollutant(s) discharged in excess of the WQS; (2) an assessment of the source of the pollutant; (3) the identification of additional BMPs that will be implemented to achieve compliance with the applicable WQS; and (4) time schedules for implementation of the proposed structural and non-structural BMPs. Coastkeeper shall have twenty-one (21) days upon receipt of Defendants' WQS Action Plan to provide Defendants with comments. Defendants shall have twenty-one (21) days from the date Coastkeeper comments on Defendants' Action Plan to implement any additional non-structural or structural BMPs. Defendants shall provide a written explanation if Defendants refuse to develop and/or implement any of Coastkeeper's recommended additional BMPs. If any structural BMPs require any agency approval, then Defendants shall contact Coastkeeper to request an extension of the deadline to implement the structural BMPs requiring agency approval. Coastkeeper's consent to Defendants' requested extension shall not be unreasonably withheld. Defendants shall notify Coastkeeper in writing when the Action Plan has been implemented.

15. Action Plan for Year 4 Wet Season. If at the end of the 2011/2012 Wet Season, storm water sample results demonstrate that Defendants continue to discharge storm water and/or non-stormwater containing pollutants exceeding the limits set forth in Tables 1 and/or 2, the Parties shall meet and confer by July 1, 2012 to discuss the sample results, current BMPs, and to devise a mutually agreeable action plan ("Year 4 Action Plan"). Within thirty (30) days of meeting and conferring, Defendants will develop and submit the Year 4 Action Plan to Coastkeeper. Coastkeeper will provide comments on the Year 4 Action Pan within thirty (30) days of receipt of the plan. DBW Metals shall revise the Year 4 Action Plan to include Coastkeeper's comments.

16. Mass Emission Reduction for Contaminants with WQS Based Limits. If any sampling demonstrates discharges of stormwater containing a concentration of pollutants

exceeding the WQS Based Limits in Table 2, Defendants shall have the opportunity to demonstrate within 180 days that the potential total mass emission of the contaminant has been reduced through a combination of decreases in its concentrations and reductions of the volume of the runoff discharged from industrial activities. Defendants agree to submit a plan for additional mass emission contaminant reduction to Coastkeeper for review and comment as soon as practicable and in any case within 30 days of receipt of sampling data demonstrating an exceedance. Coastkeeper shall provide comments, if any, to the Defendants within 30 days of receipt. Defendants shall incorporate Coastkeeper's comments in order to reduce the mass emission of the contaminant and initiate implementation of the reduction within 30 days of receipt of Coastkeeper comments and complete implementation within 60 days of receipt of Coastkeeper's comments, or as otherwise agreed between Coastkeeper and Defendants. If any of Coastkeeper's comments are not adopted and incorporated, Defendants shall justify in writing why any comment is not being incorporated within 30 days of receiving the comments. Any disputes as to the adequacy of the mass emission reduction plan shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV below.

17. The baseline for mass emissions reductions calculations, consisting of the geometric mean of all concentrations of stormwater contaminants sampled by Coastkeeper and sampled by Defendant prior to the Effective Date, is as follows:

Table 3: Geometric Mean of Contaminants That Exceed Numeric Limits

Contaminant	Geometric Mean
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

For the contaminants listed in Table 3, the demonstration that the potential total mass emission of a contaminant has been reduced shall be made as follows:

a. Determine the geometric mean of all concentrations of the contaminant measured before and after the Effective Date of the Consent Decree;

b. Determine the site surface area discharging runoff containing the contaminant before and after this Effective Date;

c. Multiply the geometric mean of concentrations and site surface area discharging before and after this Effective Date to obtain indicators of potential mass emission before and after this Effective Date; and

d. Show that the potential mass emission of the contaminant has decreased by the amount(s) specified in Table 4:

Table 4: Mass Emission Decrease Requirements for Table 3 Contaminants

If the concentration exceeds the WQS Based Limit by:	Then the potential total mass emission shall be reduced by:
1-100% (i.e., up to 2 times the limit)	50%
101-200% (i.e., up to 3 times the limit)	75%
201-300% (i.e., up to 4 times the limit)	95%

18. For the Contaminants listed in Table 5 below, for which inadequate baseline data is currently available for such Contaminants' inclusion in Table 3, or for which the geometric means are below the applicable WQS Based Limits set out in Table 2, the following method shall be used to assess compliance with the WQS Based Limits described above for any discharge point where storm water discharges occur during storm events smaller than the Compliance Storm Event.

a. Based on existing site conditions (100 percent impervious surfaces and no storm water infiltration or diversion) and the amount of rainfall that falls on

the Facility during each of the monitored storm events described, the volume of water that would have discharged from the Facility prior to installation of the filtration and/or diversion measures shall be calculated;

b. Using the WQS Based Limits described above, the mass of "allowable" pollutants will be calculated (volume of water assuming no filtration/diversion multiplied by the WQS Based Limits) for each listed constituent;

c. The actual contaminant mass discharged for each of the pollutants listed above will be calculated (volume of water actually discharged multiplied by the analytical results for storm events where discharges occur);

d. For each of the monitored storm events, the calculated mass of actual contaminants discharged under subparagraph (c) above will be compared to the mass of allowable contaminants calculated under subparagraph (b) above.

Table 5: Contaminants not in Table 3

Contaminant	Geometric Mean[3]
Arsenic	Insufficient Data
Cadmium	Less than Table 2
Silver	Insufficient Data
Nickel	Less than Table 2

D. Sampling, Monitoring, Inspecting, and Reporting

19. Sampling Program. Within thirty (30) days of the Effective Date, Defendants shall revise their monitoring and reporting plan (M&RP) to meet the

[3] The references in Table 5 to "Insufficient Data" indicate that the combined storm water discharge sampling data currently available to Coastkeeper lack at least three sample results that are above the reporting limit for that contaminant from which to calculate the geometric mean.

requirements of this Consent Decree. All storm water discharge locations shall be sampled at the Facility. Storm water samples collected must represent the discharge at the point it leaves the Facility. Additionally, sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released. The M&RP shall be revised to include sampling at all new or additional discharge points created in the future.

20. Coastkeeper's Review of Revised M&RP. Defendants agree to submit the M&RP to Coastkeeper for review and comment as soon as it is completed but in any event no later than thirty (30) days from the Effective Date of this Consent Decree. Coastkeeper shall provide comments, if any, to the Defendants within thirty (30) days of receipt of the M&RP. Defendants shall incorporate Plaintiff' comments into the M&RP, or shall justify in writing why any comment is not incorporated within twenty-one (21) days of receiving comments. Any disputes as to the adequacy of the M&RP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV below.

21. Sample Analysis and Sample Frequency. Beginning with the 2009/2010 Wet Season (defined as October 1- May 31), Defendants shall collect storm water samples from each discharge location from each storm event at the Facility. In years 2-5 of the Decree, DBW Metals agrees to sample every storm event up to five (5) storm events per Wet Season. Until every storm event up to five (5) storm events are sampled, any water from a storm event that is not transferred to the adjacent property shall be sampled prior to discharge, unless the storm event begins during after operating hours and the discharge becomes necessary before operating hours recommence. In the latter case, the discharge shall be sampled if it is still ongoing when operating hours recommence. Operating hours are defined as 7 a.m. to 5 p.m. Monday through Friday and 8 a.m. to 1:30 p.m. Saturday.

22. Defendants shall analyze the samples for the constituents identified in Table 1 and Table 2. A California State certified laboratory shall perform all sample chemical

analyses. Defendants shall select laboratories and analytical limits such that, at a minimum, the method detection limits ("MDLs") shall be below both the Table 1 and Table 2 Limits set forth herein. In addition, Defendants shall perform sampling as required by the Industrial Permit for the Facility.

E. Storm Water Pollution Prevention Plan

23. SWPPP Revisions. Within thirty (30) days of the Effective Date of this Consent Decree, Defendants agree to revise the SWPPP currently in effect at the Facility to incorporate all storm water pollution prevention measures and other requirements set forth in this Consent Decree and/or the Industrial Permit. Specifically, the SWPPP shall include a description of all industrial activities and corresponding potential pollution sources and, for each potential pollutant source, a description of the potential pollutants from the sources. The SWPPP shall also identify BMPs (and their implementation dates) designed to achieve compliance with Numeric Limits set forth in Table 1 and Table 2. Defendants shall revise the SWPPP as necessary to incorporate additional BMPs developed pursuant to this Consent Decree.

24. Coastkeeper's Review of Revised SWPPP. Defendants shall submit the revised SWPPP to Coastkeeper for review and comment as soon as it is completed but in any event no later than thirty (30) days from the Effective Date of this Consent Decree. Within thirty (30) days of Coastkeeper's receipt of the revised SWPPP, Coastkeeper shall provide Defendants with comments and suggestions, if any, concerning the revisions to the SWPPP. Defendants shall incorporate or shall justify in writing why any comment is not incorporated within twenty-one (21) days of Defendants' receipt of Coastkeeper's comments on the revised SWPPP and re-issue the SWPPP. Any disputes as to the adequacy of the SWPPP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section IV below.

F. Employee Training

25. Within thirty (30) days of the Effective Date, Defendants shall develop a training program, including any materials needed for effectiveness, and shall provide

training for employees as follows:

a. Non-Storm Water Discharge Training. Defendants shall conduct training on the Industrial Permit's prohibition of non-storm water discharges so that employees know what non-storm water discharges are and how to avoid them. Such training shall be specified in the SWPPP;

b. BMP Training. Defendants shall provide training to all employees responsible for BMP implementation and maintenance. Training shall be provided by a private consultant or representative of Defendants familiar with the Industrial Permit requirements and shall be repeated as necessary to ensure that all such employees are familiar with the Industrial Permit and SWPPP requirements. Defendants shall maintain training records to document compliance with this paragraph, and shall provide Coastkeeper with a copy of these records within fourteen (14) days of receipt of a written request;

c. Sampling Training. Defendants shall provide training to all individuals performing sampling pursuant to the Industrial Permit at the Facility. All employees shall thereafter be trained prior to becoming responsible for conducting sampling activities. The training shall be provided by a private consultant or representative of Defendants familiar with the Industrial Permit requirements and shall be repeated as necessary to ensure Industrial Permit compliance. Defendants shall maintain training records to document compliance with this paragraph, and shall provide Coastkeeper with a copy of these records within fourteen (14) days of receipt of a written request.

d. Visual Observation Training. Defendants shall provide additional training to all individuals performing visual observations pursuant to the Industrial Permit at the Facility. The training will be provided by a private consultant or representative of Defendants and shall be repeated as necessary to ensure Industrial Permit compliance. All new staff will receive this training before assuming responsibilities for implementing the SWPPP. Defendants shall maintain training records to document compliance with

this paragraph, and shall provide Coastkeeper with a copy of these records within fourteen (14) days of a written request.

G. Compliance Monitoring

26. Site Inspections. Coastkeeper, Dr. Richard Horner, or an alternative water quality engineer identified by Coastkeeper, accompanied by Coastkeeper's attorney or other representative, may conduct up to two (2) site inspections at the Facility during the first year following the Effective Date of the this Consent Decree. The number and frequency of site inspections in the following years will be based on whether Defendants have achieved and remain in compliance with the Consent Decree. The Parties agree to negotiate in good faith to schedule inspections in following years, with the understanding that inspections are a necessary part of evaluating compliance and that Orange County Coastkeeper is entitled to reasonable compensation for these activities. Site inspections shall occur during normal business hours. Coastkeeper shall provide Defendants' with as much notice as possible, but at least twenty-four (24) hours notice during the Wet Weather season and forty-eight (48) hours notice during the dry season prior to each inspection. Notice will be provided by phone and electronic mail to the individuals listed in paragraph 48 below. During site inspections, Coastkeeper and/or its representatives shall be allowed access to the Facility's SWPPP and monitoring records and to all monitoring reports and data for the Facility. During site inspections, Coastkeeper and/or its representatives may collect samples of storm water discharges at the Facility.

27. Compliance Monitoring and Oversight. Defendants agree to help defray Coastkeeper's reasonable costs incurred in conducting site inspections and compliance monitoring for the first year following the Effective Date of this Consent Decree by making a payment of Five Thousand Dollars ($5,000.00). This payment shall be made within sixty (60) days of the Effective Date of this Decree. This payment shall be made payable to:

Lawyers for Clean Water Attorney Client Trust Account

and shall be sent certified mail or overnight delivery and mailed to Lawyers for Clean Water, Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129. The Parties agree to negotiate in good faith the funding for compliance monitoring, including additional site inspections, in following years, with the understanding that such monitoring is a necessary part of evaluating Defendants' compliance with this Consent Decree. Defendants specifically agree that Orange County Coastkeeper is entitled to reasonable compensation for compliance monitoring. Coastkeeper shall provide copies of any invoicing for site inspections and compliance oversight within thirty (30) days of receiving a written request by Defendants.

28. Reporting. During the life of this Consent Decree, on a monthly basis, Defendants shall provide Coastkeeper with a copy of all compliance and monitoring data, including inspection reports, related to the Facility. During the life of this Consent Decree, Defendants shall provide Coastkeeper with all laboratory analyses related to the Facility within seven (7) days of Defendants' receipt of such information.

29. Document Provision. During the life of this Consent Decree, Defendants shall copy Coastkeeper on all documents related to water quality at the Facility that are submitted to the Regional Board, the State Board, and/or any State or local agency or municipality. Such reports and documents shall be provided to Coastkeeper concurrently as they are sent to the agencies and/or municipalities. Any correspondence related to water quality received by DBW Metals from any regulatory agency shall be provided within three (3) business days of receipt by DBW Metals.

H. Environmental Projects and Fees and Costs

30. Environmental Mitigation Project. Defendants agree make a payment of Fifteen Thousand Dollars ($15,000) to the Public Interest Green Fund at the Orange County Community Foundation, 30 Corporate Park, Suite 410, Irvine, California 92606, www.oc-cf.org. The Public Interest Green Fund is a non-profit organization that uses its funds to support environmental advocacy by area law students on behalf of non-profit organizations, either via stipends or scholarships. This mitigation payment shall be used

to support student advocacy in projects that reduce or mitigate the impacts of storm water pollution in Orange County. Defendants shall make the mitigation payment within sixty (60) days of the Effective Date and mail the payment via certified mail or overnight delivery to the Public Interest Green Fund. Defendants shall provide Coastkeeper with a copy of such payment.

31. Coastkeeper's Fees and Costs. Defendants agree to partially reimburse Coastkeeper for their investigation fees and costs, consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a result of investigating and filing the lawsuit, and negotiating a resolution of this matter in the amount of Fifty-One Thousand Five Hundred Dollars ($51,500.00). Defendants shall make this payment within sixty (60) days of the Effective Date. All such payments shall be made payable to:

Lawyers for Clean Water Attorney-Client Trust Account

and delivered by certified mail or overnight delivery to: Lawyers for Clean Water, Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129.

32. Stipulated Payment. Defendants shall make a remediation payment of One Thousand Dollars ($1,000) for each missed deadline included in or contemplated by this Consent Decree, unless the missed deadline results from a Force Majeure Event. Payments for a missed deadline shall be made for the restoration and/or improvement of the watershed in the area affected by Defendants' discharges and shall be awarded to the Environmental Mitigation Project recipient identified in paragraph 30 above. Defendants agree to make the stipulated payment within thirty (30) days of a missed deadline and mail the payment via certified mail or overnight delivery. Defendants shall provide Coastkeeper with a copy of each such payment.

I. Commitments of Plaintiff

33. Plaintiff shall submit this Consent Decree to the United States Environmental Protection Agency and the United States Department of Justice ("DOJ") within three (3) days of the final signature of the Parties for agency review consistent with 40 C.F.R. §135.5. The agency review period expires forty-five (45) days after

receipt by both agencies, as evidenced by the certified return receipts, copies of which shall be provided to Defendants if requested. In the event that EPA or DOJ object to entry of this Consent Decree the Parties agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

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

III. EFFECTIVE DATE AND TERMINATION DATE

35. The term "Effective Date," as used in this Consent Decree, shall mean the last date for the United States Department of Justice and the United States Environmental Protection Agency ("Federal Agencies") to comment on the Consent Decree, i.e., the 45th day following the United States Department of Justice and United States Environmental Protection Agency's receipt of the Consent Decree, or the date on which the Federal Agencies provide notice that they require no further review and the Court enters the final Consent Decree, whichever occurs earlier.

36. This Consent Decree will terminate on its own terms five (5) years from the Effective Date.

IV. DISPUTE RESOLUTION

37. This Court shall retain jurisdiction over this matter for the purposes of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree. The Court shall have the power to enforce this Consent Decree with all available legal and equitable remedies, including contempt.

38. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of the party's proposal to resolve the dispute under this Section.

The Parties shall then meet and confer in an attempt to resolve the dispute no later than ten (10) calendar days from the date of the notice.

39. If the Parties cannot resolve a dispute by the end of the meet and confer process, the party invoking the dispute resolution provision may invoke formal dispute resolution by filing a motion before the United States District Court for the Central District of California. The Parties shall jointly apply to the Court for an expedited hearing schedule on the motion.

40. If Coastkeeper initiates a motion or proceeding before the Court to enforce the terms and conditions of this Consent Decree, Coastkeeper shall be entitled to recover reasonable fees incurred to enforce the terms of this Consent Decree consistent with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §§ 1365, 1319.

V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

41. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties hereby fully release, except for claims for the Defendants' failure to comply with this Consent Decree and as expressly provided below, each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all alleged CWA violations claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

42. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the Regional Board, EPA, or any other judicial or administrative body on any other matter relating to Defendants.

43. Neither the Consent Decree nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. Defendants maintain and reserve all defenses they may have to any alleged violations that may be raised in the future.

44. Force Majeure. Defendants shall notify Coastkeeper pursuant to the terms of this paragraph, when implementation of the requirements set forth in this Consent Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good-faith efforts of Defendants, due to circumstances beyond the reasonable control of Defendants or its agents, and which could not have been reasonably foreseen and prevented by the exercise of due diligence by Defendants. Any delays due to Defendants' failure to make timely and bona fide applications and to exercise diligent efforts to obtain any necessary permits, or due to normal inclement weather shall not, in any event, be considered to be circumstances beyond DBW Metals' control.

a. If Defendants claim impossibility, they shall notify Coastkeeper in writing within twenty-one (21) days of the date that DBW Metals first knew of the event or circumstance that caused or would cause a violation of this Consent Decree or the date DBW Metals should have known of the event or circumstance by the exercise of due diligence. The notice shall describe the reason for the nonperformance and specifically refer to this Section. It shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by DBW Metals to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. DBW Metals shall adopt all reasonable measures to avoid and minimize such delays.

b. The Parties shall meet and confer in good-faith concerning the non-performance and, where the Parties concur that performance was or is impossible, despite the timely good faith efforts of DBW Metals, due to circumstances beyond the control of DBW Metals that could not have been reasonably foreseen and prevented by the exercise of due diligence by DBW Metals, new deadlines shall be established.

c. If Coastkeeper disagrees with DBW Metals' notice, or in the event that the Parties cannot timely agree on the terms of new performance deadlines or requirements, either party shall have the right to invoke the Dispute Resolution Procedure pursuant to Section IV. In such proceeding, DBW Metals shall bear the burden of proving that any

delay in performance of any requirement of this Consent Decree was caused or will be caused by force majeure and the extent of any delay attributable to such circumstances.

VI. MISCELLANEOUS PROVISIONS

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

46. Choice of Law. The laws of the United States shall govern this Consent Decree.

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

48. Correspondence. Except as otherwise specifically stated herein, all notices required herein or any other correspondence pertaining to this Consent Decree shall be sent by first-class mail and electronic mail as follows:

If to Plaintiff:

Daniel Cooper
Drevet Hunt
Lawyers for Clean Water
1004 A O'Reilly Ave
San Francisco, CA 94129
daniel@lawyersforcleanwater.com
drev@lawyersforcleanwater.com

With copies to:

Orange County Coastkeeper
Garry Brown
3151 Airway Ave # F110
Costa Mesa, CA 92626-4621
garry@coastkeeper.org

If to Defendant:

William W. Funderburk, Jr.
Ruben A. Castellon, Esq.
Stanzler Funderburk & Castellon LLP
811 Wilshire Blvd. Suite 1025
Los Angeles, CA 90017
wfunderburk@sfcfirm.com
rcastellon@sfcfirm.com@sfcfirm.com

With copies to:

DBW & Associates, Inc.
Attn: David Williams
3250 East Frontera Street
Anaheim, CA 92806
david@dbwmetals.com

Notifications of communications shall be deemed submitted three (3) days after the date that they are postmarked and sent by first-class mail. Any change of address or addresses shall be communicated in the manner described above for giving notices.

49. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent 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. Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of the Defendants to comply with all federal, state, and local laws and regulations governing any activity required by this Consent Decree.

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

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

52. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

53. Integration Clause. This is an integrated Consent Decree. This Consent Decree 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 Consent Decree.

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

55. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

56. The Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the Defendants do not admit liability for any purpose as to any allegation or matter arising out of this Action.

The undersigned representatives for Coastkeeper and Defendants each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree and that this Consent Decree binds that party.

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

LAWYERS FOR CLEAN WATER, INC.

Dated: December _____, 2009 _____
Daniel Cooper
Drevet Hunt
Lawyers for Clean Water, Inc.
Attorneys for Plaintiff

ORANGE COUNTY COASTKEEPER

Dated: December _____ ,2009 _____
Garry Brown
Orange County Coastkeeper

STANZLER FUNDERBURK CASTELLON LLP

Dated: December _____, 2009 _____
Ruben A. Castellon
Attorney for Defendants

DBW & ASSOCIATES, INC.

Dated: December _____, 2009 _____
David B. Williams, Owner
DBW & Associates, Inc.

IT IS SO ORDERED:

Date:

_____

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.*)

WHEREAS, Santa Monica Baykeeper ("Baykeeper" or "Plaintiff") is a non-profit corporation dedicated to the preservation, protection and defense of the environment, the wildlife, and the natural resources of the Santa Monica Bay watershed and area receiving waters in Los Angeles County;

WHEREAS, Kramer Metals, Inc. ("Kramer Inc." or "Defendant") is an Owner and/or Operator of the Kramer Inc. scrap metal recycling facility located at 1760 E. Slauson Avenue, Los Angeles, California (hereinafter "Kramer 1760 Facility") and was an Owner and/or Operator of the Kramer Inc. facility located at 1000 E. Slauson Avenue (hereinafter "Kramer 1000 Facility") (collectively referred to as the "Kramer Facilities" or the "Sites");

WHEREAS, Baykeeper contends that the Kramer Inc.'s operations at the Kramer Facilities result in discharges of pollutants to storm drains, Compton Creek, the Los Angeles River, and ultimately San Pedro Bay and the Pacific Ocean (collectively referred to as the "Receiving Waters") and Kramer Inc.'s discharges are regulated by the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq*. ("CWA" or "Act"), Sections 301(a) and 402, 33 U.S.C §§ 1311(a), 1342;

WHEREAS, on 10 March 2007, Baykeeper served Kramer Inc., Spectrum Alloys, Inc., Continental Truck and Towing Co., LLC, and R & P Renovators, LLC, Kramer/Spirtas, LLC, Rail Prop, LLC, the United States Environmental Protection Agency ("EPA"), EPA Region IX, the State Water Resources Control Board ("State Board") and the Regional Water Quality Control Board ("Regional Board"), with a notice of intent to file suit ("60-Day Notice") under Sections 505(a) and (b) of the CWA, 33 U.S.C. § 1365(a) and (b). The 60-Day Notice alleged that the recipients had in the past and in fact continue to violate Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342, by discharging pollutants into Receiving Waters in violation of National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS0000001

[State Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Permit") and the Act;

WHEREAS, on 13 June 2007, Baykeeper filed a complaint against Kramer Inc., *Spectrum Alloys, Inc., Continental Truck and Towing Co., LLC, and R & P Renovators, LLC, Kramer/Spirtas, LLC, and Rail Prop, LLC,* in the United States District Court, Central District of California (Civil Case No. CV 07-03849 VBF (FFMx)) entitled *Santa Monica Baykeeper v. Kramer Metals, Inc., Spectrum Alloys, Inc., Continental Truck and Towing Co., LLC, and R & P Renovators, LLC, Kramer/Spirtas, LLC, and Rail Prop, LLC* ("Complaint");

WHEREAS, on December 12, 2008, Plaintiff filed a Notice of Motion and Motion for Partial Summary Judgment ("Motion") to establish Kramer Inc.'s liability for violations of the Industrial Permit and the Act at the Kramer Facilities;

WHEREAS, on February 27, 2009, the Court issued an order granting in part Plaintiff's Motion;

WHEREAS, Baykeeper and Kramer Inc. (collectively referred to herein as the "Settling Parties" or "Parties") have agreed that it is in the Parties' mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings;

WHEREAS, this Consent Decree shall be submitted to the United States Department of Justice and the United States Environmental Protection Agency for the statutory review period pursuant to 33 U.S.C. § 1365(c) and 40 C.F.R. § 135.5;

WHEREAS, all actions taken by Kramer Inc. pursuant to this Consent Decree shall be made in compliance with all applicable federal, state and local rules and regulations;

///

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

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A);

2. Venue is appropriate in the Central District Court pursuant to Section 505(c)(1) of the Act, 33 U.S.C. §1365(c)(1), because the Kramer Facilities at which the alleged violations took place are located within this District;

3. The Complaint states a claim upon which relief may be granted against Kramer Inc. pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

4. Baykeeper has standing to bring this action.

I. OBJECTIVES

5. It is the express purpose of the Parties entering into this Consent Decree to further the objectives set forth in Section 101 *et seq*. of the CWA, 33 U.S.C. § 1251 *et seq*., and to resolve those issues alleged by Baykeeper in its Complaint. In light of these objectives and as set forth fully below, Kramer Inc. agrees, *inter alia*, to comply with the provisions of this Consent Decree and to comply with the requirements of the Industrial Permit and all applicable provisions of the CWA at the Kramer 1760 Facility. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the Kramer 1760 Facility "not cause or contribute to the exceedance of an applicable water quality standard." Effluent Limitation B(3) of the Industrial Permit requires that Best Management Practices ("BMPs") be developed and implemented to achieve Best Available Technology ("BAT") and the Best Conventional Pollutant Control Technology ("BCT"). Kramer Inc. is required to develop and implement BMPs necessary to comply

with the Industrial Permit's requirement to achieve compliance with BAT/BCT standards and with Water Quality Standards. [1]

II. COMMITMENTS OF THE PARTIES

A. Industrial Storm Water Pollution Control Measures

6. Kramer Inc. shall comply with the industrial storm water pollution control requirements of this Consent Decree by implementing the Discharge Minimization and Interim Discharge Minimization provisions of this Consent Decree as set forth below.

7. Interim Discharge Minimization. In the 2009-2010 wet season (defined as October 1 – May 31), Kramer Inc. shall eliminate storm water discharges from the Kramer 1760 Facility for all storms up to and including the 5 year, 24 hour storm event ("Interim Qualifying Storm Event"), as defined by the National Oceanographic and Atmospheric Administration ("NOAA") Atlas 2, Vol. XI, Figure 39 (1973) with an assumed dry antecedent condition and 4 total inches of rainfall over a 24-hour period. The Parties agree that any discharge of stormwater and/or stormwater pollutants from the Kramer 1760 Facility in connection with a rainfall event that exceeds an Interim Qualifying Storm Event during the 2009-2010 wet season is not a violation of this consent decree.

8. Kramer Inc. shall, within 30 days of the Effective Date of this Consent Decree, develop an Interim Discharge Minimization BMP Plan ("Interim BMP Plan") to detain, capture, infiltrate, evaporate, harvest treat, or store industrial storm water generated at the Kramer 1760 Facility during storm events up to and including the Interim Qualifying Storm Event. The Interim BMP Plan may contain the following measures listed herein:

(a) Materials Storage and Industrial Activities. Placing sources of contamination in covered containers or under cover with such areas contained by

[1] Water Quality Standards means water quality criteria contained in the Regional Water Quality Control 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.

berming or other containment sufficient to prevent the exposure of pollutants to storm water or rainwater and the runoff or discharge of pollutants;

(b) Coating. Coating structural sources of contamination (e.g. galvanized building roofs and siding);

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

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

(e) Infiltrating Runoff. Creating a pervious site such that infiltration happens passively through the site;

(f) Infiltration Structure. Collecting and routing storm water to a structure that is designed to be an infiltration structure (such as an infiltration basin or dry well/ injection well);

(g) Treating Runoff. Treating runoff discharging from the site.

(h) Sand Filters. The Interim BMP Plan may include the installation of the advanced sand filters evaluated in the Caltrans Retrofit Study ("CRS") at appropriate locations.

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

(j) Vehicle and Equipment Maintenance and Fueling.

i. Conducting all vehicle and equipment maintenance and fueling at the Kramer 1760 Facility on asphalt or another impermeable surface;

ii. Conducting all vehicle and equipment maintenance and fueling at the Kramer 1760 Facility under cover;

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

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

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

vi. Installing tire washing facilities at exit points from the Kramer 1760 Facility to prevent off-site tracking from vehicles;

vii. Annually power washing the entire paved part of the Kramer 1760 Facility, including areas not reachable by mechanical sweepers, and dispose of the contaminated water consistent with all federal, state and local requirements, and not to area storm drains.

9. Defendant shall complete and provide the Interim BMP Plan to Baykeeper for review and comment no later than 30 days from the Effective Date of this Consent Decree. Baykeeper shall respond with comments within 16 days of receiving the Interim BMP Plan. Within 12 days of receiving Baykeeper's comments, if any, Defendant shall submit a final Interim BMP Plan to Baykeeper, incorporating Baykeeper's comments into the Interim BMP Plan, or justifying in writing why any comment is not being incorporated. Defendant shall implement the Interim BMP Plan within 30 days of submitting the final Interim BMP Plan to Baykeeper. All BMPs in the Interim BMP Plan shall be implemented and functioning at the Kramer 1760 Facility on or before October 1, 2009 (the start of the 2009-2010 wet season). Any disputes as to the Interim BMP Plan shall be resolved in accordance with the dispute resolution provisions of paragraphs

24 through 27 below.

10. In the 2009-2010 wet season, stormwater discharges from the Kramer 1760 Facility Containment Area (as defined in Exhibit A) occurring during rain events less than the Interim Qualifying Storm Event shall be considered a breach of this Consent Decree except where force majeure is demonstrated pursuant to paragraph 33 of this Consent Decree. Non-stormwater discharges from the Containment Area not authorized by the Industrial Permit, shall also be considered a breach of this Consent Decree. Permitted Discharges to the POTW/sanitary sewer shall not be considered a discharge from the Containment Area , and shall not be considered a breach of this Consent Decree.

11. Discharge Minimization. In the 2010-2011 wet season (defined as October 1 – May 31), Kramer Inc. shall eliminate storm water discharges from the Kramer 1760 Facility's Containment Area (as defined in Exhibit A) for all storms up to and including the 25 year, 24 hour storm event ("Discharge Minimization Qualifying Storm Event"), as defined by the National Oceanographic and Atmospheric Administration ("NOAA") Atlas 2, Vol. XI, Figure 41 (1973) with an assumed dry antecedent condition and 6 total inches of rainfall over a 24-hour period. The Parties agree that any discharge of stormwater and/or stormwater pollutants from the Kramer 1760 Facility in connection with a rainfall event that exceeds a Discharge Minimization Qualifying Storm Event is not a violation of this consent decree.

12. Kramer Inc. shall, within 60 days of the Effective Date of this Consent Decree, develop a Discharge Minimization BMP Plan ("DM BMP Plan") detailing Kramer Inc.'s proposal to roof all areas of the Kramer 1760 Facility where industrial activity takes place. Defendant shall complete and provide the DM BMP Plan to Baykeeper for review and comment no later than 60 days from the Effective Date of this Consent Decree. Baykeeper shall respond with comments within 30 days of receiving the DM BMP Plan. Within 20 days of receiving Baykeeper's comments, if any, Defendant shall submit a final DM BMP Plan to Baykeeper, incorporating Baykeeper's comments

into the DM BMP Plan, or justifying in writing why any comment is not being incorporated. All roofing and any additional BMPs in the DM BMP Plan shall be completed, installed, and functioning at the Kramer 1760 Facility on or before October 1, 2010 (the start of the 2010-2011 wet season).

B. STORM WATER POLLUTION PREVENTION PLAN

13. SWPPP Revisions. Within 45 days of the Effective Date of this Consent Decree, Kramer Inc. agrees to revise the SWPPP currently in effect at the Kramer 1760 Facility to incorporate all storm water pollution prevention measures and other applicable requirements set forth in this Consent Decree and/or the Industrial Permit. Specifically, the SWPPP shall include a description of all industrial activities and corresponding potential pollution sources and, for each potential pollutant source, a description of the potential pollutants from the sources. The SWPPP shall also identify BMPs (and their implementation dates) designed to achieve compliance with the provisions of this Consent Decree. Kramer Inc. shall revise the SWPPP as necessary to incorporate additional BMPs developed pursuant to this Consent Decree.

14. Baykeeper's Review of Revised SWPPP. Kramer Inc. shall submit one copy of the revised SWPPP to Baykeeper within seven days of completion of the revisions.

a. Within twenty (20) days of Baykeeper's receipt of the revised SWPPP, Baykeeper shall provide Kramer Inc. with comments and suggestions, if any, concerning the revisions to the SWPPP.

b. Within ten (10) days of Kramer Inc.'s receipt of Baykeeper's comments on the revised SWPPP, Kramer Inc. shall incorporate Baykeeper's comments and re-issue the SWPPP.

c. If Baykeeper is dissatisfied with the SWPPP after its re-issuance pursuant to paragraph 14(b) above, Baykeeper may, within sixty (60) days of

Baykeeper's receipt of the SWPPP, elect to invoke the dispute resolution procedures outlined in paragraphs 24 through 27 below.

C. MONITORING AND REPORTING

15. Site Inspections. During the life of this Consent Decree, Baykeeper's Water Quality Engineer, accompanied by Baykeeper's attorney or other representative, may conduct up to two Site Inspections each calendar year at the Kramer 1760 Facility . The Site Inspections shall occur during normal business hours and Baykeeper shall provide Kramer Inc. with forty-eight (48) hours notice prior to each inspection. If an inspection is to take place on a Monday, Baykeeper shall provide written notice not later than 10:00 a.m. on the preceding Friday during normal business hours. During the Site Inspections, Baykeeper and/or its representatives shall be allowed access to the Kramer 1760 Facility's SWPPP and monitoring records and to all monitoring reports and data for the Kramer 1760 Facility. During the Site Inspections, Baykeeper and/or its representatives may collect samples of storm water discharges at the Kramer 1760 Facility. A certified California laboratory shall analyze storm water samples collected by Baykeeper. Baykeeper shall make every reasonable effort to ensure that its inspections are scheduled in such a manner as to allow Kramer Inc.'s compliance officer to be present at all inspections.

16. Compliance Monitoring and Oversight. Kramer Inc. agrees to help defray Baykeeper's reasonable costs incurred in conducting Site Inspections and compliance monitoring by reimbursing Baykeeper Ten Thousand Dollars ($10,000) for these costs. Five-Thousand ($5,000.00) dollars of this amount shall be paid within ten (10) days of the Effective Date of this Consent Decree. The remaining Five Thousand ($5,000.00) dollars shall be paid within one hundred fifty (150) days of the Effective Date. Kramer Inc. agrees to make compliance monitoring and oversight funds payable to "Lawyers for Clean Water Attorney Client Trust Account" and delivered by certified mail or overnight

delivery to Lawyers for Clean Water, Inc., 1004A O'Reilly Avenue, San Francisco, California 94129, attention Layne Friedrich.

17. Reporting. During the life of this Consent Decree, on a monthly basis, Kramer Inc. shall provide Baykeeper with a copy of all compliance and monitoring data, including inspection reports, related to the Kramer 1760 Facility. During the life of this Consent Decree, Kramer Inc. shall provide Baykeeper with all laboratory analyses or stormwater discharge information related to the Kramer 1760 Facility within seven days of Kramer Inc.'s receipt of such information.

18. Document Provision. During the life of this Consent Decree, Kramer Inc. shall copy Baykeeper on all documents related to water quality at the Kramer 1760 Facility that are submitted to the Regional Board, the State Board, and/or any State or local agency or municipality. Such reports and documents shall be provided to Baykeeper concurrently as they are sent to the agencies and/or municipalities.

D. ENVIRONMENTAL PROJECTS AND FEES

19. Environmental Mitigation Project. Kramer Inc. agrees to pay Ninety-Five Thousand Dollars ($95,000.00) to the Rose Foundation for use in a supplemental environmental project to eliminate or mitigate the impacts of storm water pollution to the Compton Creek and/or Los Angeles River watersheds receiving discharges from the Kramer 1760 Facility and Kramer 1000 Facility. Kramer Inc. shall make the mitigation payment within one hundred fifty (150) days of the Effective Date of this Consent Decree and mail via certified mail or overnight delivery to the Rose Foundation, 6008 College Avenue, Suite 10, Oakland, CA 94618. Kramer Inc. shall provide Baykeeper with a copy of such payment.

20. Baykeeper's Fees and Costs. Kramer Inc. agrees to reimburse Baykeeper for Baykeeper's investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and other costs incurred as a result of investigating and preparing the lawsuit, and negotiating a resolution of this matter, totaling Three-Hundred Forty-Five Thousand

($345,000.00) Dollars. The first payment of Forty-Five Thousand ($45,000.00) Dollars shall be made within ten days of the Effective Date, payable to "Lawyers for Clean Water Attorney Client Trust Account" and delivered by certified mail or overnight delivery to: Lawyers for Clean Water, Inc., 1004A O'Reilly Avenue, San Francisco, California 94129 attention Layne Friedrich. The remaining sum of Three Hundred Thousand ($300,000.00) dollars shall be made in the manner above within one-hundred fifty (150) days of the Effective Date.

E. STIPULATED PAYMENT

21. Kramer Inc. shall make a remediation payment of One Thousand Dollars ($1,000) for each missed deadline included in or contemplated by this Consent Decree, unless the missed deadline results from a Force Majeure Event. Payments for missed deadlines shall be made to Santa Monica Bay Restoration Commission for the restoration and/or improvement of the watershed in the area affected by the missed deadline. Kramer Inc. agrees to make the stipulated payment within thirty (30) days of a missed deadline and mail via certified mail or overnight delivery to Santa Monica Bay Restoration Commission, 320 West 4th Street, Suite 200, Los Angeles, CA 90013. Kramer Inc. shall provide Baykeeper with a copy of each such payment.

F. COMMITMENTS OF PLAINTIFF

22. Stipulated Dismissal. Within three (3) days of execution of this Consent Decree by the Parties, Baykeeper shall file this Consent Decree with the United States District Court for the Central District of California ("District Court").

23. Review by Federal Agencies**.** Baykeeper shall submit this Consent Decree to EPA and the U.S. Department of Justice ("DOJ") within three days of the execution of this Consent Decree for review consistent with 40 C.F.R. § 135.5. In the event that EPA

or DOJ comments negatively on the provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

G. DISPUTE RESOLUTION

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

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

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

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

III. RETENTION OF JURISDICTION AND TERMINATION

28. Within ten (10) days of execution of this Consent Decree, Baykeeper will dismiss with prejudice all defendants to this action except for Kramer Metals, Inc. The Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or enforcing the terms of this Consent Decree executed by the Parties, or as long thereafter

as is necessary for the Court to resolve any motion to enforce this Consent Decree filed within sixty (60) days after completion of the obligations set forth in the Consent Decree. This Consent Decree shall terminate in accordance with paragraph 29 below after Kramer Inc. completes the roofing of the Kramer 1760 Facility required under this Consent Decree and after Baykeeper has conducted an inspection of the completed roofing at the Kramer 1760 Facility.

29. If Kramer Inc. believes it has complied with the terms of this Consent Decree, Kramer Inc. shall submit a written notice of compliance and request to terminate this Consent Decree to Baykeeper setting forth the information justifying Kramer Inc.'s request for termination. Upon receipt of this written request, Baykeeper shall have twenty-one (21) days to conduct an inspection of the Kramer 1760 Facility in accordance with the provisions of paragraph 15 above. If upon inspection Baykeeper does not agree to terminate coverage under the Consent Decree, the Parties shall resolve the matter via the dispute resolution provisions of paragraphs 24 through 27. If Baykeeper has not invoked the dispute resolution provisions within 21 days of Baykeeper's receipt of the written notice and request to terminate the Consent Decree, Kramer Inc. may move the Court to terminate the Consent Decree and Baykeeper shall not oppose the motion.

IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

30. In consideration of the above, upon termination of this Consent Decree, the Parties hereby fully release, except for claims for Kramer Inc.'s failure to comply with this Consent Decree and as expressly provided below, each other and their respective successors, assigns, officers, agents, employees, landlords/property owners, and all persons, firms and corporations having an interest in them, from any and all alleged CWA violations claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

31. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the Regional Board, EPA, or any other judicial or administrative body on any other matter relating to Kramer Inc.

V. MISCELLANEOUS PROVISIONS

32. The Parties enter into this Consent Decree to avoid prolonged and costly litigation. Neither the Consent Decree, nor any payment pursuant to the Consent Decree, nor any implementation of BMPs or any other compliance with this Consent Decree, shall constitute or be construed as – and Kramer Inc. expressly does not intend to imply—any admission to any 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. Kramer Inc. maintains and reserves all defenses it may have to any alleged violations that may be raised in the future.

33. Force Majeure. Force Majeure includes any act of God, war, fire, earthquake, windstorm, flood or natural catastrophe; unexpected and unintended accidents not caused by Kramer Inc.'s or its employees' negligence; civil disturbance, vandalism, sabotage or terrorism; restrain by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency. Force Majeure shall not include normal inclement weather, economic hardship or inability to pay. Any party seeking to rely upon this paragraph to excuse or postpone performance, shall have the burden of establishing that it could not reasonably have been expected to avoid the event or circumstance, and which by exercise of due diligence has been unable to overcome the failure of performance. Kramer Inc. shall exercise due diligence to resolve and remove any force majeure event.

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

35. Choice of Law. The laws of the United States shall govern this Consent Decree.

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

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

If to Plaintiff:

Daniel G. Cooper, Esq.
Lawyers for Clean Water, Inc.
1004 O'Reilly Ave.
San Francisco, CA 94129

With copies to:

Santa Monica Baykeeper
120 W. Broadway, Suite 105
Santa Monica, CA 90401

If to Kramer Inc.:

Jason M. Booth
Dongell Lawrence Finney LLP
707 Wilshire Blvd., 45th Floor
Los Angeles, CA 90017

With copies to:

Douglas Kramer
Kramer Metals, Inc.
1760 E Slauson Avenue
Los Angeles, CA 90058-3827

Notifications of communications shall be deemed submitted three days after the date that they are 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. In addition, the Parties may agree to transmit documents electronically or by facsimile.

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

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

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

41. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

42. Integration Clause. This is an integrated Consent Decree. This Consent Decree 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 Consent Decree.

43. Authority. The undersigned representatives for Baykeeper and Kramer Inc. each certify that it is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree.

44. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

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

46. The term "Effective Date," as used in this Consent Decree, shall mean the date of expiration of the 45-day review period for the Federal agencies set forth under paragraph 23 of this Consent Decree.

The undersigned representatives for Baykeeper and Kramer Inc. each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree and that this Consent Decree binds that party.

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

LAWYERS FOR CLEAN WATER, INC.

Dated: 20 July 2009

Daniel Cooper
Martin McCarthy
Lawyers for Clean Water, Inc.

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.

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: 27th July 2009 by: _____
Stanley Kramer
Kramer Metals, Inc.

Jul 28 2009 15:07 KRAMER METALS INC 323.588.8007 p.2

Exhibit A

Case 2:07-cv-03849-DDP-FMO Document 97-2 Filed 07/30/2009 Page 23 of 23

2/4/2009 9:18:35 AM

SOUTHERLY BOUNDARY OF THE CITY OF LOS ANGELES

S89°16'43"E

625.28'M

SLAUSON AVENUE

RANDOLPH STREET

HOLMES AVENUE

LOT 1

LOT 2

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 20

BUILDING

BUIILDING

SHOP

TRUCK WELL

SCALE HOUSE

SCALE

CLARIFYING PIT

SHREDDER

BALER

BRIQUETTER

SHEAR

SAW

WAREHOUSE (BUTLER)

STORAGE

STORAGE

STORAGE

VAC.

SET L & TAG RCE 28918 ON CC.

SET L & TAG RCE 28918 ON CC.

SET SPK / TAG RCE 28918 ON AC.

SET SPK / TAG RCE 28918 ON AC.

FD. L & T PER TR. NO. 27379, MB. 819/51-52.

FD. 2"Ø I.P. TAGGED RCE 11349 PER TR. NO. 27379, MB. 819/51-52.

FD. L & TAG LS 2569 @ 2' O/S P/L PROD.

SET NAIL

CENTERLINE OF ALLEY DEDICATED ON MAP OF FIRST ADDITION TO HUNTINGTON PARK PER TR. NO. 27379, MB. 819/51-52.

C/L OF 10' EASEMENT OF S. CAL. ED. CO. PER TR. NO. 27379, MB. 819/51-52.

5' EASEMENT OF PAC. TEL. & TEL. CO. PER TR. NO. 27379, MB. 819/51-52.

C/L 10' EASEMENT TO S. CAL. ED. CO. PER TR. NO. 27379, MB. 819/51-52.

C/L 10' EASEMENT TO S. CAL. ED. CO. PER TR. NO. 27379, MB. 819/51-52.

371.91'R=M

543.32'M

142.50'M

255.00'M

165.00'R=M

543.20'R

N89°16'43"W

N00°43'17"E

N00°43'18"W

S00°43'18"W

N00°11'45"W

32.47'M

SCALE: 1"=20'

LEGEND :

PROPERTY LINE	℄ OR
CENTER LINE	℄ OR
CHAIN LINK FENCE	CLF OR
WROUGHT IRON FENCE	WIF OR
WOODEN FENCE	WDF OR
EXISTING CONTOUR ELEVATION	(100.00)
EXISTING GRADE ELEVATION	+ 100.00
ASPHALT CONCRETE	AC
CEMENT CONCRETE	CC
FINISH FLOOR	FF
TOP OF CURB	TC
TOP OF WALL	TW
WATER METER	WM
NATURAL GROUND	NG
CONCRETE BLOCK WALL	CBW
FLOWLINE	FL
DRIVEWAY	DWY
TOP OF DRIVEWAY "X"	TX
BACK OF SIDEWALK	BW
BOTTOM OF DRIVEWAY "X"	BX
BRICK	BRK
POWER POLE	PP
LIGHT POST	LP
INVERT	INV
HOSE BIBB	HB
LIGHT STANDARD	LS
FIRE HYDRANT	FH
WATER VALVE	WV
STREET SIGN	SS

BENCHMARK:

CUT SPIKE N N CURB SLAUSON AVE N RDWY 25FT E OF E CURB LINE HOLMES AVE E END CB

ELEVATION = 176.24' (1985)

LEGAL DESCRIPTION:

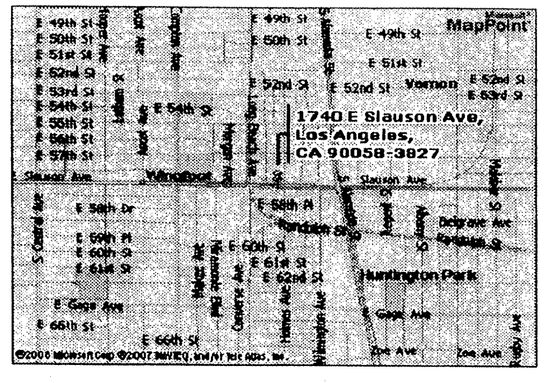
LOTS 1, 2, 4 THRU 11, 19 & 20 OF TR. NO. 27379, MB. 819-51-52.

BASIS OF BEARING:

ALL BEARINGS SHOWN HEREON ARE BASED ON THE BEARING S89°14'63"W ON THE CENTERLINE OF SLAUSON AVENUE AS SHOWN ON TR. NO. 27379, MB. 819-51-52.

VICINITY MAP :

NOT TO SCALE



DISCLAIMER:

UTILITIES SHOWN HEREON ARE COMPILED FROM DATA OBTAINED FROM OTHERS AND BELIEVED TO BE CORRECT, BUT NO LIABILITY IS ASSUMED BY THE COMPANY AS TO THE ACCURACY OF SUCH DATA. P.A. ARCA ENGINEERING, INC. DOES NOT ACCEPT ANY RESPONSIBILITY 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) 422-4133.

REVISIONS	DATE	BY

OWNER/CLIENT:
STANLEY & SUSAN KRAMER
1760 E. SLAUSON AVENUE
LOS ANGELES, CA 90058

PROJECT:
BOUNDARY AND TOPOGRAPHIC SURVEY
1740 E. SLAUSON AVENUE
LOS ANGELES, CA 90058

STAMP:

DISCIPLINE:
P.A. ARCA ENGINEERING, INC.
501 EAST CARSON PLAZA DRIVE, SUITE 201 CARSON, CA 90746
TEL: (310) 756-0618 www.paarcaengineering.com FAX: (310) 756-3777
PERFECTO A. ARCA RCE #028918

DATE:	10/2/2008
SCALE:	AS SHOWN
DRAWN:	C.R.A.
REVIEWED/APP:	F.C.M./M.J.A.
CHECKED:	P.A.A.
JOB NO.:	AEI-08-0808

INDEX

SHEET 1 OF 1 SHEET(S)

KRAMER 000002133

ANDREW L. PACKARD (State Bar No. 168690)
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HALLIE B. ALBERT (State Bar No. 258737)
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Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiff, vs. CITY OF REDDING, COUNTY OF SHASTA, and KURT STARMAN, an individual, Defendants.	Case No. 2:10-CV-01389-WBS-CMK **[PROPOSED] CONSENT AGREEMENT** (Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387)

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

WHEREAS, Defendant the County of Shasta ("**COUNTY**") owns the property located

at 14095 Clear Creek Road, in the unincorporated area of Shasta County known as Igo, in the State of California upon which the West Central Landfill is sited (the "**Facility**"), Defendant the City of Redding ("**CITY**") operates the Facility, and Defendant Mr. Kurt Starman ("**STARMAN**")[1] was only named as a defendant in this matter in his capacity as the City Manager for the CITY;

WHEREAS, the Facility is an approximately 230-acre landfill facility within a larger 1000-acre site;

WHEREAS, unless otherwise noted, CITY, COUNTY and STARMAN shall be referred to herein collectively as DEFENDANTS;

WHEREAS, DEFENDANTS entered into an agreement effective July 26, 1990 concerning the use and operation of the Facility and nothing in this Consent Agreement ("**Agreement**") shall affect, alter, or amend any rights or obligations of the COUNTY or CITY arising out of agreements between DEFENDANTS relating to ownership or operation of the Facility;

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

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

WHEREAS, storm water discharges associated with industrial activity are regulated pursuant to the National Pollutant Discharge Elimination System ("**NPDES**"), General Permit No. CAS000001 Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12 DWQ and 97-03-DWQ), issued by the State Water Resources Control Board

[1] STARMAN was only named as a defendant in this matter in his capacity as City Manager for the CITY. Accordingly, the parties agree that STARMAN's obligations, if any, arising under this Consent Agreement, shall terminate prior to the Termination Date reflected in the parties' Consent Agreement, if he ceases to serve the CITY as its City Manager.

pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter "**General Permit**");

WHEREAS, on or about April 8, 2010, and again on or about May 24, 2010, PLAINTIFF provided notice of DEFENDANTS' violations of the Act, and of its intention to file suit against DEFENDANTS, to the Administrator of the United States Environmental Protection Agency ("**EPA**"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("**State Board**"); the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("**Regional Board**"); and to DEFENDANTS, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of CSPA's notice letters ("**Notices**") are attached as **Exhibit B** and incorporated herein by reference);

WHEREAS, DEFENDANTS deny the occurrence of the violations alleged in the Notices and maintain that they have complied at all times with the provisions of the General Permit;

WHEREAS, CSPA filed a complaint (*California Sportfishing Protection Alliance v. City of Redding, et al.*, Case No. 2:10-CV-01389-WBS-CMK) (the "**Action**") against CITY and STARMAN in the United States District Court, Eastern District of California, on June 7, 2010, and, upon the expiration of PLAINTIFF's May 24, 2010 notice letter to COUNTY, filed a First Amended Complaint adding COUNTY as a defendant on July 23, 2010;

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

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

WHEREAS, at the time the Agreement is submitted for approval to the United States

District Court, CSPA shall request a dismissal of the First Amended Complaint with prejudice and the Parties shall stipulate and request that the Court retain jurisdiction for the enforcement of this Agreement as provided herein;

AND WHEREAS, the Parties, through their authorized representatives and without either adjudication of CSPA's claims or admission by DEFENDANTS of any alleged violation or other wrongdoing, have chosen to resolve this matter through settlement to avoid the cost and uncertainties of further litigation;

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

I. COMMITMENT OF DEFENDANTS

1. Compliance With General Permit & Clean Water Act. Beginning immediately, DEFENDANTS shall operate the Facility in full compliance with the requirements of the General Permit and the Clean Water Act, subject to any defenses available under the law.

2. DEFENDANTS' Implementation of Specific Storm Water Best Management Practices. DEFENDANTS shall complete the implementations of the following storm water control measures/best management practices ("**BMPs**") in the time frames provided:

(a) DEFENDANTS shall install aggregate-based berms with an asphalt bitumen (liquid asphalt) surface layer around the Facility's "**Self-Haul Transfer Area**" within sixty (60) days of the completed mutual execution of this Agreement to the extent necessary to direct storm water north to a newly established and designated storm water discharge point and sampling location;

(b) DEFENDANTS shall install asphalt berms for the 2011 to 2015 Wet Seasons on or before July 1, 2011, around the Facility's Self-Haul Transfer Area to the extent necessary to direct storm water north to a newly established and designated storm

water discharge point and sampling location;

(c) DEFENDANTS shall install a litter filter and an oil-water separator at the newly established storm water discharge point/sampling location described in Clause 2(a), above, within ninety (90) days of the completed mutual execution of this Agreement;

(d) DEFENDANTS shall create a new, comprehensive erosion control plan for the Facility and integrate it into the Facility SWPPP within sixty (60) days of the completed mutual execution of this Agreement;

(e) DEFENDANTS shall remediate the main drainage through the southern canyon by re-grading the drainage's existing slopes and installing rock to prevent future erosion of the drainage within thirty (30) days of the completed mutual execution of this Agreement;

(f) DEFENDANTS shall remediate the drainage issues on the access road down to Dry Creek by re-grading the road, installing a rock lined drainage ditch and installing cross drains to deter erosion of the road surface within thirty (30) days of the completed mutual execution of this Agreement;

(g) DEFENDANTS shall hydro-seed the barren areas on the existing waste pile within thirty (30) days of the completed mutual execution of this Agreement;

(h) DEFENDANTS shall strive to minimize the amount of windblown debris at the Facility to the greatest extent feasible by continuing to remove windblown trash from the Facility no less than twice per week;

(i) During each Wet Season throughout the life of this Agreement, DEFENDANTS shall weekly monitor and maintain all of the Facility's storm water conveyances (e.g., drainage trenches, pipes, dams), discharge points and BMP structures in a manner that ensures they are kept free of debris and materials not related to the control or treatment of storm water;

(j) DEFENDANTS shall develop and implement a training program for all

new employees and a yearly refresher course for employees to train the employees in storm water management and pollution prevention practices at the Facility, on or before February 1, 2011. Further, throughout the life of this Agreement, DEFENDANTS shall maintain records at the Facility of the monitoring and maintenance required by Clause 2(h), above, and of any employee training related to storm water management; and,

(k) Within sixty (60) days of the completed mutual execution of this Agreement, DEFENDANTS shall create a visual inspection checklist that must be used by trained Facility personnel when conducting the visual observations and monitoring of storm water required under the General Permit, and such visual inspection checklists shall be incorporated into the Facility SWPPP.

3. SWPPP Amendments/Additional BMPs. Within sixty (60) days of the completed mutual execution of this Agreement, DEFENDANTS shall formally amend the Storm Water Pollution Prevention Plan ("**SWPPP**") and the Storm Water Monitoring Plan ("**SWMP**") for the Facility to incorporate all of the relevant requirements of this Consent Agreement, as well as the revised Facility map attached hereto as **Exhibit A**. DEFENDANTS shall provide a copy of the revised SWPPP and SWMP to CSPA upon their completion.

4. Sampling Frequency. DEFENDANTS shall collect and analyze samples from four (4) storm events, as qualified in the General Permit[2] for sampling purposes, in each of the five (5) Wet Seasons occurring during the term of this Agreement (2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015). The storm water sample results shall be compared with the values contained in Clause 5 below.

5. Sampling Parameters. The COUNTY shall analyze each storm water sample taken in accordance with the provisions of the General Permit. Accordingly, all samples shall be analyzed for each of the constituents listed in the below table by a laboratory accredited by

[2] "**Qualifying Storm Events**" under the General Permit are those events in which (i) the samples taken are 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.

the State of California. All samples collected from the Facility shall be delivered to the laboratory as soon as possible to ensure that sample hold time is not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual constituents at or 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

6. Sampling results shall be provided to CSPA within thirty (30) days of DEFENDANTS' receipt of the laboratory report from each sampling event pursuant to the Notice provisions below. If the results of any samples exceed the parameter values set forth above, DEFENDANTS shall comply with the "**Action Memorandum**" requirements set forth in Clause 7 of this Agreement.

7. "Action Memorandum" Trigger. If any sample taken during the five (5) Wet Seasons referenced in Clause 4 above exceeds the evaluation levels set forth in the table in Clause 5, or if DEFENDANTS fail to collect and analyze samples from four (4) storm events,

as required in the General Permit, DEFENDANTS shall prepare a written statement discussing (1) the exceedance(s) and /or failure to collect and analyze samples from four (4) storm events, (2) the possible cause and/or source of the exceedance(s), and (3) additional feasible measures that will be taken to address and eliminate the problem and future exceedances ("**Action Memorandum**"). The Action Memorandum shall be provided to CSPA not later than July 30th following the conclusion of each Wet Season. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional measures may include, but are not limited to, material improvements to the storm water collection and discharge system, reviewing the frequency of Facility sweeping, changing the type and extent of storm water filtration media or modifying other industrial activities or management practices at the Facility. Such additional measures, to the extent feasible, shall be implemented immediately and in no event later than sixty (60) days after the due date of the Action Memorandum, except where 1) structural changes require longer than sixty (60) days to complete; 2) weather-related conditions render immediate implementation infeasible; or 3) the Parties agree in writing to defer implementation of specific measures in order to effectively meet and confer as discussed in this section below. Within thirty (30) days of implementation, the Facility SWPPP shall be amended to include all additional BMP measures designated in the Action Memorandum.

8. CSPA Review Of "Action Memorandum"; Meet-and-Confer. CSPA may review and comment on an Action Memorandum and suggest any additional pollution prevention measures it believes are appropriate. CSPA shall make good faith efforts to provide DEFENDANTS any comments and suggestions within thirty (30) days of its receipt of the Action Memorandum; however, CSPA's failure to do so shall not be deemed to constitute agreement with the proposal(s) set forth in the Action Memorandum. Upon request by CSPA, DEFENDANTS agree to meet and confer in good faith (at the Facility, if requested by PLAINTIFF) regarding the contents and sufficiency of the Action Memorandum. If, after meeting and conferring on the Action Memorandum, the Parties fail to reach agreement on additional measures, either of the Parties may bring a motion before the Magistrate Judge

consistent with the Agreement's dispute resolution procedures described below. If CSPA failed to provide DEFENDANTS its objections or comments to the contents and sufficiency of the Action Memorandum within thirty (30) days of its receipt thereof and CSPA subsequently brings a motion before the Magistrate Judge challenging the sufficiency of DEFENDANTS' storm water management measures implemented prior to CSPA's filing of such motion, the Court may consider CSPA's failure to provide DEFENDANTS feedback on the Action Memorandum within thirty (30) days as one of many factors in its analysis of the sufficiency of storm water management measures implemented by DEFENDANTS prior to filing of the motion.

9. Inspections During The Term Of This Agreement. In addition to any site inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as set forth above, DEFENDANTS shall permit representatives of CSPA to perform up to three (3) physical inspections of the Facility during the term of this Consent Agreement. These inspections shall be performed by CSPA's counsel and consultants and may include sampling, photographing, and/or videotaping and CSPA shall provide DEFENDANTS with a copy of all sampling reports, photographs and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical inspection, except that DEFENDANTS shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations or any party/attorney, or the safety of individuals. In such case, DEFENDANTS shall specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. DEFENDANTS shall not make any alterations to Facility conditions during the period between receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that DEFENDANTS would not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws or regulations. Nothing herein shall be construed to prevent DEFENDANTS from continuing to implement any BMPs identified in the SWPPP

during the period prior to an inspection by CSPA or at any time.

10. Defendants' Communications with Regional and State Boards. During the term of this Agreement, DEFENDANTS shall provide CSPA with copies of all documents submitted to the Regional Board or the State Board concerning storm water discharges from the Facility, including, but not limited to, all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to the Notice provisions in Clause 24 and contemporaneously with DEFENDANTS' submission to such agencies.

11. SWPPP Amendments. DEFENDANTS shall provide CSPA with a copy of any amendments to the Facility SWPPP and SWMP (e.g., any additional storm water discharge points/sampling locations developed in response to erosion control efforts at the Facility and/or changed operational areas) made after the execution of this Agreement by the Parties within thirty (30) days of such amendment.

II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS

12. Mitigation Payment. In recognition of the good faith efforts by DEFENDANTS to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by DEFENDANTS of any civil penalties which may have been assessed in this action if the matter had proceeded to trial, and as mitigation of the Clean Water Act violations alleged in CSPA's First Amended Complaint, the Parties agree that DEFENDANTS will pay the sum of thirty thousand dollars ($30,000) within fifteen (15) days after the Court Approval Date to the Rose Foundation for Communities and the Environment **(**6008 College Avenue, Oakland, CA 94618, Attn: Tim Little**)** for projects to improve water quality in Dry Creek, Cottonwood Creek, the Sacramento River and/or the Sacramento-San Joaquin River Delta Estuary. If the mitigation payment is not dispersed by the Rose Foundation as agreed above within two year(s) of the completed mutual execution of this Agreement, the funds shall be returned to DEFENDANTS to implement the mitigation.

13. CSPA's Attorneys' Fees and Costs. DEFENDANTS agree to reimburse CSPA

in the amount of thirty-two thousand five hundred dollars ($32,500) to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred as a result of investigating the activities at the Facility, bringing the action, and negotiating a resolution in the public interest. Such payment shall be made to the Law Offices of Andrew L. Packard Attorney-Client Trust Account and remitted within fifteen (15) days after the Court Approval Date.

14. Compliance Monitoring Funding. To defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs associated with monitoring DEFENDANTS' compliance with this Consent Agreement over its five-year term, DEFENDANTS agree to contribute seventeen thousand five hundred dollars ($17,500) to a compliance monitoring fund maintained by CSPA's counsel. Compliance monitoring activities may include, but shall not be limited to, site inspections, review of water quality sampling reports, review of annual reports, discussions with representatives of DEFENDANTS concerning the Action Memoranda referenced above, and potential changes to compliance requirements herein, preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and compliance-related activities. Such payment shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust Account and remitted within fifteen (15) days of the Court Approval Date. Any unused portion of these funds remaining on the Termination Date shall be refunded to DEFENDANTS within fifteen (15) days of the Termination Date of this Agreement.

III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT

15. Meet and Confer Regarding Breach. With the exception of the timelines set forth above for addressing exceedances of values specified in Clause 6 and Action Memoranda specified in Clause 8, if a dispute under this Agreement arises, or any Party under this Agreement believes that a breach of this Agreement has occurred, the Parties shall meet and confer within seven (7) 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, including implementation dates, 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 filing a motion before the Magistrate Judge in the District Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

16. CSPA Waiver and Release. Upon Court approval and entry of this Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases DEFENDANTS and their elected officials, officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other representatives (each a "**Released Defendant Party**") from, and waives all claims which arise from or pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure of DEFENDANTS to comply with the Clean Water Act at the Facility.

17. DEFENDANTS' Waiver and Release. DEFENDANTS, on their own behalf and on behalf of those Released Defendant Parties under their control, release CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and other representative) from, and waive all claims which arise from or pertain to the Action, 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 Action.

18. Stipulation for Dismissal. Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and Order which shall provide that:

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

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

IV. MISCELLANEOUS PROVISIONS

19. No Admission of Liability or Fault. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be construed as, and DEFENDANTS expressly do not intend to imply, an 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 DEFENDANTS 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.

20. Completed Mutual Execution. The term "**completed mutual execution**," as used in this Agreement, shall mean the last date on which the signature of a Party to this Agreement is executed.

21. Termination Date. This Agreement shall terminate on September 30, 2015.

22. Counterparts. This Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document. An executed copy of this Consent Agreement shall be valid as an original.

23. Severability. In the event that any one of the provisions of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

24. Construction; Governing Law. The language in all parts of this Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning. This Agreement shall be construed pursuant to California law, without regarding to conflict of law principles.

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

26. Entire 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. This Agreement and its attachments are made for the sole benefit of the Parties, and no other person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment, unless otherwise expressly provided for therein.

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

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

With copies sent to:

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

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

Rick Duvernay, City Attorney
City of Redding
City Attorney's Office
777 Cypress Avenue
Redding, CA 96049-6071
Tel.: (530) 225-4050
Fax.: (530) 225-4362
E-mail: rduvernay@ci.redding.ca.us

Rubin Cruse, County Counsel
James R. Ross, Assistant County Counsel
Shasta County
1450 Court Street, Room 332
Redding, CA 96001-1675
Tel.: (530) 225-5711
Fax.: (530) 225-5817
E-mail: rcruse@co.shasta.ca.us
jross@co.shasta.ca.us

With copies sent to:

Katherine J. Hart
Leslie Z. Walker
Abbott & Kindermann, LLP
2100 21st Street
Sacramento, CA95818
Tel: (916) 456-9595
Fax.: (916) 456-9599
E-mail: khart@aklandlaw.com
lwalker@aklandlaw.com

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

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

29. **Force Majeure**. 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 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 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.

30. Non-Approval of Agreement. If for any reason the United States Department of Justice, the United States Environmental Protection Agency or the 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 so that it is acceptable to the United States Department of Justice, the United States Environmental Protection Agency or the Court. If the Parties are unable to modify this Agreement in a mutually acceptable manner, this Agreement shall become null and void.

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

32. Entire Agreement. This Agreement and the attachments contain all of the terms and conditions agreed upon by the Parties relating to the matters covered by the Agreement, and supersede any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Agreement.

33. Modification. This Agreement may be amended or modified only by a writing signed by the Parties or their authorized representatives, and then by order of the Court.

34. Breach of Agreement. Except in case of an emergency but subject to the regulatory authority of any applicable governmental authority, any breach of or default under this Agreement capable of being cured shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default, or within such other period approved in

writing by the Party making such allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or, if the breach or default can be cured but is not capable of being cured within such five (5) day period, has commenced and is diligently pursuing to completion such cure.

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

[SIGNATURES ON FOLLOWING PAGE]

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

Dated: _____ California Sportfishing Protection Alliance

By: _____
Bill Jennings, Executive Director

Dated: 11/23/10 City of Redding

By: _____
Kurt Starman, City Manager

Dated: _____ County of Shasta

By: _____
Rubin E. Cruse, Jr., County Counsel

Dated: 11/23/10 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 23, 2010 By: _____
Rick Duvernay

Dated: _____ 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

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

Revised SWPPP Monitoring Points

[#] Visual Monitoring Location

[#] Analytical Monitoring Location

R 6 W
MDB&M

T 31 N
T 30 N

CLEAR CREEK RD

R1
(BACKGROUND)

DRY

CLOVERDALE RD

CREEK

NORTHERN CANYON

R2
(DISCHARGE)

DIVERSION CUT

PHASE 2 WMU

PHASE 1 WMU
CLOSED

SOUTHERN CANYON

R3
(DISCHARGE)

R4
(COMPLIANCE)

PROPERTY/PERMITTED FACILITY BOUNDARY

N

1" = 750'

① SCALES AND SCALEHOUSE
② SELF-HAUL TRANSFER AREA
③ FUELING STATION
④ STORAGE BUILDING
⑤ SHOP BUILDING
⑥ NORTH COVER SOIL BORROW AREA
⑦ WORKING FACE (LOCATION VARIES)
⑧ CONTACT WATER SURGE POND
⑨ UNIT 3-4 UNDERDRAIN DISCHARGE
⑩ SOUTH COVER SOIL BORROW AREA
⑪ CONTACT WATER PUMPING POND & PUMP
⑫ LEACHATE WET WELL AND PUMP
⑬ CLASS II LEACHATE IMPOUNDMENT
⑭ CONTACT WATER STORAGE PONDS
⑮ STORM WATER COLLECTION PONDS

POTENTIAL STORM WATER POLLUTANT AREA
CONTACT WATER
LEACHATE
STORM WATER DETENTION POND
STORM WATER SAMPLING LOCATION
STORM WATER VISUAL MONITORING LOCATION
AUTHORIZED NON-STORM WATER VISUAL MONITORING LOCATION
PAVED
GRAVEL/DIRT
ACCESS ROADS

FIGURE 2
WEST CENTRAL LANDFILL
SITE PLAN

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

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

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.
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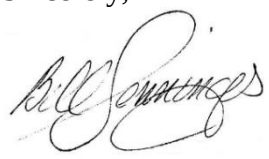
VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects 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

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Rick Duvernay, City Attorney
City of Redding
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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

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 WDID 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:

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Erik Roper, Esq.
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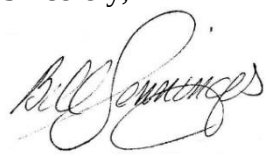
VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects 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,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
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Eric Holder
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U.S. Department of Justice
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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.

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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.

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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.

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Attorneys for Plaintiffs,
Inland Empire Waterkeeper, a program of Orange County Coastkeeper,
And Orange County Coastkeeper

JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE WATERKEEPER, a program of ORANGE COUNTY COASTKEEPR, and ORANGE COUNTY COASTKEEPER, a non-profit corporation, Plaintiffs, v. RUBY METALS, INC., and GOLD COAST METALS TRADING, INC., a California Corporation, 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*.)**

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

WHEREAS, Orange County Coastkeeper is a non-profit corporation dedicated to the preservation, protection and defense of the environment, the wildlife, and the natural resources of Orange County area waters, including the Santa Ana River Watershed and its receiving waters;

WHEREAS, Inland Empire Waterkeeper and Orange County Coastkeeper are collectively referred to herein as ("Waterkeeper" or "Plaintiffs");

WHEREAS, Ruby Metals, Inc. is an owner and/or operator of the scrap metal recycling facilities located at 2805 South Industrial Drive ("2805 Facility") and 2820 South Industrial Drive ("2820 Facility"), Bloomington, California (collectively the "2805/2820 Facilities");

WHEREAS, Gold Coast Metals Trading, Inc. is an owner and/or operator of the scrap metal recycling facilities located at 2805 South Industrial Drive and 2820 South Industrial Drive, Bloomington, California;

WHEREAS, Ruby Metals, Inc., and Gold Coast Metals Trading, Inc. are collectively referred to herein as "Defendants" or "Ruby Metals";

WHEREAS, on June 10, 2009 and June 23, 2009, Waterkeeper served Defendants, the United States Environmental Protection Agency ("EPA"), EPA Region IX, the State Water Resources Control Board ("State Board") and the Regional Water Quality Control Board ("Regional Board"), with a notice of intent to file suit for violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA"). The notice letter alleged violations of the Clean Water Act for Defendants' discharges of pollutants into receiving waters in violation of National Pollution Discharge Elimination

System ("NPDES") General Permit No. CAS0000001 [State Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Permit");

WHEREAS, on September 9, 2009, Waterkeeper filed a complaint against Defendants in the United States District Court, Central District of California (Civil Case No. CV 09-6558-AHM (OPx)) entitled *Inland Empire Waterkeeper, et. al. v. Ruby Metals, Inc., and Gold Coast Metals Trading, Inc.* ("Complaint");

WHEREAS, Defendants deny all allegations of the Complaint;

WHEREAS, Plaintiffs and Defendants (collectively referred to herein as the "Parties") have agreed that it is in the Parties' mutual interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings;

WHEREAS, all actions taken by Defendants pursuant to this Consent Decree shall be made in compliance with all applicable federal, state and local rules and regulations;

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

1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

2. Venue is appropriate in the Central District Court pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the 2805/2820 Facilities at which the alleged violations took place is located within this District;

3. The Complaint states a claim upon which relief may be granted against Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

4. Plaintiffs have standing to bring this action.

5. The Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or enforcing the terms of this Consent Decree, or as long

thereafter as is necessary for the Court to resolve any motion to enforce this Consent Decree.

I. OBJECTIVES

6. It is the express purpose of the Parties entering into this Consent Decree to further the objectives set forth in Sections 101 *et seq*. of the CWA, 33 U.S.C. §§ 1251 *et seq*., and to resolve those issues alleged by Waterkeeper in its Complaint. In light of these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply with the provisions of this Consent Decree and to comply with the requirements of the Industrial Permit and all applicable provisions of the CWA at the 2805/2820 Facilities. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the 2805/2820 Facilities "not cause or contribute to the exceedance of an applicable water quality limit." Effluent Limitation B(3) of the Industrial Permit requires that Best Management Practices ("BMPs") be developed and implemented to achieve Best Available Technology ("BAT") and the Best Conventional Pollutant Control Technology ("BCT"). Defendants are required to develop and implement BMPs necessary to comply with the Industrial Permit's requirement to achieve compliance with Water Quality Standards and BAT/BCT standards. BMPs must be developed and implemented to prevent discharges or to reduce contamination in storm water discharged from the 2805/2820 Facilities sufficient to achieve the numeric limits detailed in paragraphs 19 and 20 below.

II. COMMITMENTS OF THE PARTIES

A. Eliminating Discharge Points

7. 2820 Facility. The 2820 Facility currently discharges at the driveway at the north entrance to the facility, the driveway at the south entrance to the facility, and out the southwest corner of the facility. Ruby Metals will eliminate the southwest corner discharge point by plugging, blocking, closing, or otherwise preventing storm water from

discharging from that location. Instead, water will be routed to the truck dock as explained in Section II.B. below.

8. 2805 Facility. The 2805 Facility discharges from the driveway at the north entrance to the facility, the driveway at the south entrance to the facility (which comingles with the discharge draining the southern portion of the facility to the southern driveway), and the northwest corner of the facility adjacent to the neighboring Atlas Pacific facility. Ruby Metals will plug, block, close or otherwise prevent storm water from discharging from the northwest discharge point at the 2805 Facility. Ruby Metals will install curbing along the northern wall leading to the discharge point to prevent any water from discharging from this area. Instead, water will be routed to the truck dock as explained in Section II.B. below.

B. Immediate BMP Plan

9. Water Drainage and Capture System. Ruby Metals is in the process of developing a drainage control and storm water capture system in an effort to prevent storm water from discharging at the 2805/2820 Facilities. Implementation will include installing curbing, drainage channels, and trench gates across the south driveway at the 2805 Facility and across the south and north driveways at the 2820 Facility. The intent is to direct all storm water at each of the facilities to the truck dock at each of the respective facilities. The water in the truck docks will be pumped to two (2) 10,000-gallon holding tanks located at the 2820 Facility, and to holding tanks that will be installed at the 2805 Facility. Ruby Metals agrees to purchase additional holding tanks as part of their efforts to prevent storm water from discharging at the site. The system will include float-controlled submersible pumps and electrical controls. However, for the first year of this Consent Decree, Ruby Metals agrees to manually operate the system during storm events to reduce water levels in the truck docks and maximize capacity. The system will be operational within 120 days of the Effective Date of this Consent Decree.

10. Additional BMPs. Within thirty (30) days of the Effective Date of this Consent Decree Ruby Metals agrees to develop, implement and/or continue to maintain the following BMPs:

a. Conducting all vehicle and equipment fueling at the 2805/2820 Facilities on asphalt or other impermeable surface and under cover;

b. Conducting all vehicle and equipment maintenance at the 2805/2820 Facilities on asphalt or other impermeable surface and under cover. If Ruby must maintain and/or repair stationary equipment identified as the baler and large grappling crane Ruby shall develop and implement BMPs to prevent the exposure of pollutants associated with repair and maintenance to water, such as using a drip pan and straw wattle berming, and shall carry a spill response kit at all times maintenance and repair of stationary equipment occurs. Under no circumstances will Ruby conduct maintenance or repair that is not under cover and on impermeable surface during a rain event;

c. Berming or otherwise containing the surface of the area where vehicle maintenance, repair and/or fueling occurs in order to prevent the exposure and/or discharge of pollutants from this area;

d. Cleaning the maintenance and fueling area as necessary to control track-off of pollutants;

e. Dispensing with all petroleum products within the maintenance and fueling area only; and

f. Constructing secondary containment adequate to capture all drips, spills, and leaks around the vehicle fueling area and for all other areas where 55-gallon drums are stored for on-site use.

11. BMPs for S. Industrial Drive. Within thirty (30) days of the Effective Date of this Consent Decree, Ruby Metals agrees to develop and implement BMPs on S. Industrial Drive between the 2805 Facility and the 2820 Facility to prevent the exposure of storm water and/or non-storm water to pollutants associated with Ruby Metals'

industrial activities until and unless Defendants cease use of S. Industrial Drive. BMPs include but are not limited to:

a. Using and/or parking vehicles on S. Industrial Drive only when necessary to carry out Defendants' industrial operations at the 2805/2820 Facilities to minimize the transport or distribution of pollutants associated with Ruby Metals' industrial activities.

b. Sweeping adequate to prevent the exposure of pollutants to storm water flows;

c. Installing tire washing facilities at all driveways for the 2805/2820 Facilities in order to prevent off-site tracking from vehicles using S. Industrial Drive for Ruby Metals' industrial activities;

d. Power washing the portion of S. Industrial Drive between the 2805 Facility and the 2820 Facility, including areas not reachable by mechanical sweepers, on an annual basis. Ruby Metals shall ensure BMPs are in place to prevent any discharge from the S. Industrial Drive to area storm drains resulting from the power washing.

C. Long-Term BMP Plan

12. Within ninety (90) days of the Effective Date of this Consent Decree, Ruby Metals agrees to begin considering additional measures to capture storm water and prevent the discharge of storm water at the 2805/2820 Facilities and/or to reduce the levels of pollutants in storm water discharges at the 2805/2820 Facilities and incorporate them into a long-term plan. The purpose of the long-term plan shall be to retain storm water generated from a 25-year, 24-hour rainfall event without surface water discharge at both the 2820 Facility and the 2805 Facility. If this cannot be fully achieved Ruby Metals shall provide a high level of treatment to the differential between the retained and 25-year, 24-hour runoff volumes such that storm water discharges do not contain pollutants above Table 1 or Table 2 levels. Additional BMPs that must be analyzed as part of the long-term plan include but are not limited to:

a. Source control to eliminate contact between industrial activity and associated pollutants with storm water, and/or non-storm water;

b. Infiltration including investigating both on-site and off-site (e.g., on lands east of the 2805 Facility) opportunities for collecting and routing storm water to a structure that is designed to be an infiltration facility (such as an infiltration basin or trench). The analysis shall include gathering data on the feasibility such as soils analysis and drilling wells to determine the infiltration possibilities;

c. Rain harvesting including transfer to an off-site user;

d. Materials storage including placing sources of contamination in covered containers or under cover with such areas contained by berming or other containment sufficient to prevent the exposure of pollutants to storm water and non-storm water, and to therefore prevent the discharge of pollutants;

e. Coating structural sources of contamination (e.g., galvanized building roofs and siding);

f. Sweeping including employing high efficiency sweeping in order to prevent the exposure of pollutants to storm water flows;

g. Storing storm water and/or non-stormwater including constructing and maintaining on-site retention facilities (such as retention ponds or swales, infiltration basins, baker tanks, sumps, and/or cisterns) designed to hold and store the runoff generated by a 25-year, 24-hour rain event without any off-site discharge;

h. Treating runoff discharging from the site with devices such as sand filters evaluated in the Caltrans Retrofit Study ("CRS") or equivalent treatment devices at appropriate locations;

i. Installing tire washing facilities at exit points from the 2805/2820 Facilities to prevent off-site tracking from vehicles;

j. Power washing the entire paved part of the 2805/2820 Facilities, including areas not reachable by mechanical sweepers, as necessary but at least annually.

Ruby Metals shall ensure BMPs are in place to prevent any discharge from the 2805/2820 Facilities resulting from the power washing.

13. By June 1, 2010 Ruby Metals shall complete its consideration and analysis of the long-term BMPs and submit a report describing the analysis for each proposed BMP and if the BMP is not selected the reason(s) why the BMP was rejected (referred to as "Long-Term BMP Plan"). Financial hardship is not in and of itself an adequate justification to reject a BMP. The Long-Term BMP Plan shall also include implementation dates for the proposed BMPs that are selected. Defendants shall submit the Long-Term BMP Plan to Waterkeeper for review and comment. Waterkeeper shall respond with comments within thirty (30) days of receiving the Long-Term BMP Plan. Defendants shall incorporate Plaintiffs' comments into the Plan, or shall justify in writing why any comment is not being incorporated within thirty (30) days of receiving comments. Any disputes as to the adequacy of the Long-Term BMP Plan shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV below.

D. Employee Training

14. Within thirty (30) days of the Effective Date, Defendants shall develop a training program, including any materials needed for effectiveness, and shall provide training for employees as follows:

a. Non-Storm Water Discharge Training. Defendants shall conduct training on the Industrial Permit's prohibition of non-storm water discharges so that employees know what non-storm water discharges are and how to avoid them. Such training shall be specified in the SWPPP;

b. BMP Training. Defendants shall provide training to all employees responsible for BMP implementation and maintenance. Training shall be provided by a private consultant or representative of Defendants familiar with the Industrial Permit requirements and shall be repeated as necessary to ensure that all such employees are

familiar with the Industrial Permit and SWPPP requirements. Defendants shall maintain training records to document compliance with this paragraph, and shall provide Waterkeeper with a copy of these records within fourteen (14) days of receipt of a written request;

c. Sampling Training. Defendants shall provide training to all individuals performing sampling pursuant to the Industrial Permit at the 2805/2820 Facilities. All employees shall thereafter be trained prior to becoming responsible for conducting sampling activities. The training shall be provided by a private consultant or representative of Defendants familiar with the Industrial Permit requirements and shall be repeated as necessary to ensure Industrial Permit compliance. Defendants shall maintain training records to document compliance with this paragraph, and shall provide Waterkeeper with a copy of these records within fourteen (14) days of receipt of a written request.

d. Visual Observation Training. Defendants shall provide additional training to all individuals performing visual observations pursuant to the Industrial Permit at the 2805/2820 Facilities. The training will be provided by a private consultant or representative of Defendants and shall be repeated as necessary to ensure Industrial Permit compliance. All new staff will receive this training before assuming responsibilities for implementing the SWPPP. Defendants shall maintain training records to document compliance with this paragraph, and shall provide Waterkeeper with a copy of these records within fourteen (14) days of a written request.

F. Sampling, Monitoring, Inspecting, and Reporting

15. Sampling Program. Within thirty (30) days of the Effective Date of this Consent Decree, Defendants shall revise their monitoring and reporting plan ("M&RP") to comply with this section. All storm water discharge locations shall be sampled at the 2805/2820 Facilities. Storm water samples collected must represent the discharge at the point it leaves the 2820 Facility and the 2805 Facility. For example, if storm water is

discharging from both sides of a driveway, two separate storm water samples must be collected from each side of the driveway. Additionally, sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released. Finally, the M&RP shall be revised to include sampling at all new or additional discharge points created in the future.

16. Waterkeeper's Review of Revised M&RP. Defendants agree to submit the M&RP to Waterkeeper for review and comment as soon as it is completed but in any event no later than thirty (30) days from the Effective Date of this Consent Decree. Waterkeeper shall provide comments, if any, to the Defendants within thirty (30) days of receipt of the M&RP. Defendants shall incorporate Plaintiffs' comments into the M&RP, or shall justify in writing why any comment is not incorporated within fourteen (14) days of receiving comments. Any disputes as to the adequacy of the M&RP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV below.

17. Sample Analysis and Sample Frequency. Beginning with the 2009/2010 Wet Season (defined as October 1- May 31), Defendants shall collect storm water samples from each discharge location from each storm event at the 2805/2820 Facilities. In years 2-5 of the Consent Decree, Ruby Metals agrees to sample every storm event up to five storm events per Wet Season. Defendant may discontinue analyzing storm water samples for a constituent specified in Tables 1 and 2 if five consecutive sampling results within a Wet Season for the constituent are reported as below the limits in Tables 1 and 2.

18. Defendants shall analyze the samples for the constituents identified in Table 1 and Table 2. A California State certified laboratory shall perform all sample chemical analyses. Defendants shall select laboratories and analytical limits such that, at a minimum, the method detection limits ("MDLs") shall be below both the Table 1 and

Table 2 Limits set forth herein. In addition, Defendants shall perform sampling as required by the Industrial Permit for the 2805/2820 Facilities.

19. BAT/BCT and Technology Based Limits:[1] Contaminants in discharges shall not exceed the limits in Table 1:

Contaminant (All metals are total recoverable)	**Limit (All but pH expressed as Mg/L)**
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

[1] 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 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[2] limits:

Contaminant	**Limit** (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

[2] 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.

water sampling data demonstrating an exceedance of a Benchmark Level at either the 2820 Facility or the 2805 Facility. The Action Plan shall include at a minimum (1) the identification of the pollutant(s) discharged in excess of the Benchmark Levels, (2) an assessment of the source of each pollutant exceedance, (3) the identification of additional BMPs that will be implemented to achieve compliance with the Benchmark Levels set forth in Table 1, and (4) time schedules for implementation of the proposed BMPs. Waterkeeper shall have thirty (30) days upon receipt of Defendants' Benchmark Action Plan to provide Defendants with comments. Defendants shall have thirty (30) days from the date Waterkeeper comments on Defendants' Benchmark Action Plan to implement any additional non-structural or structural BMPs recommended by Waterkeeper. Ruby Metals shall provide a written explanation if Ruby Metals refuses to develop and/or implement any of Waterkeeper's recommended additional BMPs. If any structural BMPs require any agency approval, then Defendants shall contact Waterkeeper to request an extension of the deadline to implement the structural BMPs requiring agency approval. Waterkeeper's consent to Defendants' requested extension shall not be unreasonably withheld. Defendants shall notify Waterkeeper in writing when the Action Plan has been implemented.

b. WQS Action Plan. Defendants shall provide Waterkeeper with a WQS Action Plan by July 1 following each Wet Season if storm water sampling data demonstrating an exceedance of a WQS Level at either the 2820 Facility or the 2805 Facility. The objective of the WQS Action Plan is to set forth additional BMPs designed to achieve compliance with Table 2 limits. The Action Plan shall include at a minimum (1) the identification of the pollutant(s) discharged in excess of the WQS; (2) an assessment of the source of the pollutant; (3) the identification of additional BMPs that will be implemented to achieve compliance with the applicable WQS; and (4) time schedules for implementation of the proposed structural and non-structural BMPs. Waterkeeper shall have thirty (30) days upon receipt of Defendants' WQS Action Plan to

provide Defendants with comments. Defendants shall have thirty (30) days from the date Waterkeeper comments on Defendants' Action Plan to implement any additional non-structural or structural BMPs. Ruby Metals shall provide a written explanation if Ruby Metals refuses to develop and/or implement any of Waterkeeper's recommended additional BMPs. If any structural BMPs require any agency approval, then Defendants shall contact Waterkeeper to request an extension of the deadline to implement the structural BMPs requiring agency approval. Waterkeeper's consent to Defendants' requested extension shall not be unreasonably withheld. Defendants shall notify Waterkeeper in writing when the Action Plan has been implemented.

c. Action Plan for Year 4 Wet Season. If at the end of the 2011-2012 Wet Season, storm water sample results demonstrate that Defendants continue to discharge storm water and/or non-stormwater containing pollutants exceeding the limits set forth in Tables 1 and/or 2, the Parties shall meet and confer by July 1, 2012 to discuss the sample results, current BMPs, and to devise a mutually agreeable action plan ("Year 4 Action Plan"). Within fourteen (14) days of meeting and conferring, Defendants will develop and submit the Year 4 Action Plan to Waterkeeper. Waterkeepers will provide comments on the Year 4 Action Pan within thirty (30) days of receipt of the plan. Ruby Metals shall revise the Year 4 Action Plan to include Waterkeeper's comments.

G. Storm Water Pollution Prevention Plan

23. SWPPP Revisions. Within thirty (30) days of the Effective Date of this Consent Decree, Defendants agree to revise the SWPPP currently in effect at the 2805/2820 Facilities to incorporate all storm water pollution prevention measures and other requirements set forth in this Consent Decree and/or the Industrial Permit. Specifically, the SWPPP shall include a description of all industrial activities and corresponding potential pollution sources, and, for each potential pollutant source, a description of the potential pollutants from the sources. The SWPPP shall also identify BMPs (and their implementation dates) designed to achieve compliance with Numeric

Limits set forth in Table 1 and Table 2. Defendants shall revise the SWPPP as necessary to incorporate additional BMPs developed pursuant to this Consent Decree.

24. Waterkeeper's Review of Revised SWPPP. Defendants agree to submit the revised SWPPP to Waterkeeper for review and comment as soon as it is completed but in any event no later than thirty (30) days from the Effective Date of this Consent Decree. Within thirty (30) days of Waterkeeper's receipt of the revised SWPPP, Waterkeeper shall provide Defendants with comments and suggestions, if any, concerning the revisions to the SWPPP. Within fourteen (14) days of Defendants' receipt of Waterkeeper's comments on the revised SWPPP, Defendants shall incorporate Waterkeeper's comments and re-issue the SWPPP. Any disputes as to the adequacy of the SWPPP shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV below.

H. Compliance Monitoring

25. Site Inspections. Waterkeeper, Dr. Richard Horner, or an alternative water quality engineer identified by Waterkeeper, accompanied by Waterkeeper's attorney or other representative, may conduct up to three yearly site inspections at the 2805/2820 Facilities for the first two years of the this Consent Decree, and may conduct up to two site inspections each year thereafter. Site inspections shall occur during normal business hours and Waterkeeper shall provide Defendants' with as much notice as possible, but at least twenty-four (24) hours notice during the Wet Weather season and forty-eight (48) hours notice during the dry season prior to each inspection. Notice will be provided by phone and electronic mail. During site inspections, Waterkeeper and/or its representatives shall be allowed access to the 2805/2820 Facilities SWPPP, monitoring records, and monitoring reports and data for the 2805/2820 Facilities. During site inspections, Waterkeeper and/or its representatives may collect samples of storm water discharges at the 2805/2820 Facilities. A certified California laboratory shall analyze storm water samples collected by Waterkeeper.

26. Compliance Monitoring and Oversight. Defendants agree to help defray Waterkeeper's reasonable costs incurred in conducting site inspections and compliance monitoring by paying Five Thousand Dollars ($5,000) towards this end. Payment shall be made within sixty (60) days from execution of this Consent Decree and be made payable to Lawyers for Clean Water Attorney Client Trust Account and sent certified mail or overnight delivery to Lawyers for Clean Water, Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129.

27. Reporting. During the life of this Consent Decree, on a monthly basis, Defendants shall provide Waterkeeper with a copy of all compliance and monitoring data, including inspection reports, related to the 2805/2820 Facilities. During the life of this Consent Decree, Defendants shall provide Waterkeeper with all laboratory analyses of storm water or non-stormwater data at the 2805/2820 Facilities within seven (7) days of Defendants' receipt of such information.

28. Document Provision. During the life of this Consent Decree, Defendants shall copy Waterkeeper on all documents related to water quality at the 2805/2820 Facilities that are submitted to the Regional Board, the State Board, and/or any State or local agency or municipality. Such reports and documents shall be provided to Waterkeeper concurrently as they are sent to the agencies and/or municipalities. Any correspondence received by Ruby Metals from any regulatory agency shall be provided to Waterkeeper within three (3) business days of receipt by Ruby Metals.

I. Environmental Projects and Fees and Costs

29. Environmental Mitigation Project. Defendants agree make a payment of Thirty Thousand Dollars ($30,000) to the Public Interest Green Fund to be used for projects that reduce or mitigate the impacts of storm water pollution in Orange County and the Inland Empire. Defendants shall pay Five Thousand Dollars ($5,000) each month for six months starting ninety (90) days from the Effective Date, for a total of six payments of Five Thousand Dollars. Payment shall be made via certified mail or

overnight delivery to the Public Interest Green Fund at the Orange County Community Foundation, 30 Corporate Park, Suite 410, Irvine, California 92606. Defendants shall provide Waterkeeper with a copy of such payment.

30. Waterkeeper's Fees and Costs. Defendants agree to partially reimburse Waterkeeper in the amount of Forty-Five Thousand Dollars ($45,000) for their investigation fees and costs, consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a result of investigating and filing the lawsuit, and negotiating a resolution of this matter. Payment shall be made within sixty (60) days of execution of this Consent Decree and be made payable to Lawyers for Clean Water Attorney Client Trust Account, and sent certified mail or overnight delivery to Lawyers for Clean Water, Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129.

31. Stipulated Payment. Defendants shall make a remediation payment of One Thousand Dollars ($1,000) for each missed deadline included in or contemplated by this Consent Decree, unless the missed deadline results from a Force Majeure Event. Payments for missed deadline shall be made for the restoration and/or improvement of the watershed in the area affected by Defendants' discharges and shall be awarded to the Environmental Mitigation Project recipient identified in paragraph 29 below. Defendants agree to make the stipulated payment within thirty (30) days of a missed deadline and mail via certified mail or overnight delivery. Defendants shall provide Waterkeeper with a copy of each such payment.

J. Commitments of Plaintiff

32. Plaintiffs shall submit this Consent Decree to the United States Environmental Protection Agency and the United States Department of Justice ("DOJ") within three (3) days of the final signature of the Parties for agency review consistent with 40 C.F.R. §135.5. The agency review period expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts, copies of which shall be provided to Defendants if requested. In the event that EPA or DOJ object to

entry of this Consent Decree the Parties agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

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

III. EFFECTIVE DATE AND TERMINATION DATE

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

35. This Consent Decree will terminate on its own terms five (5) years from the Effective Date.

IV. DISPUTE RESOLUTION

36. If Ruby Metals claims inability to pay as the basis for their failure to comply with any provision of this Consent Decree including but not limited to developing or implementing a BMP, or making monetary payments, Defendants' shall submit financial documents that support their claim. Waterkeeper reserves the right to require the submission of additional financial documents in order to analyze Defendants' claim of inability to pay.

37. This Court shall retain jurisdiction over this matter for the purposes of adjudicating all disputes among the parties that may arise under the provisions of this

Consent Decree. The Court shall have the power to enforce this Consent Decree with all available legal and equitable remedies, including contempt.

38. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of the party's proposal to resolve the dispute under this Section. The Parties shall then meet and confer in an attempt to resolve the dispute informally over a period of ten (10) calendar days from the date of the notice.

39. If the Parties cannot resolve a dispute by the end of the meet and confer informal negotiations, the party invoking the dispute resolution provision may invoke formal dispute resolution by filing a motion before the United States District Court for the Central District of California. The Parties shall jointly apply to the Court for an expedited hearing schedule on the motion.

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

V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

41. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties hereby fully release, except for claims for the Defendants' failure to comply with this Consent Decree and as expressly provided below, each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all alleged CWA violations claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

42. Nothing in this Consent Decree limits or otherwise affects Plaintiffs' right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the Regional Board, EPA, or any other judicial or administrative body on any other matter relating to Defendants.

43. Neither the Consent Decree nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall in be construed as an admission of violation of any law, rule, or regulation. Defendants maintain and reserve all defenses they may have to any alleged violations that may be raised in the future.

44. Force Majeure. Defendants shall notify Waterkeeper pursuant to the terms of this paragraph, when implementation of the requirements set forth in this Consent Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good-faith efforts of Defendants, due to circumstances beyond the reasonable control of Defendants or its agents, and which could not have been reasonably foreseen and prevented by the exercise of due diligence by Defendants. Any delays due to Defendants' failure to make timely and bona fide applications and to exercise diligent efforts to obtain any necessary permits, or due to normal inclement weather, shall not, in any event, be considered to be circumstances beyond Ruby Metals control.

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

b. The Parties shall meet and confer in good-faith concerning the non-performance and, where the Parties concur that performance was or is impossible, despite the timely good faith efforts of Ruby Metals, due to circumstances beyond the control of

Ruby Metals that could not have been reasonably foreseen and prevented by the exercise of due diligence by Ruby Metals, new deadlines shall be established.

c. If Waterkeeper disagrees with Ruby Metals' notice, or in the event that the Parties cannot timely agree on the terms of new performance deadlines or requirements, either party shall have the right to invoke the Dispute Resolution Procedure pursuant to Section IV. In such proceeding, Ruby Metals shall bear the burden of proving that any delay in performance of any requirement of this Consent Decree was caused or will be caused by force majeure and the extent of any delay attributable to such circumstances.

VI. MISCELLANEOUS PROVISIONS

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

46. Choice of Law. The laws of the United States shall govern this Consent Decree.

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

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

If to Plaintiff:

Layne Friedrich, Esq.
Elizabeth Crosson, Esq.
Lawyers for Clean Water
1004 A O'Reilly Ave
San Francisco, CA 94129
layne@lawyersforcleanwater.com
liz@lawyersforcleanwater.com

With copies to:

Orange County Coastkeeper/Inland Empire Waterkeeper
Garry Brown
3151 Airway Ave # F110
Costa Mesa, CA 92626-4621
garry@coastekeeper.org

If to Defendant:

William Funderburk, Esq.
Stanzler Funderburk & Castellon LLP
811 Wilshire Blvd. Suite 1025
Los Angeles, CA 90017
wfunderburk@sfcfirm.com

With copies to:

Ruby Metals, Inc.
Attn: Peter Chen
2805 South Industrial Drive
Bloomington, CA 92316
Brian@rubymetals.com

Gold Coast Metals Trading, Inc.
Attn: Chen Ying Hsiung
2805 South Industrial Drive
Bloomington, CA 92316
Brian@rubymetals.com

Notifications of communications shall be deemed submitted three (3) days after the date that they are 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.

49. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent 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.

Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of the Defendants to comply with all federal, state, and local laws and regulations governing any activity required by this Consent Decree.

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

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

52. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

53. Integration Clause. This is an integrated Consent Decree. This Consent Decree 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 Consent Decree.

54. Authority. The undersigned representatives for Plaintiffs and Defendants each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree.

55. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

56. The Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into

this Consent Decree, the Defendants do not admit liability for any purpose as to any allegation or matter arising out of this Action.

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

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

IT IS SO ORDERED:

Date: January 08, 2010

JS-6

_____

Honorable A. Howard Matz
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWYERS FOR CLEAN WATER, INC.

Dated: November _____, 2009

_____

Layne Friedrich
Lawyers for Clean Water, Inc.
Attorneys for Plaintiff

ORANGE COUNTY COASTKEEPER

Dated: November _____ ,2009

_____

Garry Brown
Orange County Coastkeeper/Inland Empire Waterkeeper

STANZLER FUNDERBURK CASTELLON LLP

Dated: November _____, 2009

_____
William W. Funderburk
Attorney for Defendants

RUBY METALS, INC.

Dated: November _____, 2009

_____
Peter Chen, Owner
Ruby Metals, Inc.

GOLD COAST METALS TRADING, INC.

Dated: November _____ , 2009

_____
Chen Ying Hsiung, Owner
Gold Coast Metals Trading, Inc.

ORANGE COUNTY
COASTKEEPER
EDUCATION / ADVOCACY / RESTORATION / ENFORCEMENT

3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
Website 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

Daniel Cooper (Bar No. 153576)
Martin McCarthy (Bar No. 194915)
LAWYERS FOR CLEAN WATER, INC.
1004-A O'Reilly Avenue
San Francisco, California 94129
Telephone: (415) 440-6520
Facsimile: (415) 440-4155
Email: daniel@lawyersforcleanwater.com

Christopher Sproul (Bar No. 126398)
ENVIRONMENTAL ADVOCATES
5135 Anza Street
San Francisco, California 94121
Telephone: (415) 533-3376
Facsimile: (415) 358-5695
Email: csproul@enviroadvocates.com

Jason Flanders (Bar No. 238007)
SAN FRANCISCO BAYKEEPER
785 Market Street, Suite 850
San Francisco, California 94103
Telephone: (415) 856-0444
Facsimile: (415) 856-0443
Email: jason@baykeeper.org

Attorneys for Plaintiff
SAN FRANCISCO BAYKEEPER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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;

WHEREAS, on December 2, 2009, Plaintiff filed its complaint in the United States District Court for the Northern District of California ("District Court") against Defendant, Case No. CV 09-05677 SBA (hereinafter "Complaint");

WHEREAS, on September 28, 2009, Plaintiff sent Defendant a letter notifying the Defendant of Plaintiff's intent to seek a peremptory writ of mandate ordering the Defendant to comply with California Water Code §§ 13000 *et seq.* (the "Porter-Cologne Act"), the *Statewide Waste Discharge Requirements for Sanitary Sewer Systems*, State Water Resources Control Board Order No. 2006-0003-DWQ and Monitoring and Reporting Programs No. 2006-0003 DWQ, as amended by Order No. 2008-0002-EXEC ("SSO WDR"), the San Mateo County Ordinance, and the San Carlos Municipal Code;

WHEREAS, Defendant denies Baykeeper's allegations that it has violated the Clean Water Act and/or any of the permits as alleged in the Complaint, denies that it failed to perform its duties under the Clean Water Act, the Porter-Cologne Act, the SSO WDR, the San Mateo County Ordinance, or the San Carlos Municipal Code as alleged in the Complaint, and denies it has liability to Baykeeper or other citizen groups;

WHEREAS, the Parties, through their authorized representatives and without either adjudication of the Complaint's claims or admission by Defendant of any alleged violation or other wrongdoing, have chosen to resolve this action through settlement and avoid the costs and uncertainties of further litigation;

WHEREAS, all actions taken by Defendants pursuant to this Consent Decree shall be made in compliance with all applicable federal, state and local rules and regulations;

WHEREAS, for purposes of settlement, the Parties waive all objections that they may have to the Court's jurisdiction to enter and retain jurisdiction over this Consent Decree.

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

I. GENERAL OBJECTIVES

1. The objectives of this Consent Decree are:

a. To ensure that Defendant uses, implements, and improves ways, means, and methods to prevent sanitary sewer overflows;

b. To ensure that the City uses, implements, and improves ways, means, and methods to prevent violations of, or comply with, applicable permits, laws, and regulations as related to sanitary sewer overflows.

II. DEFINITIONS

2. Unless otherwise expressly defined herein, terms used in this Consent Decree that are defined in the Clean Water Act or in regulations, or in rules promulgated under the Clean Water Act, have the meaning assigned to them in the applicable statutes, regulations, or rules. Whenever terms listed below are used in this Consent Decree, the following definitions apply:

a. "Consent Decree" means this Consent Decree, the District Court's Stipulated Order of Dismissal, and any Exhibits or documents incorporated by reference into this Consent Decree.

b. "SSA" means Sewer Condition Assessment by closed-circuit television or alternative inspection technology as referenced in the May 2009 EPA Report on the Condition Assessment of Wastewater Collection Systems-State of Technology Report, provided that any alternative inspection technology employed performs at a level superior or equal to closed-circuit television for all purposes.

c. "San Carlos Collection System" means the sewer pipes and lines, manholes or maintenance holes, pump stations, and all appurtenances thereto under ownership and responsibility of the City that are used to convey wastewater generated by residential, commercial, and industrial sources to the South Bayside System Authority facilities, ending at the inlet to the South Bayside System Authority Waste Water Treatment Plant ("WWTP") pump station on Monte Vista Drive near the San Carlos Airport. For purposes of this Consent Decree, the San Carlos Collection System does not include the Devonshire County Sanitation District, the Scenic Heights County Sanitation District, the Emerald Lake Heights Sewer Maintenance District or the Harbor Industrial Sewer Maintenance District, Private Laterals or other privately owned or operated infrastructure that may connect to the San Carlos Collection System.

d. "CCTV" means closed-circuit television.

e. "CIP" means the City's sanitary sewer system capital improvement program.

f. "City" or "the City" means the City of San Carlos, California.

g. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.

h. "Design Storm" means a 10-year return period rainstorm with a duration of 24 hours as measured by a properly calibrated and monitored rain gage, or such rain gages, within San Carlos or, if no such gage is available, at the San Francisco International Airport. The engineering design criteria to be used by the City for a 10-year 24-hour storm shall take into account short duration intense rainfall periods by reference to USDA Urban Hydrology for Small Watersheds guidance TR-55 (June 1986) and use of the synthetic rainfall distribution curve (Figure B-1 SCS 24-Hour Rainfall Distribution) found in Appendix B of TR-55. The City shall use the distribution curve for a Type IA storm as referenced on Figure B-1 of Appendix B of TR-55 based on local rainfall quantities for the San Carlos area in San Mateo County, California.

i. "FOG" means fats, oil, and grease.

j. "Infiltration" means groundwater, rainwater, or other surface water that may enter the San Carlos Collection System through the pipe, joints, or cracks.

k. "Inflow" means wastewater or water that may enter the San Carlos Collection System through unpermitted connections, drains, or manholes.

l. "I/I" means infiltration and inflow.

m. "Lower Lateral" means the lateral line connecting a home or business to the City's sewer main extending from the sewer main to the City's clean out or to the back of the public right-of-way, whichever is applicable to the lateral connection. Lower Laterals are generally connected to upper laterals.

n. "MS4 Permit" means the *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.

o. "NPDES" means National Pollutant Discharge Elimination System.

p. "Private Lateral" means the private sanitary sewer lateral or line connecting a home or other structure to the Lower Lateral, generally extending from the outside of the foundation of the structure to the public right-of-way or the City's cleanout, whichever is applicable

q. "Sanitary Sewer Overflow", "overflow", or "SSO" has the same meaning as those terms are defined in Section A.1 of the SSO WDR", or any amendment thereto, and which currently means: "any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system. SSOs include: (i) Overflows or releases of untreated or partially treated wastewater that reach waters of the United States; (ii) Overflows or releases of untreated or partially treated wastewater that do not reach waters of the United States; and (iii) Wastewater backups into buildings and on private property that are caused by blockages or flow conditions within the publicly owned portion of a sanitary sewer system." For purposes of this definition, "waters of the United States" has the meaning as set forth in 40 C.F.R. § 122.2.

r. "Sewer line segment" means any section of publicly owned sewer line or pipe located between: (1) two manholes/maintenance holes; (2) a pump station and a manhole/maintenance hole; (3) a pump station or a manhole/maintenance hole and a headworks structure; or (4) a sewer line or pipe otherwise identifiable as a discrete section.

s. "SSMP" means the Sewer System Management Program implemented by the City for the San Carlos Collection System to monitor the condition, maintenance, and repair of the San Carlos Collection System.

t. "Year" shall mean calendar year, unless otherwise specified.

III. JURISDICTION AND VENUE

3. Plaintiff alleges the following jurisdictional allegations:

a. This District Court has jurisdiction over the subject matter of the claims asserted by Plaintiff pursuant to section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States), and 28 U.S.C. § 1367(a), which provides supplemental jurisdiction for claims based on state law, including, but not limited to, California Code of Civil Procedure section 1085, the

California Water Code sections 13000 *et seq.*, (the Porter-Cologne Act), San Mateo County Ordinance, title 4 sections 100.010 *et seq* ("San Mateo Ordinance), and the City of San Carlos Municipal Code, title 13 sections 14.010 *et seq.* ("Municipal Code");

b. Venue is proper in this judicial district pursuant to sections 309(b) and 505(c) of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c);

c. The Complaint filed herein states claims for which relief can be granted against Defendant pursuant to section 505 of the Clean Water Act, 33 U.S.C. § 1365;

d. Plaintiffs have standing to bring this action;

e. The District Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is necessary for the District Court to resolve any motion to enforce this Consent Decree.

IV. EFFECT OF CONSENT DECREE

4. Plaintiff does not, by its consent to this Consent Decree, warrant or aver in any manner that the Defendant's compliance with this Consent Decree will constitute or result in compliance with any Federal or State law or regulation. Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of the Defendant to comply with all applicable Federal, State and local laws and regulations governing any activity required by this Consent Decree.

5. Nothing in the Consent Decree, including but not limited to the proposed actions and payments made pursuant to the Consent Decree, shall be used as evidence or be construed as a finding, adjudication, or acknowledgement of any fact, law, issue of law, or liability, nor shall it be construed as an admission of violation of any law, issue of law, rule, regulation, permit, or administrative order by Defendant.

V. APPLICABILITY

6. The provisions of this Consent Decree apply to and bind the Parties, including any successors or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

7. The Parties agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the

Defendant does not admit liability for any purpose as to any allegation or matter arising out of the Notice Letter and/or Complaint.

8. No change in ownership or corporate or other legal status of the Defendant or any transfer of the Defendant's assets or liabilities shall in any way alter the responsibilities of the Defendant or any of its successors or assigns thereof, under this Consent Decree. In any action to enforce this Consent Decree, the Defendant shall not raise as a defense the failure by any of its agents, servants, contractors, employees, and successors or assigns to take actions necessary to comply with this Consent Decree. Defendant is not precluded from raising as a defense that a particular spill in the San Carlos Collection System was caused by an upstream sewage collection system ("Satellite System") connected to the San Carlos Collection System. To assert this defense for a particular spill, Defendant shall have the burden to demonstrate that: (1) Defendant has initiated and is diligently prosecuting enforcement of its service contract with the Satellite System to address the cause the spill; and (2) that the Satellite System directly caused the spill in question.

VI. EFFECTIVE DATE AND TERMINATION DATE

9. The term "Effective Date," as used in this Consent Decree, shall mean the last date for the United States Department of Justice to comment on the [proposed] Consent Decree, i.e., the 45th day following the United States Department of Justice's receipt of the [proposed] Consent Decree and Stipulated Dismissal or, the date on which the Federal Agencies provide notice that no further review is required and the District Court enters the final Consent Decree, whichever occurs earlier.

10. This Consent Decree will automatically terminate seven (7) years from the Effective Date ("Termination Date") unless Baykeeper has invoked the Dispute Resolution Procedure set forth in Section XIX or the Parties have agreed to an early termination of this Consent Decree and the District Court has authorized the modification of the Termination Date.

11. The obligations set forth in this Consent Decree take effect as of the date of execution by all Parties unless otherwise noted in this Consent Decree.

VII. SSO AND SPILL REDUCTION PERFORMANCE STANDARDS

12. SSO Reduction Goals. It is the goal of this Consent Decree to reduce the City's Collection System SSOs to zero (0) over time. To approach the goal of zero (0) SSOs, the City shall reduce its

SSOs and Lower Lateral spills as follows:

a. San Carlos Collection System SSO Reduction Performance Goals.

Calendar Year	Maximum Number of SSOs Per 100 Miles of Sewer Line/Year
2010	46
2011	41
2012	32
2013	23
2014	14
2015	7
2016	5
2017	2

b. Lower Lateral SSO Reduction Performance Goals.

The City's goal is to reduce the annual number of Lower Lateral spills. The Lower Lateral SSO Reduction Standards are as follows:

Calendar Year	Maximum Number of Lower Lateral Spills
2010	18
2011	16
2012	13
2013	10
2014	7
2015	4
2016	3
2017	2

13. For purposes of determining compliance with the San Carlos Collection System SSO

Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals, SSOs and spills caused by storm events exceeding the Design Storm shall not be counted.

14. For purposes of determining compliance with the San Carlos Collection System SSO Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals, the Parties assume the City currently has approximately 106 miles of main sewer line in the San Carlos Collection System.

15. Failure to meet the San Carlos Collection System SSO Reduction Performance Goals shall be a violation of this Consent Decree to be resolved by the Dispute Resolution procedure in Section XIX below.

16. Failure to meet the Lower Lateral SSO Reduction Performance Goals shall be a violation of this Consent Decree to be resolved by the Dispute Resolution procedure in Section XIX below.

17. In order to reach the above SSO standards, the City shall implement the programs described below.

18. Compliance or non-compliance with the SSO Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals shall be documented by the City in each year's Annual Report required under Section XVI of this Consent Decree.

VIII. SSO INVESTIGATION, RESPONSE AND REPORTING

19. The terms, conditions, obligations, and requirements of the City's current Sanitary Sewer Overflow Response Plan ("SORP") are incorporated into this Consent Decree, and are enforceable pursuant to this Consent Decree.

20. The City recognizes that proper identification of the cause of SSOs is essential to prevent future SSOs.

21. Within one-hundred twenty (120) days of the Effective Date of this Consent Decree the City shall prepare a standard operating procedure ("SSO Cause Determination SOP") aimed at the proper and consistent determination of the cause of each SSO. The City shall provide a copy of the SSO Cause Determination SOP to Baykeeper for review and comment within seven (7) days of its finalization. Within thirty (30) days after providing the SSO Cause Determination SOP to Baykeeper, the City shall train all of its personnel who respond to SSOs regarding how to use the SSO Cause Determination SOP. Baykeeper shall provide the City, in writing, with all recommended revisions to the SSO Cause

Determination SOP within thirty (30) days after receiving the SSO Cause Determination SOP from the City. Upon receipt of Baykeeper's comments, the City shall consider each of Baykeeper's recommended revisions and indicate within thirty (30) days of receipt of Baykeeper's comments whether the City accepts each such recommendation for revision, and if not, provide a detailed explanation as to why Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding disputes over the SSO Cause Determination SOP. In any such dispute resolution process, the City shall demonstrate that the elements or actions set forth in the SSO Cause Determination SOP are designed to ensure causes of the SSOs can be readily and accurately determined. To the extent the Parties do not dispute specific original provisions of the SSO Cause Determination SOP or specific recommended revisions, the City shall implement all undisputed provisions or revisions within thirty (30) days of receiving Baykeeper's comments on the SSO Cause Determination SOP. After the Parties have reached agreement on the SSO Cause Determination SOP, or after the dispute resolution process resolves any dispute concerning the SSO Cause Determination SOP, the City shall begin implementation of the SSO Cause Determination SOP as an enforceable requirement of this Consent Decree within sixty (60) days of agreement or upon the schedule set forth therein.

22. Within one-hundred eighty (180) days of reaching agreement with Baykeeper regarding the SSO Cause Determination SOP, the City shall complete training of all City personnel that respond to SSOs in the methods and practices used to identify the root causes of SSOs, including capacity related SSOs, and shall certify to Baykeeper that the training has been completed. All new employees who may respond to SSOs shall be trained in the methods and practices used to identify the root causes of SSO within sixty (60) days of commencing employment or transfer to duties that include SSO response and the City shall maintain records of such training.

23. The cause of any SSO shall be reported to the State Board's California Integrated Water Quality System ("CIWQS") and entered into and maintained in the City's Computerized Maintenance Management System (CMMS) database. The information in the CMMS database shall be used in evaluating the City's programs. The City shall include in its Annual Report required under Section XVI of this Consent Decree a summary of SSO causes as determined by analysis of its CMMS database.

24. In the first two Annual Reports required by Section XVI of this Consent Decree, the City shall provide to Baykeeper a compilation of individual SSO reports for each spill it reported to the State Board. The City may discontinue providing Baykeeper with compilations of individual spill reports after the first two Annual Reports required under Section XVI of this Consent Decree are provided, unless Baykeeper requests in writing that the City continue to provide such compilations.

25. In the Annual Report required under Section XVI of this Consent Decree, the City shall provide Baykeeper with a summary of any changes to the total quantity of sewer line that will affect the calculation of the San Carlos Collection System SSO Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals.

IX. SSO REDUCTION ACTION PLAN

26. If any Annual Report required under Section XVI of this Consent Decree provided by the City to Baykeeper documents compliance with the then-applicable SSO Reduction Performance Goals, the City shall have no obligation to prepare a SSO Reduction Action Plan as set forth herein. However, if an Annual SSO Summary Report documents SSOs in excess of the SSO Reduction Performance Goals of this Consent Decree, the City shall submit to Baykeeper by June 1st of that same year a SSO Reduction Action Plan that specifies the actions taken in the prior calendar year pursuant to the Consent Decree and additional measures to be taken during the pending calendar year and thereafter, which are designed to achieve compliance with the SSO Reduction Performance Goals set forth in this Consent Decree. The SSO Reduction Action Plan shall include a proposed schedule for implementation of all actions proposed.

27. Baykeeper shall provide the City, in writing, with all recommended revisions to the SSO Reduction Action Plan within thirty (30) days of receipt of the document. The City shall consider each of Baykeeper's recommended revisions and indicate within thirty (30) days of receipt of Baykeeper's comments whether the City accepts each such recommendation for revision, and if not provide a detailed explanation as to why Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding disputes over the SSO Reduction Action Plan. In such Dispute Resolution processes, to the extent the Parties do not dispute original provisions or recommended revisions, the City shall implement all undisputed provisions or revisions. After the

Parties have reached agreement on the SSO Reduction Action Plan or after Dispute Resolution resolves any dispute concerning the SSO Reduction Action Plan, the City shall begin implementation of the SSO Reduction Action Plan as an enforceable requirement of this Consent Decree within forty-five (45) days of agreement on the SSO Reduction Action Plan, or upon the schedule set forth therein.

28. The City shall address in the SSO Reduction Action Plan the various elements of such a plan that it believes will be necessary to achieve future compliance with the SSO Reduction Performance Goals, which may include any or all elements in its SSMP Program.

29. If additional funding is necessary to implement the SSO Reduction Action Plan, the City shall seek such funding as soon as is practical. If the City seeks financing, but is unsuccessful, the City shall disclose in the SSO Reduction Action Plan the extent of its efforts to obtain financing.

X. CAPACITY ASSURANCE

30. By March 31, 2011, the City shall have completed sufficient flow monitoring of the San Carlos Collection System to support hydraulic modeling. The monitoring shall be sufficient to calibrate and validate hydraulic modeling of the San Carlos Collection System.

31. Hydraulic Modeling Work Plan. By August 1, 2010, The City shall submit a Hydraulic Modeling Work Plan for the San Carlos Collection System. The hydraulic modeling shall be sufficient to identify all necessary capacity improvements to convey peak wet weather flows to the South Bayside System Authority WWTP without SSOs caused by insufficient capacity in the San Carlos Collection System. The Hydraulic Modeling Work Plan shall contain a schedule for hydraulic modeling and all supporting efforts such as smoke testing, dye testing and other measures necessary to identify sources of I/I.

32. Capacity Assurance Report. By March 31, 2012, the City shall provide a Capacity Assurance Report to Baykeeper identifying all necessary capacity improvements to convey peak wet weather flows to the South Bayside System Authority WWTP without SSOs caused by insufficient capacity. The Capacity Assurance Report shall include a schedule for construction of all necessary capacity improvements identified in the Capacity Assurance Report based on Design Storm criteria. The schedule for construction of capacity improvements shall be as expeditious as is practicable and the City shall complete construction of such improvements within five (5) years from the date of the final

Capacity Assurance Report. In no event shall the completion of the construction of the improvements identified in the Capacity Assurance Report extend beyond the Termination Date.

33. Inflow and Infiltration (I/I). I/I identified within the San Carlos Collection System by the hydraulic modeling, smoke testing, dye testing, and condition assessment programs set forth herein, shall be identified and addressed in the Capacity Assurance Report. Major sources of I/I shall be removed as expeditiously as practicable. The Capacity Assurance Report shall include capacity improvements for the San Carlos Collection System designed to eliminate capacity-related SSOs during the rain events of less than the Design Storm.

34. Final Compliance Report. The City shall provide to Baykeeper a Final Compliance Report for Baykeeper's review and comment. The Final Compliance Report shall be submitted to Baykeeper a minimum of one (1) year prior to the Termination Date and the Final Compliance Report shall provide the status of all of the construction and other related activities required in the Capacity Assurance Report. The report shall provide sufficient information and detail to reasonably demonstrate that the City has undertaken and will have completed sufficient activities to fully comply with the capacity related SSOs for rain events less than the Design Storm by the Termination Date. This Final Compliance Report shall be subject to review, comment and referral to the Dispute Resolution Procedures as set forth in Section XIX of this Consent Decree. If the City determines that a fee increase is required to fund capacity improvement projects designed to eliminate capacity-related SSOs, the City may request a one time, one-year extension to implement the fee increase and obtain the revenue stream. If the City requests the one-year extension, the City shall have the burden to demonstrate that elimination of capacity related SSOs cannot be accomplished on the schedule set forth in this Consent Decree without the fee increase. This extension request shall be subject to the dispute resolution procedures set forth in Section XIX of this Consent Decree.

35. Review of Submittals. Baykeeper shall have the right to review the Hydraulic Modeling Work Plan and provide comments thereon. Baykeeper shall provide the City, in writing, with all recommended revisions to the Hydraulic Modeling Work Plan within twenty (20) days of receipt of the document. The City shall consider each of Baykeeper's recommended revisions and indicate within twenty (20) days of receipt of Baykeeper's comments whether the City accepts each such

recommendation for revision and if not provide a detailed explanation as to why Baykeeper's comments are being rejected. The City shall implement, within twenty (20) days of receipt of Baykeeper's comments, all elements in the Hydraulic Modeling Work Plan agreed to by Baykeeper and the City. Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding disputes over the Hydraulic Modeling Work Plan.

36. Baykeeper shall also provide the City, in writing, with all recommended revisions to the Capacity Assurance Report within thirty (30) days of receipt of the document. The City shall consider each of Baykeeper's recommended revisions and indicate within thirty (30) days of receipt of Baykeeper's comments whether the City accepts each such recommendation for revision and if not provide a detailed explanation as to why Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding disputes over the Capacity Assurance Report.

37. Neither Party shall invoke Dispute Resolution until both Parties have made good faith efforts to resolve any professional differences with regard to the Hydraulic Modeling Work Plan and the Capacity Assurance Report.

XI. SEWER CONDITION ASSESSMENT/REHABILITATION/REPLACEMENT

38. Within three (3) years of the Effective Date of the Consent Decree, the City shall complete a sewer system assessment ("SSA") inspection and condition assessment of all main sewer line segments in the San Carlos Collection System that are fifteen (15) inches and smaller in diameter and are greater than 10 years old. The City shall inspect and assess no less than thirty (30) miles of sewer in each of the first two (2) years of this Consent Decree.

39. Within one-hundred and twenty (120) days of the Effective Date of the Consent Decree, the City shall propose to Baykeeper a work plan for CCTV inspections. The defects shall be coded and weighted using the Sanitary Sewer Assessment Defect Codes, which are attached hereto as Appendix A.

40. Inspections shall be accomplished using SSA. The work products shall include an inspection database, prioritized repair projects, and prioritized rehabilitation/ replacement projects. The annual inspection quantity will include the sum of the lengths of all of the gravity sewers where inspection was completed. Segments failing to pass the SSA device or camera shall not be included in the annual inspection quantity.

41. The City shall correct defects that may cause an SSO within an appropriate timeframe. Based on the Sanitary Sewer Assessment Defect Code scores derived during SSA inspections, the City's timeframes for actions to correct observed defects in the sewer segments are shown on the table Timeframe for Actions to Correct Observed Defects set out below.

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

42. The schedule proposed in paragraph 40 above shall be prioritized to first inspect sewers in areas with known SSO problems and sewers with known or suspected structural deficiencies

XII. IMPLEMENTATION OF FATS, OILS AND GREASE PROGRAM

43. The City shall continue to contract its FOG Control Program to South Bayside System Authority ("SBSA") as outlined in the "Proposal to Conduct a FOG Program for the City of San Carlos" dated June 26, 2009. Under this program, the City contracts FOG inspections and education to SBSA.

44. The City shall continue its own residential outreach program to reduce FOG from residential sources consistent with its SSMP.

45. The City shall commence a program for enforcement of violations of the Municipal Code relating to FOG discharges, including community outreach and education. The City agrees to modify its Municipal Code to include provisions for fines for each violation of not less than One Thousand Dollars ($1,000.00) for a first offense, and not less than Five Thousand ($5,000.00) for a second and/or subsequent offense. The Municipal Code may include provision for an initial six (6) month grace period for all customers commencing from the date of adoption of such fines, and may further provide for a warning prior to prosecution for residential customers who do not willfully violate the Municipal Code.

46. The City shall report to Baykeeper the number of violations of the Municipal Code relating to FOG discharges and the amount of money collected as fines by the City each year in the Annual Report required under Section XVI of this Consent Decree.

XIII. SEWER CLEANING, HOT SPOTS, AND LATERAL PROGRAMS

47. Routine Cleaning. The City shall clean all of its gravity sanitary sewer segments fifteen (15) inches in diameter or smaller in the San Carlos Collection System at least once every five (5) years. Lower Laterals shall be cleaned and inspected after each SSO caused by a blockage in the Lower Lateral.

48. Focused Cleaning Program. The City shall expand and improve its Focused Cleaning Program to include main line sewer segments having repeat and frequent blockages caused by Roots, Debris, and Pipe Condition, in addition to those main line segments included in the City's Focused Cleaning Program due to FOG.

49. Within one-hundred twenty (120) days from the Effective Date of the Consent Decree, the City shall develop and submit to Baykeeper for comments a Focused Cleaning Work Plan ("FCWP"). The FCWP shall include a listing of all lines requiring focused cleaning and the cleaning frequency for each identified line. The FCWP shall include the rationale relied upon to select the main sewer segments included in the FCWP and to determine cleaning frequencies. Cleaning frequencies for the Focused Cleaning Program shall include: one (1) month, two (2) month, three (3) month, six (6) month, twelve (12) month, and twenty-four (24) month cycles as needed. The FCWP shall incorporate the methodology set forth below in Figure 1 ("Preventive Maintenance Scheduling Flow Chart") in paragraph 50 below.

50.

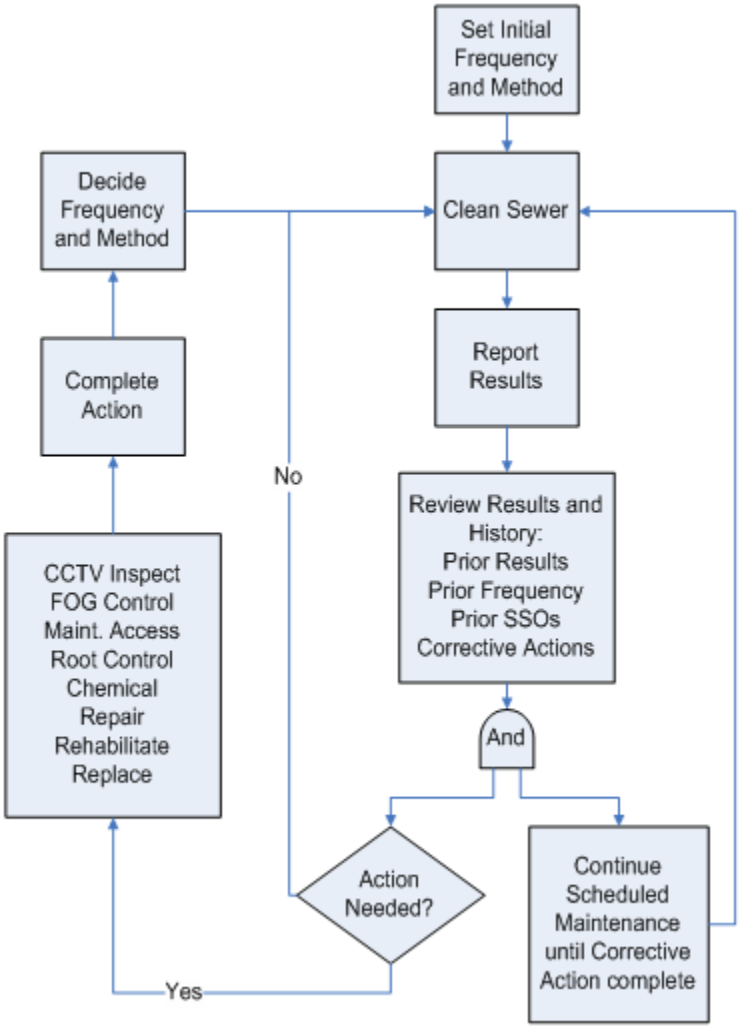

Figure 1 - Preventive Maintenance Scheduling Flow Chart.

51. Baykeeper shall review and provide the City with comments on the FCWP within thirty (30) days of submittal. The City shall consider each of Baykeeper's recommended revisions and indicate within thirty (30) days of receipt of Baykeeper's comments whether the City accepts each such recommendation for revision and if not provide a detailed explanation as to why Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding disputes over the FCWP.

52. The Parties shall attempt to resolve any disputes regarding the FCWP in good faith. Neither Party shall invoke dispute resolution until good faith efforts to resolve disputes have been completed. The City shall immediately implement all portions of the Focused Cleaning Program not in dispute and shall implement all portions of the Final FCWP not previously implemented immediately upon

resolution of disputes.

53. The Focused Cleaning Program shall be maintained in the City's CMMS database.

54. The City shall collect all observations made by its trained sewer cleaning crews in accordance with the SSO Cause Determination SOP (Section VIII of this Consent Decree) regarding the extent and nature of materials removed during the cleaning process. The observations shall be recorded in the City's CMMS database. The City shall maintain or change the frequency of its focused cleaning for a sewer line segment based on the Sewer Cleaning Results Matrix set forth below in accordance with the section labeled "Action."

Sewer Cleaning Results Matrix

	Clear	**Light**	**Moderate**	**Heavy**
Debris	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
Grease	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
Roots	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
Debris: 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

Action	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

identified with a single crew, the increased inspection schedule will only apply to that crew.

58. If scheduled or hot spot cleaning of a segment or area cannot be properly accomplished due to pipe condition or access limitations, the condition of the segment shall be considered failing and shall be repaired within one-hundred and twenty (120) days. If scheduled or hot spot cleaning cannot be properly accomplished due to access limitations, an action plan to gain access to the segment shall be developed within one-hundred and twenty (120) days and shall be implemented via repair within one (1) year.

59. The City shall identify the sewer lines cleaned and the results of its QA/QC program each year in the Annual Report required by Section XVI of this Consent Decree.

XIV. PRIVATE LATERALS

60. Within one-hundred and (180) days of the Effective Date of this Consent Decree, the City shall propose and recommend to the City Council the adoption of amendments to the Municipal Code to:

a. Require inspection of private laterals as a condition to sale of a property;

b. Require inspection of private laterals as a condition to obtaining a building permit if the value of the construction either exceeds $75,000, or where any repair or replacement is being made to the sanitary sewer system;

c. Require inspection where more than twenty-five percent of the square footage of the structure is being remodeled;

d. Set standards for evaluating the condition of private laterals subject to the provisions in subsections (a)-(b) above.

e. Require any defects in the private lateral that causes the private lateral to fail the inspection be repaired or replaced within ninety (90) days. Defects causing a private lateral to fail the inspection shall include but not be limited to the following: pipe failure; open joints; and/or openings in the pipe, which allow root intrusion.

f. Require the private lateral owner, within one-hundred and twenty (120) days of notification by the City, to remove roots from their laterals that are growing into Lower Laterals as determined by the City and make all necessary repairs to the private lateral necessary to prevent a reoccurrence of roots intrusion that reaches the lower lateral.

XV. CHEMICAL ROOT CONTROL PROGRAM

61. The City shall continue to implement its Chemical Root Control Program to supplement focused cleaning and routine cleaning to assure compliance with the San Carlos Collection System SSO Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals in Section VII of this Consent Decree. The City shall annually evaluate the effectiveness of the Chemical Root Control Program and present its findings in the Annual Reports required under Section XVI of this Consent Decree. Should the City in any year determine that the Chemical Root Control Program is ineffective, the City may submit a request for terminating the program to Baykeeper that includes the basis for such termination. Upon Baykeeper's written approval, the program shall be terminated.

XVI. ANNUAL REPORT

62. Commencing March 1, 2011 and each year that this Consent Decree remains in effect, the City shall submit an Annual Report to Baykeeper. The Annual Report shall:

a. Include the specific annual reporting requirements as set forth in Sections VII, VIII, XII, XIII, and XV of this Consent Decree.

b. Provide details relevant to the City's implementation of, and compliance with, this Final Consent Decree during the preceding year, including any program modifications during the prior calendar year or delays.

c. Assess the City's progress towards meeting the requirements of the Consent Decree.

XVII. ENVIRONMENTAL MITIGATION PROJECT AND FEES AND COSTS

63. Environmental Mitigation Project. To remediate perceived environmental harms resulting from the allegations in the Complaint, Defendant shall pay to the *Rose Foundation for Communities and the Environment* the total sum of Two-Hundred Thousand Dollars ($200,000) (the "Mitigation Payment") to be used to fund environmental project activities that will benefit the San Francisco Bay or its tributaries. Payment shall be made in two equal installments of $100,000.00, with the first installment of $100,000.00 due on or before June 30, 2010, and the second installment of $100,000.00 due on or before July 31, 2010. These payments shall be made to:

The Rose Foundation for Communities and the Environment
6008 College Avenue, Suite 10
Oakland, California 94618
Attention: Tim Little

64. Litigation Fees and Costs. To help defray Baykeeper's attorneys, consultant, and expert fees and costs, and any other costs incurred as a result of investigating, filing this action, and negotiating a settlement, Defendant shall pay Plaintiff the sum of Ninety-Five Thousand Dollars ($95,000) which shall include all attorneys' fees and costs for all services performed by and on behalf of Baykeeper by its attorneys and consultants up to and through the Effective Date of this Consent Decree. The payment shall be made within twenty-one (21) days of the Effective Date of this Consent Decree. The payment shall be made in the form of a check payable to *Lawyers for Clean Water Attorney Client Trust Account* and addressed to: 1004 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery, and shall constitute full payment for all costs of litigation incurred by Baykeeper that have or could have been claimed in connection with or arising out of Baykeeper's lawsuit, up to and including the Effective Date.

65. Compliance Monitoring. Defendants agree to compensate Plaintiff for time to be spent by legal staff and/or technical consultants reviewing compliance reports and any other documents, or participating in any meet and confer process under this Consent Decree. To this end, the Defendant shall pay Fifty-Five Thousand Dollars ($55,000) within twenty-one (21) days of the Effective Date of this Consent Decree. Payment shall be made payable to *Lawyers for Clean Water Attorney Client Trust Account* and addressed to 1004 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery. Any compliance monitoring money remaining when this Consent Decree terminates shall be returned to the City within sixty (60) days of termination.

XVIII. COMMITMENTS OF BAYKEEPER

66. Submission of Consent Decree to Federal Agencies. Baykeeper shall submit a copy of this Consent Decree to EPA and the United States Department of Justice ("DOJ") within three (3) days of the Consent Decree's execution for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts, copies of which shall be provided by Baykeeper to Defendant upon request. In the event that EPA or DOJ comment negatively on the provisions of this Consent Decree, the Parties agree to meet and

confer to attempt to resolve the issue(s) raised by EPA or DOJ.

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

XIX. DISPUTE RESOLUTION

68. If Defendant claims inability to pay as the basis for its failure to comply with any provision of this Consent Decree Defendant shall submit financial documents to Plaintiffs adequate to support their claim of inability to pay no later than thirty (30) days from their failure to comply. Plaintiff reserves the right to require the submission of additional financial documents in order to analyze Defendant's claim of inability to pay and Defendant agrees to provide said documents.

69. This District Court shall retain jurisdiction over this matter for the purposes of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree. The District Court shall have the power to enforce this Consent Decree with all available legal and equitable remedies, including contempt.

70. Meet and Confer. A Party to this Consent Decree shall invoke the dispute resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of the Party's proposal to resolve the dispute under this Section. The Parties shall then meet and confer in an attempt to resolve the dispute informally over a period of ten (10) calendar days from the date of the notice.

71. If the Parties cannot resolve a dispute by the end of the meet and confer informal negotiations, the Party invoking the dispute resolution provision may invoke formal dispute resolution by filing a motion before the District Court. The Parties shall jointly apply to the District Court for an expedited hearing schedule on the motion.

72. If Plaintiff invokes any of the provisions of this Section to enforce the terms and conditions of this Consent Decree, Plaintiff shall be entitled to recover reasonable fees incurred to enforce the terms

of this Consent Decree consistent with the provisions of sections 505 and 309 of the Clean Water Act, 33 U.S.C. §§ 1365, 1319.

XX. MUTUAL RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND FORCE MAJEURE

73. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties hereby fully release, except for claims for the Defendant's failure to comply with this Consent Decree and as expressly provided below, each other and their respective successors, assigns, officers, agents, employees, and all persons, firms, and corporations having an interest in them, from any and all Clean Water Act violations alleged or which could have been alleged based upon the facts alleged in the Complaint, up to and including the Termination Date of this Consent Decree.

74. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the Regional Board, EPA, or any other judicial or administrative body on any other matter relating to Defendant.

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

76. Force Majeure. Defendant shall notify Baykeeper pursuant to the terms of this paragraph, when implementation of the requirements set forth in this Consent Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good-faith efforts of Defendant, due to circumstances beyond the control of Defendant or its agents, and which could not have been reasonably foreseen and prevented by the exercise of due diligence by Defendant. Any delays due to Defendant's failure to make timely and bona fide applications and to exercise diligent efforts to comply with the terms in this Consent Decree in normal inclement weather shall not, in any event, be considered to be circumstances beyond Defendant's control. Financial inability shall not, in any event, be considered to be circumstances beyond Defendant's control.

a. If Defendant claims impossibility, it shall notify Baykeeper in writing within thirty (30)

days of the date that Defendant first knew of the event or circumstance that caused or would cause a violation of this Consent Decree, or the date Defendant should have known of the event or circumstance by the exercise of due diligence. The notice shall describe the reason for the nonperformance and specifically refer to this Section of this Consent Decree. It shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by Defendant to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. Defendant shall adopt all reasonable measures to avoid and minimize such delays.

b. The Parties shall meet and confer in good-faith concerning the non-performance and, where the Parties concur that performance was or is impossible, despite the timely good faith efforts of Defendant, due to circumstances beyond the control of Defendant that could not have been reasonably foreseen and prevented by the exercise of due diligence by Defendant, new performance deadlines shall be established.

c. If Baykeeper disagrees with Defendant's notice, or in the event that the Parties cannot timely agree on the terms of new performance deadlines or requirements, either Party shall have the right to invoke the Dispute Resolution Procedures pursuant to Section XIX of this Consent Decree. In such proceeding, Defendant shall bear the burden of proving that any delay in performance of any requirement of this Consent Decree was caused or will be caused by force majeure and the extent of any delay attributable to such circumstances.

77. The Dispute Resolution Procedures set forth in Section XIX shall be the exclusive mechanism for resolving disputes between the Parties with regard to any aspect of this Consent Decree.

XXI. STIPULATED PAYMENTS

78. Stipulated Payments for Failure to Comply with Consent Decree. Defendant shall make a stipulated payment of One Thousand Dollars ($1,000) for each missed deadline and/or failure to comply with a requirement included in or contemplated by this Consent Decree, unless the failure to comply is from a Force Majeure Event. Payments for missed deadlines shall be made for the restoration and/or

improvement of the San Francisco Bay watershed, and shall be awarded to the Environmental Mitigation Project recipient identified above. Defendant agrees to make the stipulated payment within thirty (30) days of a missed deadline and mail via certified mail or overnight delivery. Defendant shall provide Plaintiff with a copy of each such payment.

79. The City agrees to make stipulated payments in the event complete reports covered by this Section are not timely submitted. Reports covered by this Section include the following Sections from this Consent Decree: the SSO Cause Determination SOP under Section VIII; the SSO Reduction Action Plan under Section IX; the Hydraulic Modeling Work Plan, Capacity Assurance Report, and Final Compliance Report under Section X; the FOG Control Action Plan under Section XII; and the Annual Reports under Section XVI. The City shall have a fourteen (14) day grace period after the due date for the reports covered by this Section prior to imposition of stipulated penalties for the first instance of delayed reporting. Baykeeper is not obligated to notify the City, however it may do so in order to allow the City to promptly address any alleged deficiency after any submission date has been missed.

80. The City shall pay the following stipulated payments in the event that they file a late or incomplete report covered herein after the grace period:

a. For a report submitted after the grace period, the City shall pay $100 per day until the report is filed, up to thirty (30) days for a total amount of $3,000.

b. For any report more than thirty (30) days late, the City shall pay $5,000.

c. For any report more than ninety (90) days late, the City shall pay $10,000.

d. The above penalties are cumulative, as applicable, to a maximum payment of $18,000 per report.

81. In the case of a late report, the City shall send Baykeeper the report per Section XXII of this Consent Decree. Baykeeper shall notify the City of receipt of the late report and shall include an invoice for the amount of the stipulated payment, if any, due and payable. The City shall contact Baykeeper within five (5) working days if the City disagrees with Baykeeper's stipulated payment calculation and may meet and confer with Baykeeper or seek Dispute Resolution pursuant to Section XIX of this Consent Decree. The City shall pay any stipulated payments due pursuant to this Consent Decree within thirty (30) days after receipt of Baykeeper's invoice itemizing the stipulated payment liability, or thirty

(30) days after resolution of a dispute if the dispute resolution process has been invoked pursuant to Section XIX of this Consent Decree.

82. All payments of stipulated penalties described in this Consent Decree shall be paid by the City to the *Rose Foundation for Communities and the Environment* and sent via overnight mail to: Rose Foundation for Communities and the Environment, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little. Nothing in this Consent Decree shall prevent Baykeeper from waiving any stipulated penalties, which might be due under this Section, based on the outcome of the Informal Dispute Resolution process, or based on the City's good faith efforts.

XXII. NOTICES AND SUBMISSIONS

83. Defendant agrees to provide Plaintiff with all documents or reports required or contemplated by this Consent Decree. All documents provided by Defendant shall be directed to the following individuals at the addresses specified below unless specifically stated otherwise herein and shall be sent by certified or overnight delivery, and by electronic mail. Any change in the individuals or addresses designated by any Party must be made in writing to all Parties.

If to BAYKEEPER:

Daniel Cooper
Martin McCarthy
LAWYERS FOR CLEAN WATER, INC.
1004 O'Reilly Avenue
San Francisco, CA 94129
Telephone: (415) 440-6520
Email: daniel@lawyersforcleanwater.com
martin@lawyersforcleanwater.com

Jason Flanders
SAN FRANCISCO BAYKEEPER, INC.
785 Market Street, Suite 850
San Francisco, CA 94103-2023
Email: jason@baykeeper.org

If to the CITY:

Gregory J. Rubens
AARONSON, DICKERSON, COHN & LANZONE
939 Laurel Street, Suite D
San Carlos, CA 94070
Telephone: (650) 593-3117 ext. 202
Fax: (650) 637-1401
Email: grubens@adcl.com

Mark Weiss
CITY OF SAN CARLOS
600 Elm Street
P.O. Box 3009
San Carlos, CA 94070
Tel: (650) 802-4228
Fax: (650) 595-6729
Email: mweiss@cityofsancarlos.org

84. Notifications of communications shall be deemed submitted three (3) days after the date that they are postmarked and sent by first-class mail or deposited with an overnight mail/delivery service.

85. Defendant also agrees to make available to Baykeeper any new or existing documents within the City's custody or control that are reasonably necessary to evaluate system performance and/or compliance with this Consent Decree within seven (7) days of written request by Baykeeper.

86. During the life of this Consent Decree, Defendant shall preserve at least one legible copy of all records and documents, including computer-stored information, which relate to performance of its obligations under this Consent Decree.

87. Any notice, report, certification, data presentation or other document submitted by Defendant to Baykeeper pursuant to this Consent Decree, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning compliance or non-compliance with any requirement(s) 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

88. Continuing Jurisdiction. The Parties stipulate that the District Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree up to and including the Termination Date in paragraph 10.

89. Construction. The language in all parts of this Consent Decree shall be construed according to its plain and ordinary meaning, except as to those terms defined in Section II above.

90. Choice of Law. The laws of the United States shall govern this Consent Decree.

91. Severability. In the event that any provision, paragraph, section, or sentence of this Consent Decree is held by a District Court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

92. Counterparts. This Consent Decree may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, scanned copies (i.e., pdf) and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

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

94. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

95. Integration Clause. This is an integrated Consent Decree. This Consent Decree 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 Consent Decree.

96. Authority. The undersigned representatives for Baykeeper and the City each certify that he/she is fully authorized by the Party whom he/she represents to enter into the terms and conditions of this Consent Decree.

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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 FRANSCISCO 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 Saundra Brown Armstrong
United States District Court Judge
Northern District of California

Michael R. Lozeau (State Bar No. 142893)
LOZEAU DRURY LLP
1516 Oak Street, Suite 216
Alameda, CA 94501
Tel: (510) 749-9102
Fax: (510) 749-9103 (fax)
E-mail: Michael@lozeaudrury.com

Andrew L. Packard (State Bar No. 168690)
LAW OFFICES OF ANDREW L. PACKARD
319 Pleasant Street
Petaluma, CA 94952
Tel: (707) 763-7227
Fax: (415) 763-9227
E-mail: andrew@packardlawoffices.com

Attorneys for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiff, vs. TOMRA PACIFIC, INC., a corporation. Defendant.	Case No. C10-00701-BZ **[PROPOSED] CONSENT DECREE**

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;

WHEREAS, Defendant Tomra Pacific, Inc. ("Tomra") is a corporation organized under the laws of the State of Delaware;

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;

WHEREAS, Defendant discharges storm water at the Facility pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter, the "General Permit"). The Facility is divided into two areas. Persons drop off materials to be recycled at the front of the Facility. For purposes of this Consent Decree, this front area of the Facility is referred to as the "Drop-Off Area." The rear of the Facility includes storage, processing, and shipping of recyclable materials. For purposes of this Consent Decree, this rear area of the Facility is referred to as the "Processing Area." A map of the Facility is attached hereto as Exhibit 1 displaying the Processing Area and the Drop Off Area and their drainage features and is incorporated by reference;

WHEREAS, on or about November 20, 2009, CSPA served Defendant, the United States Attorney General, the national and Region IX offices of the United States Environmental Protection Agency, the State Water Resources Control Board ("State Board") and the Regional Water Quality Control Board – San Francisco Bay Region ("Regional Board") with a Notice of Violation and Intent to File Suit ("60-Day Notice") under Sections 505(a)(1) and (f) of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365(a)(1) and (f);

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

WHEREAS, on February 18, 2010, CSPA filed a complaint against Defendant in the United States District Court for the Northern District of California, entitled *California Sportfishing Protection Alliance v. Tomra Pacific, Inc.*, (Case No. C10-00701-BZ) (hereinafter "Complaint" or "Action"). A true and correct copy of the Complaint as well as the 60-Day Notice is attached hereto as Exhibit 2;

WHEREAS, CSPA and Defendant (hereinafter, collectively referred to as the "Settling Parties") have agreed that it is in the parties' mutual interest to enter into a Consent Decree setting

forth terms and conditions appropriate to resolving the allegations set forth in the Complaint without further proceedings;

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

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

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

1. TOMRA agrees, to the extent it has not already done so, to operate the Facility in compliance with the applicable requirements of the General Permit and Clean Water Act and any amendments thereto.

2. In order to prevent storm water from coming into contact with contaminants at the Facility and/or to prevent the discharge of waste or contaminated storm water from the Facility into the waters of the State and of the United States, Tomra shall implement additional and/or different structural and non-structural best management practices ("BMPs") as described more fully below. Tomra shall maintain or cause its tenant operating within the Processing Area to maintain all structural BMPs at the site in good operating condition.

IMPROVEMENTS TO THE FACILITY'S

STORM WATER POLLUTION CONTROL MEASURES

3. Not later than October 1, 2011, Tomra Pacific agrees to install an appropriately sized and configured Stormwater Rx unit at the 40595 Albrae Street facility designed to treat substantially all stormwater flowing off the Processing Area of the facility.

4. By not later than October 1, 2011, Tomra may develop and install an alternative

storm water control or treatment system that achieves equivalent or better storm water pollution reductions (including for example, no discharge) than the Stormwater Rx unit subject to CSPA's review and written concurrence, which shall not be unreasonably withheld. If Tomra intends to proceed with such an alternative treatment system, Tomra shall notify CSPA as soon as possible but not later than July 1, 2011. By that date, Tomra shall provide CSPA with all information gathered by Tomra to investigate the alternative storm water control or treatment system. CSPA shall have 60-days to review any alternative storm water control or treatment system proposed by Tomra. If CSPA, in good faith, does not believe that an alternative system proposed by Tomra Pacific will achieve equivalent or better storm water pollution reductions at the facility, Tomra Pacific must install the Stormwater Rx unit.

5. The parties agree to meet and confer in good faith on any alternative proposal. If CSPA objects to any alternative storm water control or treatment system or component or implementation thereof proposed by Tomra, at the request of either Settling Party, the Settling Parties shall in good faith seek to mediate any dispute well in advance of the deadline.

6. As of October 1, 2011, Tomra Pacific agrees that any discharge of storm water from the rear of the facility shall strictly comply with EPA's Benchmark Values and all applicable water quality standards established by either the San Francisco Bay Regional Board or EPA.

7. Tomra Pacific shall conduct heightened sweeping in the Facility's Drop-Off Area including but not limited to manually sweeping the area on a daily basis; hand-vacuuming the area before each forecast rain event during the rainy season, and mechanical sweeping of the area using a regenerative sweeper at least once per week during the wet season (October through May) and every other week during the dry season (June through September).

8. Not later than November 15, 2010, Tomra shall install filters in each of the drop inlets located in the Drop-Off Area conforming to the specifications set forth in Exhibit 3. To the extent such filters do not reduce pollutants in the Facility's storm water to levels below the Levels of Concern set forth in Paragraph 17, Tomra shall implement additional filtering or other management measures consistent with Paragraphs 18 through 22 below.

SAMPLING, MONITORING, INSPECTION AND REPORTING

9. In addition to, or in conformance with, any recordation, sampling, monitoring or inspecting activities described above, or otherwise required by law, Tomra agrees to perform the additional monitoring described herein during the 2010-2011, 2011-2012 and 2012-2013 wet seasons (October 1 – May 30, each year):

10. During the 2011-2012 and 2012-2013 wet seasons, Tomra agrees to sample the treated storm water from the Facility's Processing Area during four qualifying storm events during each wet season. If no discharges occur or less than four qualifying events as defined by the General Permit resulting in discharge occur, then the number of sampling events would be reduced accordingly for that wet season. If the analytical results for all of the 2011-2012 storm water samples show that a specific parameter was discharged from the Process Area below the Levels of Concern set forth at Paragraph 17, analysis of that parameter may be reduced to two samples in the subsequent wet season (2012-2013).

11. Tomra shall continue to sample storm water from the Drop-Off Area at the locations indicated on the map attached hereto as Exhibit 1. Tomra shall sample storm water discharged from the Processing Area at a location downstream of all implemented stormwater management measures and prior to discharging or commingling with any water from the municipal storm drain or other sources. Tomra shall analyze each storm water sample taken from the monitoring locations in accordance with the General Permit and this Agreement for, at a minimum, the following constituents: total suspended solids, pH, oil and grease, specific conductance, chemical oxygen demand, aluminum, zinc, copper, and lead. In addition to the General Permit's sample analysis requirements, Tomra agrees to analyze all samples for both total and dissolved metals as well as hardness.

12. All samples collected from the Facility shall be delivered to a California state accredited environmental laboratory and shall be analyzed in accordance with the provisions of the General Permit.

13. Analytical methods used by Tomra or its analytical laboratory shall be adequate to

detect the individual constituents at or below the Levels of Concern set forth in Paragraph 17.

14. Results from Tomra's sampling and analysis shall be provided to CSPA within fourteen (14) days of receipt of the final written laboratory report from each sampling event.

15. Tomra shall maintain logs of all sweeping activities at the Drop Off Area Facility, including the date and location of any sweeping, as part of the Facility's annual report

16. Tomra shall maintain logs of maintenance and replacement activities pertaining to each of the storm water management measures installed or implemented at the Facility. Such logs shall be maintained for each of the drop inlet filters installed at the Facility and maintenance activities associated with the Stormwater Rx unit or, if applicable, alternative storm water treatment system required by Paragraphs 3 and 4 above. Such logs shall be included in the Facility's Annual Report.

EXCEEDANCE OF LEVELS OF POTENTIAL CONCERN

Storm Water Discharges from Processing Area

17. Not later than October 1, 2011, Tomra shall not discharge storm water from the Processing Area in excess of the following Levels of Concern: pH – 6.0-9.0 units; total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; chemical oxygen demand ("COD") – 120 mg/L; specific conductance – 200 µmho/cm; aluminum – 0.75 mg/L (EPA Benchmark); zinc – .117 mg/L (EPA Benchmark), 0.120 mg/L (Basin Plan Standard); copper – .0636 mg/L (EPA Benchmark), 0.013 mg/L (Basin Plan Standard), lead – 0.0816 (EPA Benchmark), 0.065 mg/L (Basin Plan Standard).

Storm Water Discharges from Drop-Off Area

18. If analytical results of storm water samples taken by Tomra during the 2010-2011, 2011-2012 and/or 2012-2103 wet season indicate that storm water discharges from the Facility's Drop-Off Area exceed the Levels of Concern set forth in Paragraph 17 above, Tomra agrees to take additional feasible measures aimed at reducing pollutants in the Facility's storm water discharged from the Drop-Off Area to levels at or below these levels.

19. In furtherance of that objective, when one or more analytical results of storm water

samples taken by Tomra during the 2010-2011 and/or 2011-2012 wet season indicate that storm water discharges from the Facility's Drop-Off Area exceed the Levels of Concern, Tomra shall prepare a written statement ("Memorandum") discussing:

(1) Any exceedance or exceedances of any Level of Concern;

(2) An explanation of the possible cause(s) and/or source(s) of any exceedance; and

(3) Additional feasible best management practices ("BMPs") that will be taken to further reduce the possibility of future exceedance(s).

20. Such Memorandum shall be e-mailed and sent via first class mail to CSPA not later than July 30th following the conclusion of each wet season. Any additional measures set forth in the Memorandum shall be implemented as soon as practicable, but not later than sixty (60) days from the due date of the Memorandum, except where 1) structural changes require longer than sixty (60) days to complete; 2) weather-related conditions render immediate implementation infeasible; or 3) the Settling Parties agree in writing to defer implementation of specific measures in order to effectively meet and confer in accordance with Paragraph 21. Within thirty (30) days of implementation, Tomra's SWPPP shall be amended to include all additional BMP measures designated in the Memorandum.

21. Upon receipt of the Memorandum, CSPA may review and comment on any additional measures. If requested by CSPA within thirty (30) days of receipt of such Memorandum, CSPA and Tomra shall meet and confer and conduct a site inspection within ninety (90) days after the receipt of the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water discharged from the Drop-Off Area to levels at or below the Levels of Concern. If within thirty (30) days of the parties meeting and conferring, the parties do not agree on the adequacy of the additional measures set forth in the Memorandum, the Settling Parties may agree to seek a settlement conference before the Mediator assigned to this action by the District Court pursuant to Paragraphs 30 through 32 below. If the Settling Parties fail to reach agreement on additional measures, CSPA may bring a motion before the District Court Judge consistent with Paragraphs 29 through 30 below. If CSPA does not

request a meet and confer regarding the Memorandum within the thirty (30) day comment period provided for in this paragraph, CSPA shall waive any right to object to such Memorandum pursuant to this Agreement.

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

23. In addition to any site inspections conducted as part of meeting and conferring on additional measures set forth above, Tomra shall permit representatives of CSPA to perform up to (2) site visits per year at the Facility during normal daylight business hours during the term of this Agreement; provided that CSPA provides Tomra with at least one week prior notice via e-mail and telephone using the contact information listed in Paragraph 42 below.

24. Within thirty (30) days of the Effective Date of this Consent Decree, Tomra shall amend the Facility Storm Water Pollution Prevention Plan ("SWPPP") to incorporate all changes, improvements and best management practices set forth in this Consent Decree. A copy of the amended SWPPP shall be provided to CSPA within seven (7) business days of completion.

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

MITIGATION FEES AND COSTS

26. As mitigation of the violations alleged in CSPA's Notice and Complaint, Tomra shall pay the sum of Thirty-Five Thousand dollars ($35,000.00) (the "Payment") to the Rose Foundation for Communities and the Environment ("Rose Foundation"). The Payment shall be conditioned on

the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted to CSPA or Tomra and (b) projects funded by the Payment shall be designed to benefit water quality in the San Francisco Bay or its tributaries. Within fifteen (15) days of the Effective Date of the Consent Decree, Tomra shall make the Payment to the Rose Foundation.

27. Tomra shall reimburse CSPA in the total amount of $40,000.00 to defray CSPA's investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and all other costs incurred as a result of investigating the activities at the Facility, bringing these matters to Tomra's attention, and negotiating a resolution of this action in the public interest. Such payment shall be made within fifteen (15) days of the Effective Date of the Consent Decree. The payment shall be made out to "Lozeau Drury LLP Attorney-Client Trust Account."

28. Tomra shall reimburse CSPA up to five thousand dollars ($5,000) per year for three years for reasonable costs and fees associated with monitoring Tomra's compliance with this Consent Decree and evaluating any alternative treatment method proposed by Tomra pursuant to Paragraph 4 above. Monitoring activities include site inspections, review of water quality sampling reports, review of annual reports, discussion with representatives of Tomra concerning potential changes to compliance requirements, preparation and participation in meet and confer sessions and mediation, water quality sampling, etc. Three (3) annual payments shall be made payable to the "Lozeau Drury LLP Attorney-Client Trust Account" within thirty (30) days of receipt of an invoice from CSPA which contains a daily and hourly description of fees and costs incurred by CSPA to monitor implementation of the Consent Decree during the previous twelve (12) months.

DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE

29. The Effective Date shall be the date this Consent Decree is approved and entered by the Court. The Consent Decree shall continue in effect until October 1, 2013. This Court shall retain jurisdiction in this matter from the Effective Date through the date of its termination, for the purposes of enforcing the terms of this Consent Decree. In addition, following the date of termination of this Decree, this Court shall retain jurisdiction for the purposes of enforcing this Decree for any disputes which arose prior to the termination of the Consent Decree.

30. Except as specifically noted herein, any disputes with respect to any of the provisions of this Consent Decree shall be resolved through the following procedure. The parties agree to first meet and confer to resolve any dispute arising under this Consent Decree. The Parties shall meet and confer within fourteen (14) days of receiving written notification from the other Party of a request for a meeting to determine the merits of the dispute or whether a violation has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the violation or dispute. In the event that such disputes cannot be resolved through this meet and confer process or the Parties fail to meet and confer, the Parties agree to request a settlement meeting before David Roe, the Court-appointed mediator. In the event that the Parties cannot resolve the dispute by the conclusion of the settlement meeting with the mediator, the Parties may submit the dispute via motion to the District Court Judge. The prevailing party may seek recovery of reasonable attorney fees and costs incurred in bringing any such motion, 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) or any other legal authority, and applicable case law interpreting such provisions.

31. The Settling Parties agree that David Roe will serve as mediator for any future disputes subject to mediation pursuant to this Consent Decree. In the event that Mr. Roe is not available for any requested mediation, the Settling Parties shall jointly select an alternative mediator.

32. Tomra agrees to pay any and all fees and costs incurred or charged by the mediator to facilitate any mediation services provided for by this Consent Decree.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

33. In consideration of the above, and except as otherwise provided by this Consent Decree, the Settling Parties hereby forever and fully release each other and their respective successors, assigns, officers, agents, 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, which the Settling Parties have against each other arising from CSPA's allegations and claims as set forth in the 60-Day Notice Letter and Complaint up to and including the

Termination Date of this Consent Decree.

34. The Settling 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.

Except as otherwise provided by this Consent Decree, the Settling 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 Letter and Complaint up to and including the Termination Date of this Consent Decree.

35. The Parties enter into this Consent Decree for the purpose of avoiding prolonged and costly litigation. Nothing in this Consent Decree shall be construed as, and Tomra 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 Consent Decree constitute or be construed as an admission by Tomra 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 Consent Decree.

36. CSPA shall submit this Consent Decree to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days after the Effective Date of this Consent Decree for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45) days after receipt of the Consent Decree by both Agencies, as evidenced by the return receipts, copies of which shall be provided to Tomra upon receipt by CSPA. In the event that the Agencies comment negatively on the provisions of this Consent Decree, CSPA and Tomra agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CSPA and Tomra are unable to resolve any issue(s) raised by the Agencies in their comments, CSPA and Tomra agree to expeditiously seek a settlement conference with the

Court-appointed mediator to resolve the issue(s).

MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Road
Stockton, CA 95204
deltakeep@aol.com

With copies sent to:

Michael R. Lozeau
Lozeau Drury LLP
1516 Oak Street, Suite 216
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,

postage prepaid, and addressed as follows:

Tomra Pacific, Inc.
P.O. Drawer 1034
Monticello, NY 12701
Attn: Secretary

With copies sent to:

Ralph Robinson
Wilson Elser Moskowitz Edelman & Dicker LLP
525 Market Street, 17th Floor
San Francisco, California 94105
Ralph.robinson@wilsonelser.com

and

Walt Garigliano
P.O. Box 1034
Monticello, NY 12701
Gariglianow.law@tomrana.com

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

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

44. 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 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.

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

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: _____ Tomra Pacific, Inc.

By: _____

Dated: _____ California Sportfishing Protection Alliance

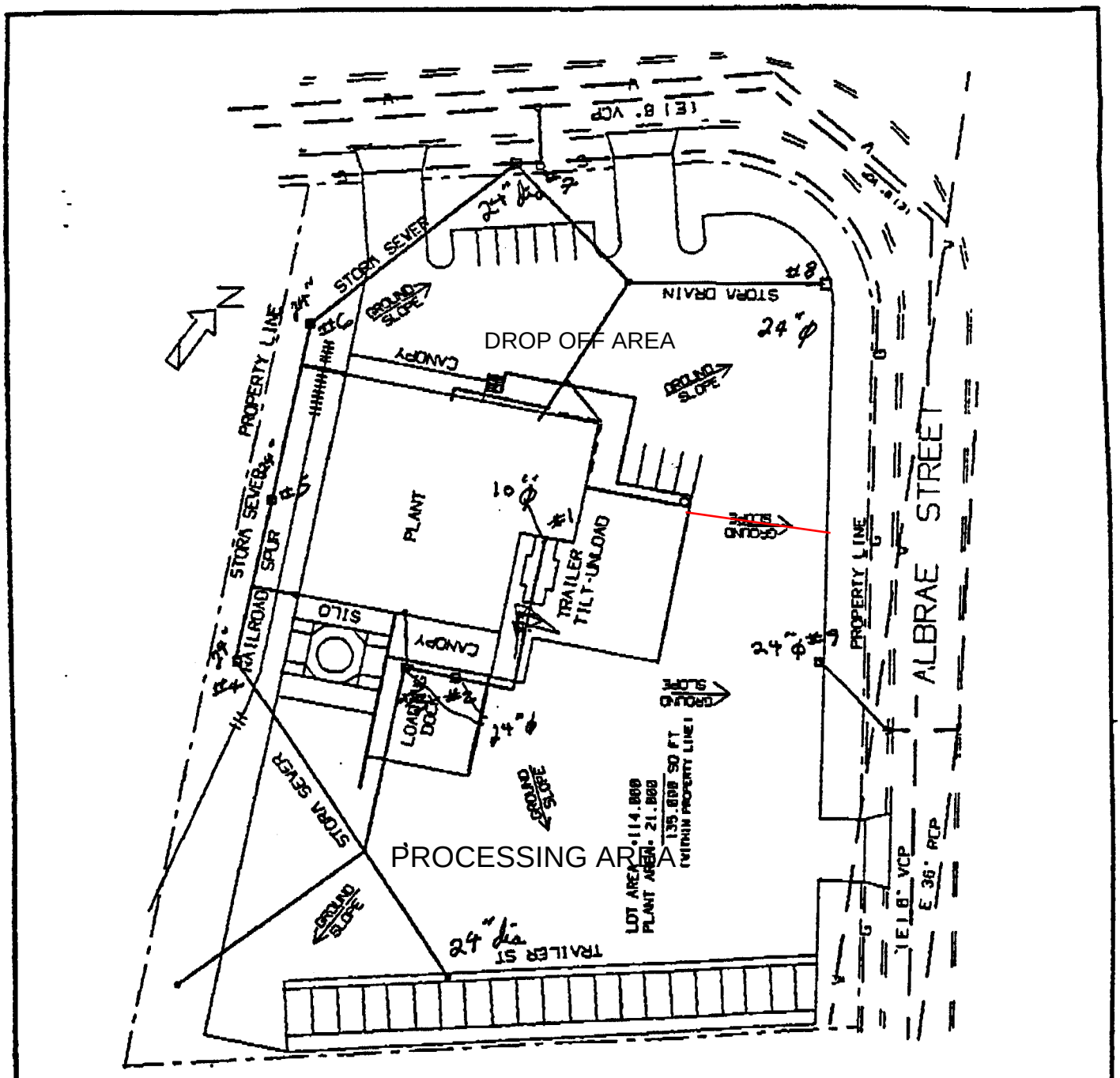
By: _____
Bill Jennings, Executive Director

APPROVED AND SO ORDERED.

Date: _____ _____
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 1

NOTICE OF INTENT
SITE MAP



MAP INFORMATION

TYPE: UTILITY PLOT PLAN

NUMBER: Reynolds DWG #CC-98-401-959

SCALE: 1" = 35'

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

FACILITY: Fremont Recycling Plant
Reynolds Aluminum Recycling Co.
Div. of Reynolds Metals Company

COUNTY: Alameda

DATE:	DRAWN:	CHECKED:
3/17/92	By: N.C.	N.C.

EXHIBIT 1

EXHIBIT 2

Michael R. Lozeau (State Bar No. 142893)
David A. Zizmor (State Bar No. 255863)
LOZEAU DRURY LLP
1516 Oak Street, Suite 216
Alameda, CA 94501
Tel: (510) 749-9102
Fax: (510) 749-9103 (fax)
E-mail: michael@lozeaudrury.com
david@lozeaudrury.com

Andrew L. Packard (State Bar No. 168690)
LAW OFFICES OF ANDREW L. PACKARD
319 Pleasant Street
Petaluma, CA 94952
Tel: (707) 763-7227
Fax: (415) 763-9227
E-mail: andrew@packardlawoffices.com

Attorneys for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

ORIGINAL
FILED
FEB 18 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

E-filing

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation,

Plaintiff,

vs.

TOMRA PACIFIC, INC., a corporation,

Defendant.

Case No. C10-00701 BZ ADR

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

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

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28

EXHIBIT 2

U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

2. On or about November 20, 2009, Plaintiff provided notice of Defendant's violations of the Act, and of its intention to file suit against Defendant, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's notice letter is attached as Exhibit A, and is incorporated by reference.

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

4. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

5. Intradistrict assignment is proper in Oakland, California, pursuant to Local Rule 3-2(c), because the source of the violations is located within Alameda County.

II. INTRODUCTION

6. This complaint seeks relief for Defendant's discharges of polluted storm water and non-storm water pollutants from Defendant TOMRA PACIFIC, INC.'s metal recycling facility located at 40595 Albrae Street in Fremont, California ("the Facility") in violation of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No.

CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Water Quality Order No. 97-03-DWQ (hereinafter "the Order" or "Permit" or "General Permit"). Defendant's violations of the discharge, treatment technology, monitoring, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.

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

III. PARTIES

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

9. Members of CSPA reside in and around San Francisco Bay and enjoy using the Bay for recreation and other activities. Members of CSPA use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife, and engage in scientific study including monitoring activities, among other

things. Defendant's discharges of pollutants threaten or impair each of those uses or contribute to such threats and impairments. Thus, the interests of CSPA's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

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

11. Defendant TOMRA PACIFIC, INC. ("Tomra") is a corporation organized under the laws of California. Tomra operates a recycling facility in Fremont, California.

IV. STATUTORY BACKGROUND

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

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

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

15. The State Board elected to issue a statewide general permit for industrial storm water discharges. The State Board issued the General Permit on or about November 19, 1991; modified the General Permit on or about September 17, 1992; and reissued the

General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

16. In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained and complied with an individual NPDES permit. 33 U.S.C. § 1311(a).

17. The General Permit contains several prohibitions. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of the Best Available Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). 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 Permit prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in any Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

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

19. EPA has established Parameter Benchmark Values as guidelines for

determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established Parameter Benchmark Values for the following parameters, among others: total suspended solids – 100 mg/L; oil & grease – 15 mg/L; pH – 6.0-9.0 s.u.; iron – 1.0 mg/L; copper – 0.0636 mg/L, zinc – 0.117 mg/L; chemical oxygen demand – 120 mg/L; and aluminum – 0.75 mg/L. The State Board has also proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

20. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply with the BAT and BCT standards. The General Permit requires that an initial SWPPP have been developed and implemented before October 1, 1992 (Section A and Provision E(2)). 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 (Section A(2)). The SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (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 (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and 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 (Section A(6)). The SWPPP 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 (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Section A(9),(10)).

21. Section C(3) of the General Permit 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 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. Section C(4)(a).

22. Section C(11)(d) of the General Permit's Standard Provisions requires dischargers to report any noncompliance to the Regional Board. *See also* Section E(6). Section A(9) of the General 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.

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

24. As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual

Report (Section B(4)). Section B(4)(c) requires visual observation records to note, among other things, the date of each monthly observation. Dischargers must also collect and analyze storm water samples from at least two storms per year. Section B(5)(a) of the General 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) requires dischargers to sample and analyze during the wet season for basic parameters, such as pH, total suspended solids, electrical conductance, and total organic content or oil & grease, as well as certain industry-specific parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii) requires discharges to sample for parameters dependent on a facility's standard industrial classification ("SIC") code. Facilities that fall under SIC Code 5093 ("processing, reclaiming, and wholesale distribution of scrap and waste materials") are required to analyze their storm water discharge samples for total suspended solids, iron, lead, aluminum, copper, zinc, and chemical oxygen demand. Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution. Section B(7)(a) indicates that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event." Section B(7)(c) requires that "if visual observation and sample collection locations are difficult to observe or sample…facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event."

25. Section B(14) of the General Permit requires dischargers to submit an annual report by July 1 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. Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

26. The General Permit does not provide for any mixing zones by dischargers. The General Permit does not provide for any dilution credits to be applied by dischargers.

27. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up $37,500 per day per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

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

29. 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." Basin Plan at 3.3.18.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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). *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"). 65 Fed. Reg. 31712 (May 18, 2000).

36. The Basin Plan establishes Marine Water Quality Objectives for copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average). Basin Plan at Table 3-3. The EPA has adopted saltwater numeric water quality standards for copper of 0.0031 mg/L (CMC) and 0.0048 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

37. The Basin Plan establishes Marine Water Quality Objectives for lead of 0.0081 mg/L (4-day average) and 0.21 mg/L (1-hour average). Basin Plan at Table 3-3. The EPA has adopted saltwater numeric water quality standards for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

V. STATEMENT OF FACTS

38. Defendant Tomra operates a recycling facility located at 40595 Albrae Street in Fremont, California. The Facility receives, sorts, and processes a variety of products for recycling. The Facility falls within SIC Code 5093. The Facility covers approximately 35,000 square feet, the majority of which is paved and used for transporting and storing recyclable materials throughout the Facility. On information and belief, Plaintiff alleges that there is at least one large building located on the property. On information and belief, Plaintiff alleges that the receiving, sorting, and processing of recyclable materials occurs both inside and outside of this building. Recyclable materials are transported in and out of this building for storage in the paved areas of the Facility.

39. Defendant channels and collects storm water falling on the Facility through a series of storm water drains that lead to at least six storm water outfalls. Each outfall collects storm water runoff from a particular area of the Facility. The Facility's outfalls discharge either to a channel adjacent to the Facility, which flows to the Bay, or to the City

of Fremont's storm drain system, which then flows to the Bay.

40. On information and belief, Plaintiff alleges that the industrial activities at the site include the receiving, sorting, and processing of recyclable materials. Industrial activities also include the outdoor handling, processing, and storage of these materials as well as other materials used to process and clean them.

41. Significant activities at the site take place outside and are exposed to rainfall. These activities include the storage and movement of raw materials and finished products, equipment used to clean and process the recyclable materials; the storage and use of vehicles and equipment for handling the materials; and the storage, handling, and disposal of waste materials. Loading and delivery of raw materials and finished products occurs outside. Trucks enter and exit the Facility directly from and to public roads. These areas are exposed to storm water and storm flows due to the lack of overhead coverage, berms, and other storm water controls.

42. Industrial equipment and vehicles are operated and stored at the Facility in areas exposed to storm water flows. Plaintiff is informed and believes, and thereupon alleges, that such machinery and equipment leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows, and that such equipment and vehicles track sediment and other contaminants throughout the Facility.

43. Plaintiff is informed and believes, and thereupon alleges that the storm water flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease, and other pollutants as it flows toward the storm water drains. Storm water and any pollutants contained in that storm water entering the drains flows directly to the municipal storm drain system.

44. The management practices at the Facility are wholly inadequate to prevent the sources of contamination described above from causing the discharge of pollutants to waters of the United States. The Facility lacks sufficient structural controls such as grading, berming, roofing, containment, or drainage structures to prevent rainfall and storm water flows from coming into contact with these and other exposed sources of contaminants. The

Facility lacks sufficient structural controls to prevent the discharge of water once contaminated. The Facility lacks adequate storm water pollution treatment technologies to treat storm water once contaminated.

45. Since at least November 20, 2004, Defendant has taken samples or arranged for samples to be taken of storm water discharges at the Facility. The sample results were reported in the Facility's annual reports submitted to the Regional Board. Defendant Tomra certified each of those annual reports pursuant to Sections A and C of the General Permit.

46. Since at least November 20, 2004, the Facility has detected iron, copper, lead, zinc, aluminum, total suspended solids, pH, oil and grease, chemical oxygen demand, and electrical conductance in storm water discharged from the Facility. Levels of these pollutants detected in the Facility's storm water have been in excess of EPA's numeric parameter benchmark values and the State Board's proposed value for electrical conductance. Levels of these pollutants detected in the Facility's storm water have been in excess of water quality standards established in the Basin Plan.

47. Since at least November 20, 2004, the Facility has observed oil and grease, turbidity and cloudiness, floating material, and discoloration in storm water discharged from the Facility in excess of the narrative water quality standards established in the Basin Plan.

48. The following discharges on the following dates contained concentrations of pollutants in excess of numeric or narrative water quality standards established in the Basin Plan:

Date	**Parameter**	**Observed Concentration**	**Basin Plan Water Quality Objective**	**Location (as identified by the Facility)**
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 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

	Observed			
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) – 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

	Observed			
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 (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

standard of .081 mg/L for zinc established by the Regional Board in the Basin Plan. That level of zinc is nearly sixteen times the 1-hour average numeric water quality standard of .081 mg/L for zinc established by the Regional Board in the Basin Plan. The Facility has also measured levels of zinc in storm water discharged from the Facility in excess of the numeric water quality standards for zinc established in the Basin Plan on November 25, 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December 27, 2004.

51. 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 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 twelve times the benchmark value for zinc established by EPA. The Facility has also measured levels of zinc in storm water discharged from the Facility in excess of EPA's benchmark value of 0.117 mg/L on November 25, 2008; February 17, 2006; February 16, 2005; and December 27, 2004.

52. The levels of copper in storm water detected by the Facility have exceeded the numeric standards for copper established in the Basin Plan. For example, on February 16, 2005, the level of copper measured by Defendant in the Facility's discharged storm water was 0.074 mg/L. That level of copper is nearly 24 times the 4-day average numeric water quality standard of .0031 mg/L for copper established by the Regional Board in the Basin Plan. That level of copper is greater than 15 times the 1-hour average numeric water quality standard of .0048 mg/L for copper established by the Regional Board in the Basin Plan. The Facility has also measured levels of copper in storm water discharged from the Facility in excess of the numeric water quality standards for copper established in the Basin Plan on November 25, 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December 27, 2004.

53. The levels of copper in storm water detected by the Facility have been outside the benchmark value for copper of 0.0636 mg/L established by EPA. For example, on February 16, 2005, the level of copper measured by Defendant in the Facility's discharged storm water was 0.074 mg/L. The Facility also has measured levels of copper in storm water

discharged from the Facility outside of the EPA's benchmark value of 0.0636 mg/L on November 25, 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December 27, 2004.

54. The levels of lead in storm water detected by the Facility have exceeded the numeric standards for lead established in the Basin Plan. For example, on February 16, 2005, the level of copper measured by Defendant in the Facility's discharged storm water was 0.019 mg/L. That level of lead is more than double the 4-day average numeric water quality standard of .0081 mg/L for lead established by the Regional Board in the Basin Plan. The Facility has also measured levels of lead in storm water discharged from the Facility in excess of the numeric water quality standards for lead established in the Basin Plan on November 25, 2008; March 26, 2007; and December 27, 2004.

55. 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 March 26, 2007, the level of aluminum measured by Defendant in the Facility's discharged storm water was 8.5 mg/L. That level of aluminum is over eleven times the benchmark value for aluminum established by EPA. The Facility has also measured levels of aluminum in storm water discharged from the Facility in excess of EPA's benchmark value of 0.75 mg/L on November 25, 2008; February 17, 2006; and December 27, 2004.

56. The levels of iron in storm water detected by the Facility have exceeded the benchmark value for iron of 1.0 mg/L established by EPA. For example, on November 25, 2008, the level of iron measured by Defendant in the Facility's discharged storm water was 9.9 mg/L. That level of iron is nearly ten times the benchmark value for iron established by EPA. The Facility has also measured levels of iron in storm water discharged from the Facility in excess of EPA's benchmark value of 1.0 mg/L on March 26, 2007; February 17, 2006; and December 27, 2004.

57. The electrical conductance levels detected by the Facility in its storm water have been greater than the numeric water quality standards applicable to electrical conductance in California. The electrical conductance levels detected by the Facility in its

storm water have been greater than the benchmark value of 200 µmho/cm proposed by the State Board. For example, on December 27, 2004, the electrical conductance level measured by Defendant in the Facility's discharged storm water was 220 µmho/cm. The Facility also has measured levels of electrical conductance in storm water discharged from the Facility in excess of the proposed benchmark value of 200 µmho/cm on March 26, 2007.

58. The levels of oil and grease in storm water detected by the Facility have exceeded the benchmark value for oil and grease of 15 mg/L established by EPA. On February 17, 2006, the level of oil and grease measured by Defendant in the Facility's discharged storm water was 17 mg/L.

59. The levels of chemical oxygen demand in storm water detected by the Facility have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established by EPA. On December 27, 2004, the level of chemical oxygen demand measured by Defendant in the Facility's discharged storm water was 640 mg/L. That level of chemical oxygen demand is over five times the benchmark value for chemical oxygen demand established by EPA.

60. On information and belief, Plaintiff alleges that since at least November 20, 2004, Defendant has failed to implement BAT and BCT at the Facility for its discharges of zinc, copper, lead, total suspended solids, aluminum, iron, electrical conductance, oil and grease, chemical oxygen demand, and other pollutants. Section B(3) of the General Permit requires that Defendant implement BAT for toxic and nonconventional pollutants and BCT for conventional pollutants by no later than October 1, 1992. As of the date of this Complaint, Defendant has failed to implement BAT and BCT.

61. On information and belief, Plaintiff alleges that since at least November 20, 2004, Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not set forth site-specific best management practices for the Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an

adequate assessment of potential pollutant sources, structural pollutant control measures employed by the Defendant, a list of actual and potential areas of pollutant contact, or an adequate description of best management practices to be implemented at the Facility to reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, Defendant's SWPPP has not been evaluated to ensure its effectiveness and revised where necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not include each of the mandatory elements required by Section A of the General Permit.

62. Information available to CSPA indicates that as a result of these practices, storm water containing excessive pollutants is being discharged during rain events from the Facility directly to either a channel adjacent to the Facility, which flows to the Bay, or to the City of Fremont's storm drain system, which then flows to the Bay.

63. On information and belief, Plaintiff alleges that Defendant has failed to collect the two required storm samples from each and every storm water discharge location at the Facility during each wet season since at least November 20, 2004. Plaintiff is informed and believes, and thereupon alleges that Defendant failed to sample two storm events during each of the 2005-2006, 2006-2007, and 2008-2009 wet seasons; and failed to sample any storm events during the 2007-2008 wet season. On information and belief, Plaintiff further alleges that during both the 2007-2008 and 2008-2009 wet seasons, Defendant sampled and analyzed storm water discharges from just one of the Facility's six outfalls; and during each of the 2004-2005, 2005-2006, and 2006-2007 wet seasons, Defendant sampled and analyzed storm water discharges from just one of the Facility's four outfalls.

64. On information and belief, Plaintiff alleges that Defendant failed to make the required monthly visual observations at the Facility in January 2005, March 2005, February 2006, and April 2006.

65. On information and belief, Plaintiff alleges that Defendant either failed to record mandatory observations or recorded no rainfall, and therefore no observations, in months during which rainfall occurred, at the Facility on sixteen separate occasions: 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.

66. On information and belief, Plaintiff alleges that Defendant failed to note the dates on its monthly visual observations in April, May, October, and November of 2005; May 2006; May 2008; and February, March, April, and May of 2009.

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

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

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

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Failure to Implement the Best Available and Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

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

71. The General Permit's SWPPP requirements and Effluent Limitation B(3) require 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. Defendant has failed to implement BAT and BCT at the Facility for its discharges of zinc, copper, lead, total suspended solids, aluminum, iron, pH, electrical conductance, oil and grease, chemical oxygen demand, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

72. Each day since November 20, 2004, that Defendant has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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

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

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

75. Discharge Prohibition A(2) of the General Permit requires that storm water 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 to a violation of any water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

76. Plaintiff is informed and believes, and thereupon alleges, that since at least November 20, 2004, Defendant has been discharging polluted storm water from the Facility in excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of

the General Permit.

77. During every rain event, storm water flows freely over exposed materials, waste products, and other accumulated pollutants at the Facility, becoming contaminated with suspended solids, zinc, copper, lead, pH, oil and grease, and other unmonitored pollutants at levels above applicable water quality standards. The storm water then flows untreated from the Facility into either a channel adjacent to the Facility or into the City of Fremont storm drain system and then flows into the Bay.

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

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

80. Every day since at least November 20, 2004, that Defendant has discharged and continues to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

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

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

82. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

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

Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials without appropriate best management practices; the continued exposure of significant quantities of various materials to storm water flows; the continued exposure and tracking of waste resulting from the operation or maintenance of vehicles at the site, including trucks; the failure to either treat storm water prior to discharge or to implement effective containment practices; and the continued discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark values.

84. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

85. Each day since November 20, 2004, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

86. Defendant has been in violation of the SWPPP requirements every day since November 20, 2004. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

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

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

88. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

89. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to sample two storm events per wet season.

90. Each day since November 20, 2004, that Defendant has failed to develop and

implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

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

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

92. Defendant has falsely certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least July 1, 2005.

93. Each day since at least July 1, 2005 that Defendant has falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of the General Permit's certification requirement each day that it maintains its false certification of its compliance with the General Permit.

VII. RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

a. Declare Defendant to have violated and to be in violation of the Act as alleged herein;

b. Enjoin Defendant from discharging polluted storm water from the Facility unless authorized by the Permit;

c. Enjoin Defendant from further violating the substantive and procedural requirements of the Permit;

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

e. Order Defendant to comply with the Permit's monitoring and reporting

requirements, including ordering supplemental monitoring to compensate for past monitoring violations;

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

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

h. Order Defendant to pay civil penalties of up to $37,500 per day per violation for each violation of the Act pursuant to Sections 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;

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

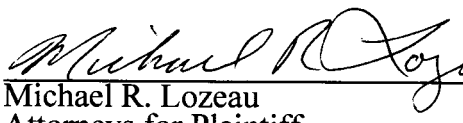
j. Award Plaintiff's costs (including reasonable investigative, attorney, witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

Dated: February 18, 2010

Respectfully submitted,

LOZEAU DRURY LLP

By: 

Michael R. Lozeau
Attorneys for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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

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. 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:

Date	**Parameter**	**Observed Concentration**	**Basin Plan Water Quality Objective**	**Location (as identified by the Facility)**
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:

Date	**Parameter**	**Observed Concentration**	**Benchmark Value**	**Location (as identified by the Facility)**
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

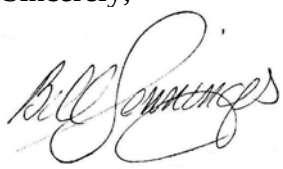
VII. Penalties.

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

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,



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
November 28, 2004
December 1, 2004
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ATTACHMENT A

Rain Dates, Tomra Pacific, Inc., Fremont, California

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ATTACHMENT A

Rain Dates, Tomra Pacific, Inc., Fremont, California

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EXHIBIT 3

Catch Basin Filters
- Triton Filter
- Geo-Trap

Curb Intlet Filters

Drop Inlet

Trench Drain Filters

Curb Protectors

Erosion Control
- Weighted Walnut Wattles

Drain and Curb Markers

Spill Control

Filter Accessories
- Filter Media
- Filter Inserts

Home » Products » TRITON Filter

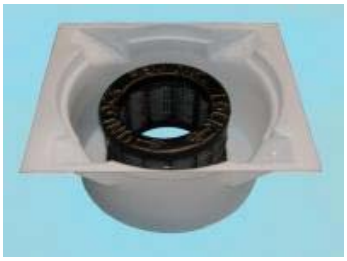
TRITON Filter

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.

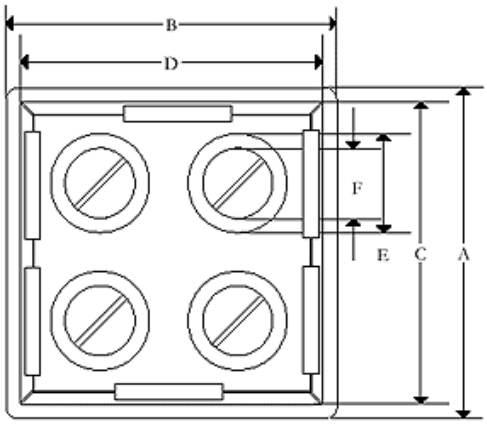
Related Links

Product Brochure »

View MSDS of Filter Media »

EXHIBIT 3

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.

Made in the USA

Copyright © 2002-2008 REM Inc., All Rights Reserved

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, polyproplene 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

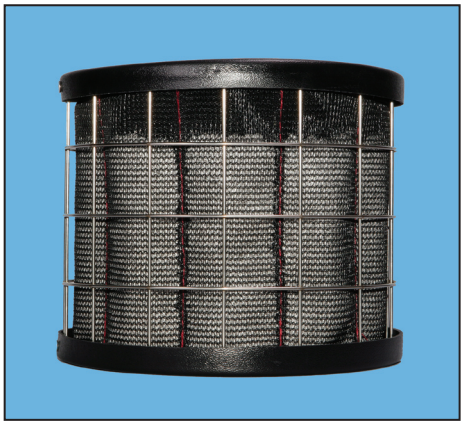
The most recent National Water Quality Inventory reports that runoff from urban areas is the leading source of impairments to surveyed estuaries and the third largest source of water quality impairments to surveyed lakes. In addition, population and development trends indicate that by 2010 more than half of the Nation will live in coastal towns and cities. Runoff from these rapidly growing urban areas will continue to degrade coastal waters.[1]

[1]Environmental Protection Agency's Office of Water EPA841–F–96–004G

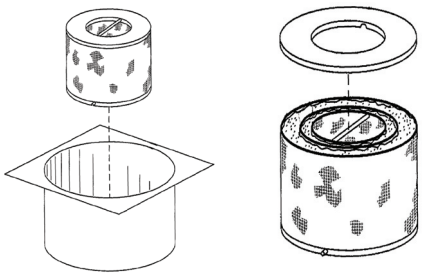
Revel Environmental Manufacturing, Inc.
www.remfilters.com
888-526-4736

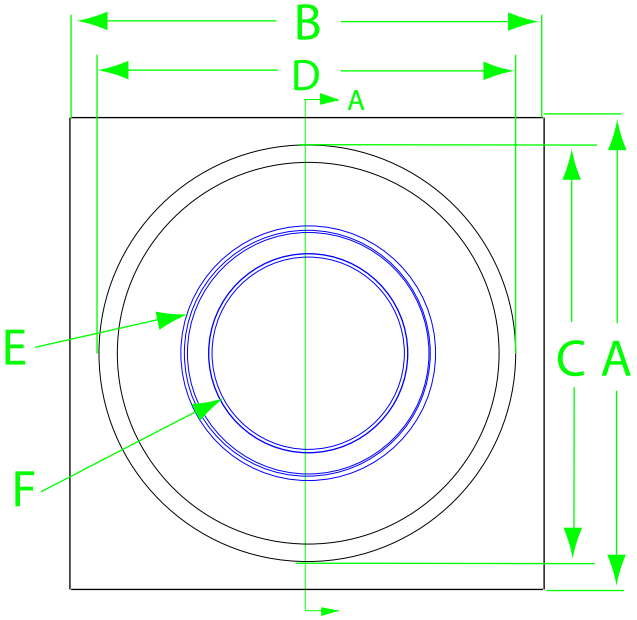
MADE IN USA

TRITON FILTER™ CATCH BASIN INSERT



TRITON MEDIA CARTRIDGE





DIMENSIONAL SPECIFICATIONS

STANDARD DIMENSIONS (IN INCHES)

	A*	B*	C	D	E	F	G*	CARTRIDGES
TR1212	13	13	11	11	6.75	3.75	5.5	1
TR1212RD	13 DIA.		11 DIA.		6.75	3.75	5.5	1
TR1616	18	18	14	14	6.75	3.75	10.5	1
TR1818	20	20	17	17	10.5	7.25	10.5	1
TR18RD	20 DIA.		16.5 DIA.		6.75	3.75	10.5	1
TR1824	19	25	17	17	10.5	7.25	10.5	1
TR2024	21	25	17	17	10.5	7.25	10.5	1
TR24SR	26	26	21	21	14	11	13	1
TR24RD	26 DIA.		21 DIA.		14	11	13	1
TR2436	26	38	17	30	10.5	7.25	10.5	2
TR3030	33	33	21	21	14	11	13	1
TR36SR	40	40	33	33	14	11	22	1 TALL
TR36RD	40 DIA.		30 DIA.		14	11	22	1 TALL
TR2448	26	52	21	42	14	11	13	2
TR4848	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.

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.

REM
www.remfilters.com

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
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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 VIIIB 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 electors 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:

$Au^{+++} > UO_4^{-2} > Cd^{++} > Hg^{++} > Au(CN)^{-2} > Cu^{++} > Pb^{++} > VO_4^{-3} > MoO_4^{-2} > Zn^{++} > Cr^{+++} > CrO_4^{-2} > Ni^{++} > SeO_4^{-2} > AsO_4^{-3} > Co^{++} > Mn^{++} > Fe^{+++} > Ag^{+} > Al^{+++} > Mg^{++} > K^{+}$

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 Na^{+}, K^{+}, Ca^{++}, Mg^{++}, Al^{+++}, Cl^{-}, $SO4^{--}$ 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.

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Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiff, vs. USA WASTE OF CALIFORNIA, INC. a Delaware corporation, and MIKE DONOHUE, an individual, 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*.)

WHEREAS, Plaintiff California Sportfishing Protection Alliance (hereinafter "Plaintiff" or "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 USA Waste of California, Inc. (hereinafter "USA Waste") owns and operates an approximately 4-acre recycling, waste transfer and local trucking facility located at 2569

Scott Avenue, in Chico, California (the "Facility"), Defendant Mike Donohue was previously the District Manager for USA Waste at the Facility. He no longer holds that position and is now the District Fleet Manager at several sites other than the Facility;

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

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

WHEREAS, storm water discharges associated with industrial activity are regulated pursuant to the 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 Water Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter "General Permit");

WHEREAS, on or about March 4, 2010, Plaintiff provided notice of Defendants' alleged violations of the Clean Water Act, and of its intention to file suit against Defendants, to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of CSPA's "Clean Water Act Notice Of Violations Letter" is attached as Exhibit B and incorporated herein by reference);

WHEREAS, on or about September 10, 2010, Plaintiff provided notice of USA Waste's alleged violations of California Health & Safety Code § 25249.5 *et seq*. (referred to as "Proposition 65") ("Proposition 65 Notice Letter"), and of its intention to file suit against USA Waste to the Proposition 65 Enforcement Reporting section of the office of the California Attorney General ("California Attorney General"); the District Attorney of each California county containing sources of drinking water potentially impacted by USA Waste's violations of Proposition 65 as described in the Proposition 65 Notice Letter; and, to USA Waste, as required by California Health & Safety Code

Section 25249.5 *et seq.* (true and correct copies of CSPA's "Proposition 65 Notice Of Violations Letter" is attached as Exhibit C and incorporated herein by reference);

WHEREAS, unless otherwise noted, the Clean Water Act Notice Of Violations Letter and the Proposition 65 Notice Of Violations Letter shall hereinafter collectively be referred to as "the Notices";

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

WHEREAS, CSPA filed a complaint ("Complaint") against Defendants in the United States District Court, Eastern District of California, on May 4, 2010 and filed a First Amended Complaint pursuant to the Parties' stipulated agreement on November 15, 2010;

WHEREAS, for purposes of this Consent Agreement only, the Parties stipulate that venue is proper in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this Consent Agreement, but otherwise preserve all affirmative defenses in the event this Consent Agreement is not entered by this Court;

WHEREAS, this Consent Agreement shall be submitted to the United States Department of Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c) and to the Proposition 65 Enforcement Reporting section of the office of the California Attorney General; and shall thereafter be submitted for approval by the Court, the date of which approval shall be referred to herein as the "Court Approval Date;"

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

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

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES, AND

ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

I. COMMITMENT OF DEFENDANTS

1. Compliance With General Permit & Clean Water Act. Beginning immediately, and throughout the term of this Consent Agreement, USA Waste, as a corporate entity acting by and through its designated agent, representatives and/or employees, shall commence all measures needed to operate the Facility in full compliance with the requirements of the General Permit and the Clean Water Act, subject to any defenses available under the law.

2. USA Waste's Implementation of Specific Storm Water Best Management Practices. Except as otherwise noted herein, within 30 days after the Court Approval Date, USA Waste shall complete or cause to be completed the implementations of the following storm water control measures/best management practices ("BMPs"):

(a) USA Waste shall improve the effectiveness of the Facility's existing infiltration basin ("the Basin") by removing sediment buildup therein and increasing the Basin's overall capacity by deepening the Basin consistent with the conceptual drawings attached in Exhibit D, attached hereto, and incorporated herein by reference. As depicted in the drawings and as shown in the photographs in Exhibit D, USA Waste' redesigned Basin includes one standpipe within the Basin with greater freeboard to increase the Basin's storm water retention time.

(b) USA Waste shall install Triton Cartridge filters in all Facility storm water drain inlets and maintain them thereafter consistent with manufacturer's recommendations;

(c) Throughout the Wet Season (i.e., October 1 through May 31) in each of the two Wet Seasons occurring during the term of this Consent Agreement (i.e., 2010-2011 and 2011-2012), USA Waste shall monitor local weather reporting in order to identify when the next anticipated qualifying storm event is likely to occur at the Facility;

(d) Throughout the Wet Season (i.e., October 1 through May 31) in each of the two Wet Seasons occurring during the term of this Consent Agreement (i.e., 2010-2011 and 2011-2012), USA Waste shall employ a regenerative sweeper to sweep the Facility's impervious

surfaces prior to the onset of any anticipated qualifying storm events in addition to sweeping on a quarterly basis, with one comprehensive Facility sweeping occurring during each of the months of January, March, July and October;

(e) USA Waste shall install structural controls necessary to direct all storm water flows away from the Facility's Public Drop Off Area and towards the Facility's storm water conveyance system and the Facility Basin, provided, however, if USA Waste determines that such structural controls will require material subsurface work (e.g., excavation, installation of drop inlets. Or additional subsurface piping), the schedule for completion shall be extended to 90 days after the Court Approval Date or such later date as agreed to in writing by the Parties.

(f) USA Waste shall work with the adjacent auto wrecking facility to eliminate or reduce to the greatest extent feasible storm water run-on from the adjacent auto wrecking facility;

(g) During the Wet Season, USA Waste shall cover the Facility's Recyclable Stockpile Area (i.e., over the glass pit, the comingle pile and the plastic pit) with tarpaulins prior to and during rain events; and,

(h) USA Waste shall include a visual monitoring inspection form in the SWPPP and train Facility personnel responsible for conducting visual monitoring of storm water in the proper use of the form.

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

4. Sampling Frequency. USA Waste shall collect and analyze or cause to be collected and analyzed samples from four (4) Qualifying Storm Events[1] (to the extent that such Qualifying

[1] "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are 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.

Storm Events occur), in each of the two Wet Seasons occurring during the term of this Consent Agreement (2010-2011 and 2011-2012). The storm water sample results shall be compared with the values set forth in Exhibit E, attached hereto, and incorporated herein by reference. If the results of any such samples exceed the parameter values set forth in Exhibit E, USA Waste shall comply with the "Action Memorandum" requirements set forth below.

5. Sampling Parameters. All samples shall be analyzed for each of the constituents listed in Exhibit E by a laboratory accredited by the State of California. All samples collected from the Facility shall be delivered to the laboratory as soon as possible to ensure that sample "hold time" is not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual constituents at or below the values specified on Exhibit E. Sampling results shall be provided to CSPA within TEN (10) business days of USA Waste' receipt of the laboratory report from each sampling event pursuant to the Notice provisions below.

6. "Action Memorandum" Trigger; CSPA Review Of "Action Memorandum"; Meet-and-Confer. If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4 above exceeds the evaluation levels set forth in Exhibit E, or if USA Waste fails to collect and analyze samples from four (4) storm events, as qualified in the General Permit, USA Waste shall prepare a written statement discussing the exceedance(s) and /or failure to collect and analyze samples from four (4) storm events, the possible cause and/or source of the exceedance(s), and additional measures that will be taken to address and eliminate the problem and future exceedances ("Action Memorandum"). The Action Memorandum shall be provided to CSPA not later than July 15th following the conclusion of each rainy season. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional measures may include, but are not limited to, taking confirmation samples, further material improvements to the storm water collection and discharge system, changing the frequency of Facility sweeping, changing the type and extent of storm water filtration media or modifying other industrial activities or management practices at the Facility. Such additional measures, to the extent feasible, shall be implemented immediately and in no event later than 60 days after the due date of the Action Memorandum. Within THIRTY (30) days of

implementation, the Facility SWPPP shall be amended to include all additional BMP measures designated in the Action Memorandum. CSPA may review and comment on an Action Memorandum and suggest any additional pollution prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed to constitute agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA, USA Waste agrees to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the contents and sufficiency of the Action Memorandum.

7. Inspections During The Term Of This Agreement. In addition to any site inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as set forth above, USA Waste shall permit representatives of CSPA to perform up to three (3) physical inspections of the Facility during the term of this Consent Agreement. These inspections shall be performed by CSPA's counsel and consultants and may include sampling, photographing, and/or videotaping. CSPA shall provide USA Waste with a copy of all sampling reports, photographs and/or video arising from such site inspections. CSPA shall provide at least forty-eight (48) hours advance notice of such physical site inspection, except that USA Waste shall have the right to deny access if circumstances would make the inspection unduly burdensome and pose significant interference with business operations or any party/attorney, or the safety of individuals. In such case, USA Waste shall specify at least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. USA Waste shall not make any alterations to Facility conditions during the period between receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that USA Waste would not otherwise have made but for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws or regulations. Nothing herein shall be construed to prevent USA Waste from continuing to implement any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

8. USA Waste' Communications with Regional and State Boards. During the term of this Consent Agreement, USA Waste shall provide CSPA with copies of all documents submitted to

the Regional Board or the State Board concerning storm water discharges from the Facility, including, but not limited to, all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to the Notice provisions herein (at ¶ 24) and contemporaneously with USA Waste' submission to such agencies.

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

II. MITIGATION, PAYMENT IN LIEU OF CIVIL PENALTIES, COMPLIANCE MONITORING AND FEES AND COSTS

10. As mitigation of the Clean Water Act violations alleged in CSPA's First Amended Complaint, USA Waste agrees to pay the sum of $30,000 within SEVEN (7) business days after the Court Approval Date to the Rose Foundation for Communities and the Environment **(**6008 College Avenue, Oakland, CA 94618, Attn: Tim Little**)** for projects to improve water quality in Comanche Creek, the Sacramento River and/or the Sacramento-San Joaquin-San Francisco Bay-River Delta. In lieu of any civil penalty assessment against USA Waste under Proposition 65, USA Waste agrees to pay the additional sum of $10,000 to the Rose Foundation for Communities and the Environment within SEVEN (7) business days after the Court Approval Date. These additional funds shall be used to reduce exposures to toxic chemicals, and to increase consumer, worker and community awareness of the health hazards posed by toxic chemicals consistent with the statutory goals of Proposition 65.

11. USA Waste agrees to reimburse CSPA in the amount of $32,500 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred as a result of investigating the activities at the Facility, bringing the Action and negotiating a resolution in the public interest. Such payment shall be made to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within SEVEN (7) business days after the Court Approval Date.

12. Compliance Monitoring Funding. To defray CSPA's reasonable investigative,

expert, consultant and attorneys' fees and costs associated with monitoring USA Waste' compliance with this Consent Agreement, USA Waste agrees to contribute $7,500 total to a compliance monitoring fund maintained by CSPA. Compliance monitoring activities may include, but shall not be limited to, site inspections, review of water quality sampling reports, review of annual reports, discussions with representatives of USA Waste concerning the Action Memoranda referenced above, and potential changes to compliance requirements herein, preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and compliance-related activities. Payment shall be made payable to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within SEVEN (7) business days of the Court Approval Date.

III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT

13. With the exception of the timelines set forth above for addressing exceedances of values specified on Exhibit E and Action Memoranda, if a dispute under this Consent Agreement arises, or either Party believes that a breach of this Consent Agreement has occurred, CSPA and USA Waste shall meet and confer within seven (7) 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, including implementation dates, to resolve the dispute. If CSPA and USA Waste fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven 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 filing a motion with the District Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this Consent Agreement. CSPA and USA Waste shall be entitled to seek fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provision.

14. CSPA Waiver and Release. Upon Court approval and entry of this Consent Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their

officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other representatives (each a "Released Defendant Party") from, and waives all claims which arise or could have arisen from or pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure of USA Waste to comply with the Clean Water Act and Proposition 65 at the Facility, up to the Effective Date of this Consent Decree.

During the term of the Consent Agreement, CSPA agrees that neither CSPA, its officers, executive staff, or members of its governing board nor any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against USA Waste seeking relief for alleged violations of the Clean Water Act, General Permit or Proposition 65. CSPA further agrees that, during the term of the Consent Agreement, CSPA will not support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against USA Waste that may be proposed by other groups that or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge USA Waste's compliance with the Clean Water Act or General Permit, or rely on the private enforcement provisions of Proposition 65 to challenge USA Waste's compliance with Proposition 65.

15. Defendants' Waiver and Release. Defendants, on their own behalf and on behalf of those Released Defendant Parties under its control, releases CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all claims which arise or could have arisen from or pertain to the Action, 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 Action.

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

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

b. the Court shall retain and have jurisdiction over CSPA and USA Waste with respect to disputes arising under this Agreement.

Nothing in this Consent Agreement shall be construed as a waiver of any party's right to appeal from an order that arises from an action to enforce the terms of this Consent Agreement. The Parties agree that Defendant Mike Donohue shall be dismissed from this matter and that all obligations under this Consent Decree shall be those of USA Waste and CSPA, and not of Defendant Mike Donohue.

IV. MISCELLANEOUS PROVISIONS

17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Agreement constitute or be construed as an admission by Defendants 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 Consent Agreement.

18. The Consent Agreement shall terminate on September 30, 2012.

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

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

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

22. The undersigned are authorized to execute this Consent Agreement on behalf of their

respective parties and have read, understood and agreed to be bound by all of the terms and conditions of this Consent Agreement.

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

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

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

With copies sent to:

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

Any notices or documents required or provided for by this Consent Agreement or related thereto that

are to be provided to USA Waste pursuant to this Consent Agreement shall be sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

USA Waste of California, Inc.
Attn: District Manager
2569 Scott Avenue
Chico, CA 95928
Tel: 530.243.2562
Fax: 530.345.5790

With copies sent to:

John Lynn Smith, Esq.
Reed Smith, LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Tel: 415.659.4863
Fax: 415.391.8269
E-mail: jlsmith@reedsmith.com

Andrew M. Kenefick, Esq.
Waste Management Legal Department
801 Second Avenue, Suite 614
Seattle, WA 98104
Tel: (206) 264-3062
Fax: (866) 863-7961
E-mail: akenefick@wm.com

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

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

26. Neither CSPA nor USA Waste 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 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

form presented, the Parties shall use their best efforts to work together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall become null and void.

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

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

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

The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for its approval and entry as an Order and Final Judgment, provided, however that, pursuant to 33 U.S.C. § 1365(c)(3), the Court shall not enter this Consent Decree until 45 days after receipt of a copy of the proposed Consent Decree by the Attorney General and the Administrator of the U.S. Environmental Protection Agency. If the Attorney General and the Administrator of the U.S. Environmental Protection Agency do not submit comments on the Consent Decree, the Parties shall notify the Court when the 45-day statutory review period has ended.

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

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

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

Nov. 5. 2010 3:25PM WM_CORNING No. 0180 P. 2/2

EXHIBIT A – Facility Site Map

EXHIBIT A

STORMWATER POLLUTION PREVENTION PLAN MAP

REVISIONS	BY

H.E. BOWEN, AIA
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Written dimensions on these documents shall have precedence over scaled dimensions. Contractors shall verify and be responsible for all dimensions and conditions on the job and these documents shall be notified of any variation from that shown or noted on these documents. Drawings must be submitted to this office for review before proceeding with fabrication.

CIVIL PLAN
(FOR REF. ONLY)
FOR PLN. CHK. ONLY

WASTE MANAGMENT
2569 SCOTT AVENUE
CHICO, CALIFORNIA 95928

DATE MAY 2010
SCALE 1"=30'-0"
DRAWN JM
JOB 05-1836

C-1

EXHIBIT B – Clean Water Act 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: 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.

Date	Parameter	Discharge	EPA Benchmark Value
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.

Date	Parameter	Discharge	EPA Benchmark Value
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.

Date	Parameter	Discharge	EPA Benchmark Value
10/31/2008	COD	210 mg/L	120 mg/L

8. Discharges of Storm Water Containing Lead (Pb) in Excess of EPA Benchmark Value.

Date	Parameter	Discharge	EPA Benchmark Value
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 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, 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:

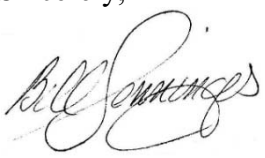
Robert J. Tuerck, Esq.
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

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

EXHIBIT B

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

EXHIBIT B

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 B

EXHIBIT C – Proposition 65 Notice of Violation

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.

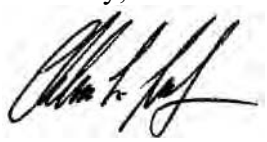
EXHIBIT C

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)

EXHIBIT C

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. 7th 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

EXHIBIT C

The Honorable Jeff W. Reisig
Yolo County District Attorney
301 2nd 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.

Erik M. Roper
Attorneys for Plaintiff
California Sportfishing Protection Alliance

EXHIBIT C

EXHIBIT D – Photographs and Conceptual drawing for Retention Basin

NORTH VALLEY DISPOSAL DETENTION BASIN IMPROVEMENTS

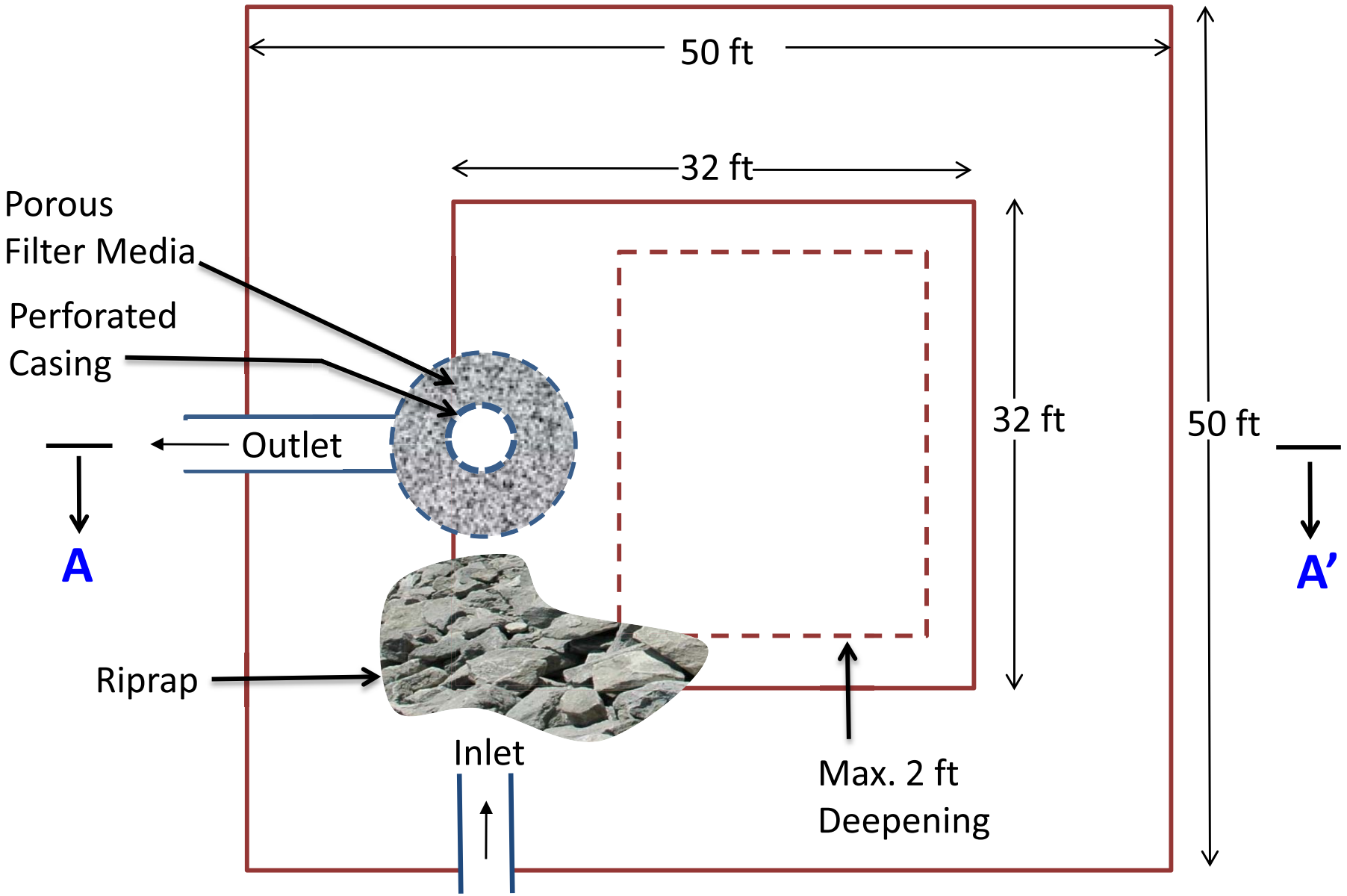
Fall 2010

EXHIBIT D

EXHIBIT D

EXHIBIT D

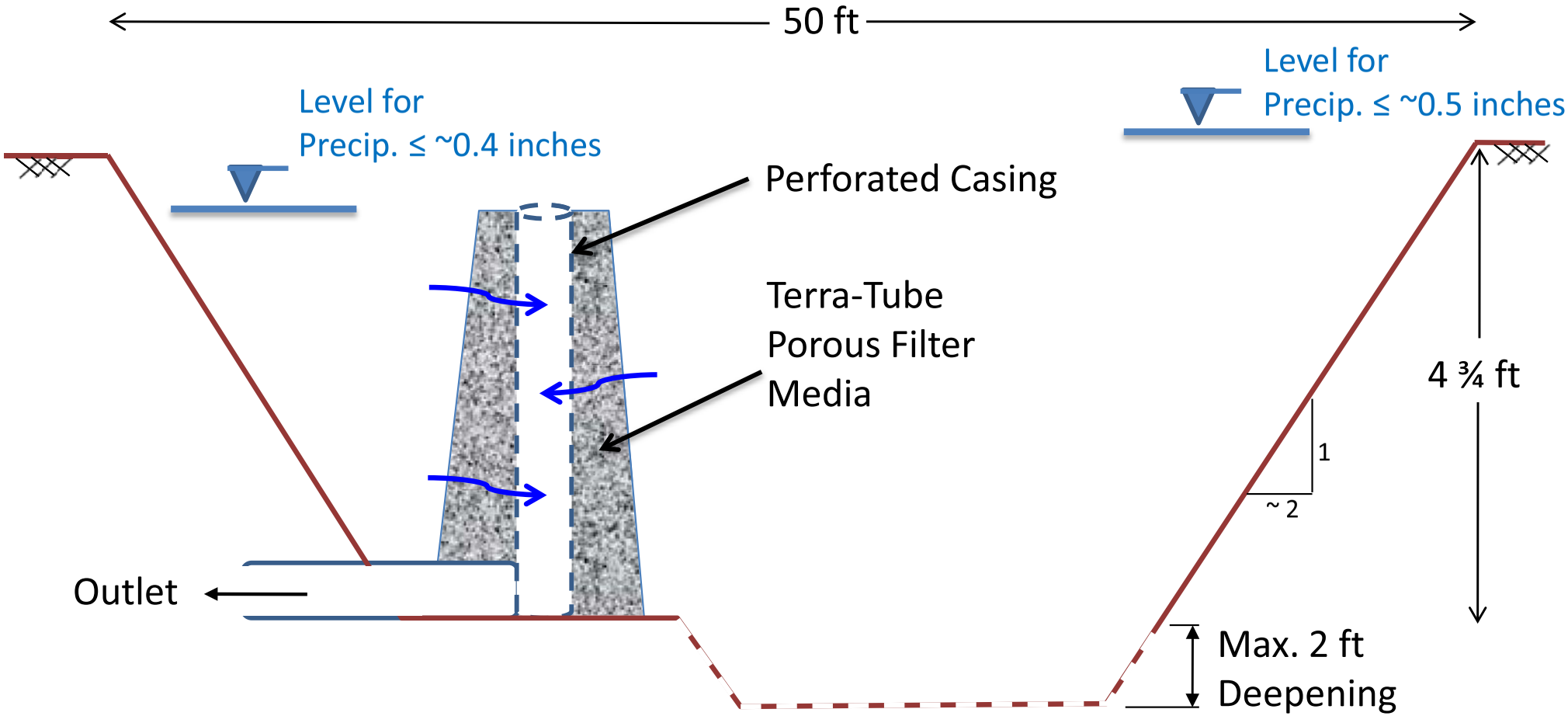
Chico Site – Conceptual Layout (PLAN VIEW)



NOT TO SCALE

EXHIBIT D

Chico Site – Conceptual Layout (Cross Section AA')



NOT TO SCALE (VERTICAL SCALE IS EXAGGERATED)

EXHIBIT D

EXHIBIT E

Parameter	Value
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