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18 CALIFORNIA SPORTFISHING  
19 PROTECTION ALLIANCE

20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 CALIFORNIA SPORTFISHING  
23 PROTECTION ALLIANCE, a non-profit  
24 corporation;  
25 Plaintiff,  
26 vs.  
27 SIMS GROUP USA CORPORATION,  
28 Defendant.

Case No. \_\_\_\_\_

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

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

**JURT TRIAL REQUESTED**

29 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
30 through its counsel, hereby alleges:

31 **I. INTRODUCTION**

32 1. This complaint seeks relief for Defendant Sims Group USA Corporation’s  
33 (“Defendant”) discharges of polluted storm water and non-storm water pollutants from  
34 Defendant’s Facility (“the Facility”) into the waters of the United States in violation of the

1 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
2 or “the Act”) and National Pollutant Discharge Elimination System (“NPDES”) Permit No.  
3 CAS000001, California Regional Water Quality Control Board, Central Valley Region  
4 (“Regional Board”) Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ  
5 (hereinafter “the Order” or “Permit”). Defendant’s violations of the discharge, treatment  
6 technology, and monitoring requirements, and other procedural and substantive requirements  
7 of the Permit and the Act are ongoing and continuous.

8         2.         The failure on the part of persons and facilities such as Defendant and its  
9 facility to comply with storm water requirements is recognized as a significant cause of the  
10 continuing decline in water quality of the Sacramento River and the Sacramento-San Joaquin  
11 Delta (the “Delta”), and other area receiving waters in the Central Valley. The general  
12 consensus among regulatory agencies and water quality specialists is that storm water  
13 pollution amounts to more than half the total pollution entering the aquatic environment each  
14 year. With every rainfall event, millions of gallons of polluted rainwater originating from  
15 industries within the surrounding area pour into the Sacramento-San Joaquin Delta. In most  
16 urbanized areas of Sacramento County, storm water drains completely untreated through  
17 storm drain systems directly to local surface waters and, eventually, into the waters of the  
18 Delta.

19         3.         The continuing decline in water quality in the Sacramento-San Joaquin Delta is  
20 a matter of serious public concern. Data gathered by CalFed, a coalition of 15 state and  
21 federal agencies analyzing water allocation issues, has confirmed that the Delta is a heavily  
22 polluted water body. The entire Delta, all of its major tributaries, and the waterways in and  
23 around the City of Sacramento have all been identified by the State Board, the Regional  
24 Board, and EPA as impaired water bodies under Section 303(d) of the Clean Water Act. 33  
25 U.S.C. § 1313(d).

26 **II. JURISDICTION AND VENUE**

27         4.         This is a civil suit brought under the citizen suit enforcement provisions of the  
28 Clean Water Act. This Court has subject matter jurisdiction over the parties and the subject

1 matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A),  
2 and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief  
3 requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in  
4 case of actual controversy and further necessary relief based on such a declaration), 33  
5 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil  
6 penalties).

7 5. On February 13, 2008, Plaintiff provided notice of the Defendant's violations  
8 of the Act, and of its intention to file suit against the Defendant, to the Administrator of the  
9 United States Environmental Protection Agency ("EPA"), the Administrator of EPA Region  
10 IX, the Executive Director of the State Water Resources Control Board ("State Board"), the  
11 Executive Officer of the Regional Water Quality Control Board, Central Valley Region  
12 ("Regional Board"), the U.S. Attorney General, and to Defendant, as required by the Act, 33  
13 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's notice letter is attached as  
14 Exhibit A, and is incorporated by reference.

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

20 7. Venue is proper in the Eastern District of California pursuant to Section  
21 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
22 within this judicial district. Pursuant to Local Rule 3-120, intradistrict venue is proper in  
23 Sacramento, California because the sources of the violations are located within Sacramento  
24 County.

### 25 **III. PARTIES**

26 8. Plaintiff California Sportfishing Protection Alliance ("CSPA") is a non-profit  
27 public benefit corporation organized under the laws of the State of California with its main  
28 office in Stockton, California. CSPA has approximately 3000 members who live, recreate

1 and work in and around waters of the State of California, including the Sacramento River  
2 and the Delta and other nearby waters of the United States. CSPA is dedicated to the  
3 preservation, protection, and defense of the environment, the wildlife and the natural  
4 resources of all waters of California. To further these goals, CSPA actively seeks federal  
5 and state agency implementation of the Act and other laws and, where necessary, directly  
6 initiates enforcement actions on behalf of itself and its members.

7 9. Members of CSPA reside in and around Sacramento County, the Sacramento  
8 River, and the Sacramento-San Joaquin Delta region. They use and enjoy the Sacramento  
9 River, the Delta, and other local waters for recreation and other activities. Members of  
10 CSPA use and enjoy the waters into which Defendant has caused, are causing, and will  
11 continue to cause, pollutants to be discharged. Members of CSPA use those areas to fish,  
12 sail, boat, kayak, swim, birdwatch, view wildlife and engage in scientific study including  
13 monitoring activities, among other things. Defendant's discharges of polluted storm water  
14 threaten or impair each of those uses or contribute to such threats and impairments. Thus,  
15 the interests of CSPA's members have been, are being, and will continue to be adversely  
16 affected by Defendant's failure to comply with the Clean Water Act and the Permit. The  
17 relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

18 10. Continuing commission of the acts and omissions alleged above will irreparably  
19 harm Plaintiff and the citizens of the State of California, for which harm they have no plain,  
20 speedy or adequate remedy at law.

21 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant Sims  
22 Group USA Corporation is a corporation organized under the laws of the State of Delaware.  
23 Defendant operates several scrap metal recycling facilities throughout California, including the  
24 facility in Rancho Cordova, California that is the subject of this enforcement action.

#### 25 **IV. STATUTORY AND REGULATORY BACKGROUND**

26 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
27 pollutant into waters of the United States, unless such discharge is in compliance with  
28 various enumerated sections of the Act. Among other things, Section 301(a) prohibits

1 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
2 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

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

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

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

17 16. In order to discharge storm water lawfully in California, industrial dischargers  
18 must comply with the terms of the General Permit or have obtained and complied with an  
19 individual NPDES permit. 33 U.S.C. § 1311(a).

20 17. The General Permit contains several absolute prohibitions. Discharge  
21 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-  
22 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.  
23 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to  
24 any surface or ground water that adversely impact human health or the environment.  
25 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that  
26 cause or contribute to an exceedance of any applicable water quality standards contained in a  
27 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

28 18. In addition to absolute prohibitions, the General Permit contains a variety of

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

6 19. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
7 or prevent pollutants in its storm water discharges through implementation of the Best  
8 Available Technology Economically Achievable ("BAT") for toxic and nonconventional  
9 pollutants and the Best Conventional Pollutant Control Technology ("BCT") for  
10 conventional pollutants. BAT and BCT include both nonstructural and structural measures.  
11 General Permit, Section A(8).

12 20. EPA has established Benchmark Levels as guidelines for determining whether  
13 a facility discharging industrial storm water has implemented the requisite BAT and BCT.  
14 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
15 established for pollutants discharged by Defendant: pH – 6.0-9.0; total suspended solids –  
16 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –  
17 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L.  
18 The State Water Quality Control Board also recently proposed adding a benchmark level for  
19 specific conductance of 200 µmho/cm.

20 21. Dischargers must develop and implement a Storm Water Pollution Prevention  
21 Plan ("SWPPP"). The SWPPP must comply with the BAT and BCT standards. The General  
22 Permit requires that an initial SWPPP have been developed and implemented before October  
23 1, 1992. The SWPPP must, among other requirements, identify and evaluate sources of  
24 pollutants associated with industrial activities that may affect the quality of storm and non-  
25 storm water discharges from the facility and identify and implement site-specific best  
26 management practices ("BMPs") to reduce or prevent pollutants associated with industrial  
27 activities in storm water and authorized non-storm water discharges (Section A(2)). The  
28 SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include:

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

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

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

6           24.     As part of their monitoring program, dischargers must identify all storm water  
7 discharge locations that produce a significant storm water discharge, evaluate the  
8 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
9 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
10 conduct visual observations of these discharge locations for at least one storm per month  
11 during the wet season (October through May) and record their findings in their Annual  
12 Report. Dischargers must also collect and analyze storm water samples from at least two  
13 storms per year. Section B(5)(a) of the General Permit requires that dischargers “shall  
14 collect storm water samples during the first hour of discharge from (1) the first storm event  
15 of the wet season, and (2) at least one other storm event in the wet season. All storm water  
16 discharge locations shall be sampled.” Section B(5)(c)(i) requires dischargers to sample and  
17 analyze during the wet season for basic parameters, such as pH, total suspended solids  
18 (“TSS”), electrical conductance, and total organic carbon (“TOC”) or oil and grease, certain  
19 industry-specific parameters, and toxic chemicals and other pollutants likely to be in the  
20 storm water discharged from the facility. Section B(5) and Table D of the General Permit  
21 requires dischargers whose industrial activities fall within SIC Code 5093 to analyze their  
22 storm water discharge samples for aluminum, copper, iron, lead, zinc, and chemical oxygen  
23 demand (“COD”). Dischargers must also conduct dry season visual observations to identify  
24 sources of non-storm water pollution. Dischargers electing to participate in a Group  
25 Monitoring Plan that has been approved by the State or Regional Board pursuant to Section  
26 B(15) of the General Permit are required to comply with all requirements of the Group  
27 Monitoring Plan.

28           25.     Section B(14) of the General Permit requires dischargers to submit an annual



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

6 26. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
7 enforcement actions against any “person,” including individuals, corporations, or  
8 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),  
9 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a).  
10 Violators of the Act are also subject to an assessment of civil penalties of up to \$27,500 per  
11 day (violations from January 30, 1997 through March 15, 2004) and \$32,500 per day  
12 (violations after March 15, 2004) pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§  
13 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

14 27. The Regional Board has established water quality standards for the Sacramento  
15 River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan for the  
16 Sacramento River and San Joaquin River Basins, generally referred to as the Basin Plan.

17 28. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
18 waters shall be maintained free of toxic substances in concentrations that produce  
19 detrimental physiological responses in human, plant, animal, or aquatic life.”

20 29. The Basin Plan establishes a standard for electrical conductivity in the Delta of  
21 0.7 mmhos/cm from April 1 through August 31 and 1.0 mmhos/cm from September 1  
22 through March 31.

23 30. The Basin Plan provides that “[w]aters shall not contain chemical constituents in  
24 concentrations that adversely affect beneficial uses.”

25 31. The Basin Plan provides that “[a]t a minimum, water designated for use as  
26 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
27 constituents in excess of the maximum contaminant levels (MCLs).” The waters of  
28 Sacramento Creek and the Delta have been designated by the State Board for use as

1 municipal and domestic supply.

2 **V. STATEMENT OF FACTS**

3 32. Defendant operates a scrap metal collection and recycling facility located at  
4 11320 Dismantle Court, in Rancho Cordova, California. The Facility is classified under  
5 Standard Industrial Classification code 5093 (“Scrap and Waste Materials”). According to  
6 publicly available records, Defendant filed a notice of intent to comply with the terms of the  
7 General Permit on March 30, 1992, June 30, 1993 and again on June 11, 1997 and was  
8 assigned WDID No. 5S34I005106 by the State Water Board.

9 33. The Facility collects and discharges storm water from at least three discharge  
10 points from its 9-acre industrial site to the City of Rancho Cordova’s storm drains, which  
11 discharge into the South Folsom Canal, which eventually discharges into the Sacramento  
12 River.

13 34. The main industrial activity at the Facility is scrap metal recycling. Operations  
14 include ferrous and non-ferrous metal receiving, shipping, processing, handling, sorting, and  
15 storage of materials, non-hazardous waste and hazardous waste. The Facility is also a public  
16 recycling drop-off center that accepts metals, plastics, glass, and other materials such as  
17 batteries, cars, and machinery. Other activities include the fueling and maintenance of the  
18 Facility and equipment, including washing of vehicles and equipment. Processing includes  
19 ferrous metal compacting, auto hulk crushing, nonferrous metal baling, and cutting of  
20 metals. Defendant operates the Facility on a continuous basis, 24 hours per day, seven days  
21 per weeks, 52 weeks per year.

22 35. CSPA is informed and believes, and thereupon alleges, that pollutants present  
23 as a result of Defendant’s industrial activities include suspended solids, specific  
24 conductivity, oils, greases, organic content, chemical oxygen demand, aluminum, copper,  
25 iron, lead, manganese, nickel, nitrates, nitrites, mercury, zinc, and other metals.

26 36. Defendant conducts significant activities at the site in outdoor, uncovered areas  
27 that are exposed to rainfall. These activities include the receiving, handling, storage, and  
28 transport of scrap metal and other recyclable materials. Heavy machinery and vehicles that

1 enter onto and operate at the Facility contribute to the presence of pollutants such as fuels,  
2 oils, greases, aluminum, copper, iron, lead, and zinc.

3 37. Plaintiff is informed and believes, and thereupon alleges that the storm water  
4 flows easily over the surface of the Facility, collecting sediment, oils, grease, metals, and  
5 other pollutants as it flows to the storm water drain and/or other outlets. Storm water and  
6 any pollutants contained in that storm water entering the drains flows directly to the City of  
7 Rancho Cordova storm drain system. CSPA is informed and believes, and thereupon  
8 alleges, that the City of Rancho Cordova does not treat storm water collected in its storm  
9 drain system prior to discharging storm water and any pollutants contained in such storm  
10 water to waters of the United States.

11 38. The management practices at the Facility continue to be inadequate to prevent  
12 the sources of contamination described above from causing the discharge of pollutants to  
13 waters of the United States. The Facility lacks sufficient structural controls such as grading,  
14 berming, roofing, containment, or drainage structures to prevent rainfall and storm water  
15 flows from coming into contact with these and other exposed sources of contaminants. The  
16 Facility lacks sufficient structural controls to prevent the discharge of water once  
17 contaminated. The Facility lacks adequate storm water pollution treatment technologies to  
18 treat storm water once contaminated. The Facility lacks any structural controls to prevent  
19 the tracking of pollutants from the Facility onto adjacent public roadways.

20 39. On March 23, 2005, a representative of the Regional Board conducted an  
21 inspection of the Facility. Based on the inspector's report, the Regional Board informed  
22 Defendant that "additional BMPs" were required at the Facility. Based on its review of  
23 publicly available documents, Plaintiff is informed and believes that Defendant failed to  
24 implement any additional, adequate BMPs as a result of the Regional Board's  
25 recommendation.

26 40. Since at least February 13, 2003, Defendant has been a member of the Metal  
27 Recyclers Group Monitoring Plan. Section B(15) of the General Permit requires members of  
28 any group monitoring plan to collect and analyze storm water samples from at least two

1 storm events occurring during non-consecutive years within a five year period.

2 41. Defendant was scheduled to collect storm water samples during the 2005-2006  
3 Wet Season. According to publicly available documents, Defendant failed to collect and  
4 analyze storm water samples at its Facility during the 2005-2006 Wet Season and claimed  
5 that no qualifying events as defined by the General Permit occurred.

6 42. Based on its review of publicly available documents, Plaintiff is informed and  
7 believes that qualifying storm events did occur during the 2005-2006 Wet Season and that  
8 Defendant's failure to collect storm water samples constitutes a violation of Defendant's  
9 obligations under the Group Monitoring Plan and Section B(15) of the General Permit.

10 43. According to publicly available information, Defendant has taken samples of  
11 storm water discharges at the Facility and had them analyzed by a laboratory on only one  
12 occasion since February 13, 2003. The sample results were reported in the Facility's Annual  
13 Reports submitted to the Regional Board for the 2006-2007 Wet Season.

14 44. Since at least February 13, 2003, Defendant has known that storm water  
15 discharges from the Facility contain total suspended solids ("TSS"), specific conductivity,  
16 aluminum, copper, iron, lead, zinc, and chemical oxygen demand ("COD") in excess of the  
17 EPA Benchmark Values and/or the proposed benchmark values for these pollutants.

18 45. On December 21, 2006, Defendant collected storm water from three discharge  
19 points at the Facility. Defendant analyzed the storm water for the presence of pH, total  
20 suspended solids, specific conductivity, oil and grease, aluminum, copper, iron, lead, zinc,  
21 and COD.

22 46. Analysis of storm water discharged from the Facility on December 21, 2006  
23 indicates that Defendant was discharging storm water with a concentration of total  
24 suspended solids in excess of the EPA Benchmark Value of 100 mg/L. On December 21,  
25 2006, Defendant also conducted a visual observation of storm water discharged from the  
26 Facility and described the discharged water as "cloudy". Plaintiff is informed and believes  
27 that the levels of TSS detected by Defendant in the storm water sample also exceed the  
28 narrative limits that EPA or the Board have established as water quality standards applicable

1 to TSS in California.

2 47. Analysis of storm water discharged from the Facility on December 21, 2006  
3 indicates that Defendant was discharging storm water with a level of specific conductivity in  
4 excess of the State Water Board's proposed benchmark value of 200  $\mu\text{mho/cm}$ .

5 48. Analysis of storm water discharged from the Facility on December 21, 2006  
6 indicates that Defendant was discharging storm water with a concentration of chemical  
7 oxygen demand in excess of the EPA Benchmark Value of 120 mg/L.

8 49. Analysis of storm water discharged from the Facility on December 21, 2006  
9 indicates that Defendant was discharging storm water with a concentration of aluminum in  
10 excess of the EPA Benchmark Value of 0.75 mg/L.

11 50. Analysis of storm water discharged from the Facility on December 21, 2006  
12 indicates that Defendant was discharging storm water with a concentration of copper in  
13 excess of the EPA Benchmark Value for copper of 0.0636 mg/L and the Basin Plan's  
14 numeric limit for copper of 0.1 mg/L.

15 51. Analysis of storm water discharged from the Facility on December 21, 2006  
16 indicates that Defendant was discharging storm water with a concentration of iron in excess  
17 of the EPA Benchmark Value for iron of 1.0 mg/L and the Basin Plan's numeric limit for  
18 iron of 0.3 mg/L.

19 52. Analysis of storm water discharged from the Facility on December 21, 2006  
20 indicates that Defendant was discharging storm water with a concentration of lead in excess  
21 of the EPA Benchmark Value for lead of 0.0816 mg/L.

22 53. Analysis of storm water discharged from the Facility on December 21, 2006  
23 indicates that Defendant was discharging storm water with a concentration of zinc in excess  
24 of the EPA Benchmark Value of 0.117 mg/L and the Basin Plan's numeric limit for zinc of  
25 0.1 mg/L.

26 54. On information and believe, Plaintiff alleges that since at least February 13,  
27 2002, Defendant has failed to analyze storm water samples collected at the Facility for  
28 chromium, nitrates, nitrites, manganese, and nickel despite that those pollutants are likely to

1 be discharged in significant quantities from the Facility.

2 55. The monitoring results described above were reported in Defendant's Annual  
3 Reports submitted to the Regional Board. Defendant is required to include, on Form 5 of  
4 those Annual Reports, an evaluation of the adequacy of best management practices at the  
5 Facility. Defendant has failed to include any discussion of any of its exceedances of the  
6 EPA's benchmark values or other applicable water quality criteria in any of its Annual  
7 Reports submitted in the past five years.

8 56. Defendant failed to conduct any visual observations of storm water discharged  
9 during the 2005-2006 Wet Season and claimed that no qualifying storm events occurred.  
10 According to publicly available documents, storm events did occur. Defendant's failure to  
11 conduct visual observations during the 2005-2006 constitutes an ongoing violation of the  
12 Permit and the Act.

13 57. Defendant failed to conduct any visual observations of storm water discharged  
14 during the 2004-2005 Wet Season and claimed that no qualifying storm events occurred.  
15 According to publicly available documents, storm events did occur. Defendant's failure to  
16 conduct visual observations during the 2004-2005 constitutes an ongoing violation of the  
17 Permit and the Act.

18 58. On information and belief, Plaintiff alleges that since at least February 13,  
19 2003, Defendant has consistently failed to implement an adequate monitoring and reporting  
20 plan, in violation of Section B of the General Industrial Storm Water Permit.

21 59. On information and belief, Plaintiff alleges that since at least February 13,  
22 2003, Defendant has failed to implement BAT and BCT at the Facility for its discharges of  
23 total suspended solids, specific conductance, chemical oxygen demand, aluminum, copper,  
24 iron, lead, zinc, and other pollutants. Section B(3) of the General Permit requires that  
25 dischargers such as Defendant implement BAT for toxic and nonconventional pollutants and  
26 BCT for conventional pollutants by no later than October 1, 1992 or prior to the  
27 commencement of operations. As of the date of this Complaint, Defendant has failed to  
28 implement BAT and BCT.

1           60.     On information and belief, Plaintiff alleges that Defendant has failed to prepare  
2 and regularly update the Facility SWPPP to set forth site-specific best management practices  
3 for the Facility that are adequate to achieve BAT or BCT at the Facility. Plaintiff is  
4 informed and believes, and thereupon alleges, that Defendant's SWPPP is inadequate and  
5 fails to comply with the requirements of the General Permit.

6           61.     Information available to Plaintiff indicates that as a result of Defendant's  
7 failure to evaluate the effectiveness of its existing BMPs, its failure to implement BAT and  
8 BCT at the Facility, its failure to fully monitor the quality of storm water discharges from the  
9 Facility and its failure to maintain an adequate SWPPP and monitoring program for the  
10 Facility, storm water containing pollutants harmful to fish, plant and bird life, and human  
11 health is being discharged during every significant rain event from the Facility directly to  
12 storm water system of the City of Rancho Cordova that flow to the South Folsom Canal, the  
13 Sacramento River, and the Delta.

14           62.     The storm drains and channels operated by the City of Rancho Cordova are  
15 tributary to the South Folsom Canal. The South Folsom Canal is a water of the United  
16 States and is tributary to the Sacramento River. The Sacramento River is a water of the  
17 United States and is tributary to the Delta. The Delta is a water of the United States.

18           63.     Plaintiff is informed and believes, and thereupon alleges, that pollutants  
19 discharged by the Facility in its storm water are contributing to violations of water quality  
20 standards that currently apply to the Sacramento River and the Sacramento-San Joaquin Delta.  
21 Plaintiff is informed and believes, and thereupon alleges, that Defendant is discharging total  
22 suspended solids, specific conductance, chemical oxygen demand, aluminum, copper, iron,  
23 lead, zinc, and un-monitored pollutants that are causing or contributing to exceedances of  
24 applicable water quality standards. Defendant is contributing to violations of water quality  
25 standards including, but not limited to, the narrative water quality standard for toxicity,  
26 suspended solids, and the numeric water quality standard for specific conductance.

27           64.     Plaintiff is informed and believes that Defendant has not submitted any reports  
28 pursuant to Section C(4)(a) of the General Permit within 60-days of becoming aware of

1 storm water pollutant levels exceeding the EPA benchmark levels or applicable water quality  
2 standards. Likewise, Defendant has failed to file a report describing the Facility's  
3 noncompliance with the General Permit pursuant to Section C(11)(d) of the General Permit.

4 65. Plaintiff is informed and believes that Defendant failed submit to the Regional  
5 Board true and complete annual reports certifying compliance with the General Permit since  
6 at least February 13, 2002. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the  
7 General Permit, Defendant must submit an annual report, that is signed and certified by the  
8 appropriate corporate officer, outlining the Facility's storm water controls and certifying  
9 compliance with the General Permit. Plaintiff is informed and believes, and thereupon  
10 alleges, that Defendant has signed incomplete annual reports that purported to comply with  
11 the General Permit when there was significant noncompliance at the Facility.

12 66. Information available to Plaintiff indicates that Defendant has not fulfilled the  
13 requirements set forth in the General Permit for discharges from the Facility due to the  
14 continued discharge of contaminated storm water and non-storm water. Plaintiff is informed  
15 and believes, and thereupon alleges, that all of the violations alleged in this Complaint are  
16 ongoing and continuing with every significant rain event.

## 17 **VI. CLAIMS FOR RELIEF**

### 18 **FIRST CAUSE OF ACTION**

#### 19 **Failure to Develop and Implement the Best Available and 20 Best Conventional Treatment Technologies (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

21 67. Plaintiff realleges and incorporate Paragraphs 1-66, as if fully set forth herein.

22 68. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
23 require dischargers to reduce or prevent pollutants in their storm water discharges through  
24 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
25 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its  
26 discharges of suspended solids, specific conductivity, chemical oxygen demand, aluminum,  
27 copper, iron, lead, zinc, and un-monitored pollutants in violation of Effluent Limitation B(3)  
28 of the General Permit.



1           66. Each day since February 13, 2002 that Defendant has failed to develop and  
2 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
3 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

4           67. Defendant has been in violation of the BAT/BCT requirements every day since  
5 at least February 13, 2003. Defendant continues to be in violation of the BAT/BCT  
6 requirements each day that it fails to develop and fully implement an adequate BAT/BCT for  
7 the Facility.

8   **SECOND CAUSE OF ACTION**  
9   **Failure to Prepare, Implement, Review, and Update**  
10   **an Adequate Storm Water Pollution Prevention Plan**  
11   **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

12           68. Plaintiff realleges and incorporate Paragraphs 1-67, as if fully set forth herein.

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

16           70. Defendant has failed to develop and implement an adequate SWPPP for the  
17 Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the  
18 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of scrap metal and other waste  
19 materials, and Defendant's conducting of industrial activities without appropriate best  
20 management practices; the continued exposure of significant quantities of scrap and waste  
21 materials to storm water flows; the continued exposure and tracking of waste resulting from the  
22 operation or maintenance of vehicles at the site, including heavy vehicles and machinery, the  
23 failure to either treat storm water prior to discharge or to implement effective containment  
24 practices; and the continued discharge of storm water pollutants from the Facility at levels in  
25 excess of EPA benchmark values and other applicable water quality standards.

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

28           72. Each day since October 1, 1992 that Defendant has failed to develop, implement  
and update an adequate SWPPP for the Facility is a separate and distinct violation of Section

1 301(a) of the Act, 33 U.S.C. § 1311(a).

2 73. Defendant has been in violation of the SWPPP requirements every day since  
3 October 1, 1992. Defendant continues to be in violation of the SWPPP requirements each day  
4 that it fails to develop and fully implement an adequate SWPPP for the Facility.

5 **THIRD CAUSE OF ACTION**

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

7 74. Plaintiff re-alleges and incorporates Paragraphs 1-73, inclusive, as if fully set  
8 forth herein.

9 75. Section B of the General Permit requires dischargers of storm water associated  
10 with industrial activity to develop and implement a monitoring and reporting program  
11 (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

12 76. Defendant has failed to develop and implement an adequate monitoring and  
13 reporting program for the Facility. Defendant's ongoing failure to develop and implement  
14 an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to  
15 monitor for requisite pollution parameters and to conduct the necessary visual observations  
16 as required by the General Industrial Storm Water Permit.

17 77. Each day since October 1, 1992 that Defendant has failed to develop and  
18 implement an adequate monitoring and reporting program for the Facility in violation of the  
19 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
20 1311(a). The absence of requisite monitoring and analytical results are ongoing and  
21 continuous violations of the Act.

22 **FOURTH CAUSE OF ACTION**

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

24 78. Plaintiff re-alleges and incorporates Paragraphs 1-77, inclusive, as if fully set  
25 forth herein.

26 79. Discharge Prohibition A(2) of the General Permit requires that storm water  
27 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
28

1 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
2 General Permit require that storm water discharges and authorized non-storm water discharges  
3 shall not adversely impact human health or the environment, and shall not cause or contribute  
4 to a violation of any water quality standards contained in a Statewide Water Quality Control  
5 Plan or the applicable Regional Board's Basin Plan.

6 80. Plaintiff is informed and believes, and thereupon alleges, that since at least  
7 February 13, 2003, Defendant has been discharging polluted storm water from the Facility  
8 directly to storm drains of the City of Rancho Cordova, that flow into the South Folsom  
9 Canal, the Sacramento River and ultimately the Delta, in violation of the Discharge  
10 Prohibition A(2) of the General Permit.

11 81. During every rain event, rainwater flows freely over exposed scrap metal, waste,  
12 industrial materials, and other accumulated pollutants at the Facility, becoming contaminated  
13 with these pollutants. The rainwater then flows from the Facility into one or more adjacent  
14 storm water drains. This contaminated storm water flows through the drains into the nearby  
15 South Folsom Canal, which is tributary to the Sacramento River and, ultimately, the Delta.

16 82. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
17 contaminated storm water are causing pollution and contamination of the waters of the United  
18 States in violation of Discharge Prohibition A(2) of the General Permit.

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

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

26 85. Every day since at least February 13, 2003, that Defendant has discharged and  
27 continues to discharge polluted storm water from the Facility in violation of the General Permit  
28 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These

1 violations are ongoing and continuous.

2 **FIFTH CAUSE OF ACTION**

3 **False Certification of Compliance In Annual Report**  
4 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

5 86. Plaintiff realleges and incorporate Paragraphs 1-85, as if fully set forth herein.

6 87. Defendant has falsely certified compliance with the General Permit in each of  
7 the annual reports submitted to the Regional Board since at least June 2003.

8 88. Each day since at least February 13, 2003 that Defendant has falsely certified  
9 compliance with the General Permit is a separate and distinct violation of the General Permit  
10 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of  
11 the General Permit's certification requirement each day that it maintains its false certification  
12 of its compliance with the General Permit.

13 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

14 **V. RELIEF REQUESTED**

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

- 16 a. Declare Defendant to have violated and to be in violation of the Act as  
17 alleged herein;
- 18 b. Enjoin Defendant from discharging polluted storm water from the Facility  
19 unless authorized by the Permit;
- 20 c. Enjoin Defendant from further violating the substantive and procedural  
21 requirements of the Permit;
- 22 d. Order Defendant to immediately implement storm water pollution control  
23 and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
24 pollutants in the facility's storm water from contributing to violations of any water quality  
25 standards in the Delta;
- 26 e. Order Defendant to provide Plaintiff with reports documenting the quality  
27 and quantity of its discharges to waters of the United States and its efforts to comply with the  
28 Act and the Court's orders;
- f. Order Defendant to pay civil penalties of \$27,500 per day per violation for

1 all violations occurring before March 15, 2004, and \$32,500 per day per violation for all  
2 violations occurring after March 15, 2004, for each violation of the Act pursuant to Sections  
3 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

4 g. Order Defendant to take appropriate actions to restore the quality of  
5 navigable waters impaired or adversely affected by its activities;

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

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

9 Dated: April 25, 2008

Respectfully submitted,

10

LAW OFFICES OF ANDREW L. PACKARD

11

By: /s/ Michael Lynes

12

Michael P. Lynes  
Attorney for Plaintiff  
CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

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**EXHIBIT A**



## California Sportfishing Protection Alliance

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

3536 Rainier Avenue, Stockton, CA 95204

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

February 13, 2008

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

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Sims Group USA Corporation  
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David M. Rogers  
Division Manager, Sims Group USA Corporation  
11320 Dismantle Ct  
Rancho Cordova, CA 95742

**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 scrap metal recycling facility owned and/or operated by Sims Group USA Corporation and Sims Hugo Neu, located at 11320 Dismantle Court, Rancho Cordova, CA 95742 ("the Facility"). The WDID identification number for the Facility is 5S34I005106. 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 Sims Group USA Corporation and Sims Hugo Neu (collectively, "Sims").

This letter addresses Sims' unlawful discharges of pollutants from the Facility to the local storm drain system, which drains into the South Folsom Canal, 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 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 Sims is well aware of issues regarding its compliance with the General Industrial Storm

Water Permit at other Sims facilities located throughout California. It is CSPA's intention, through this letter, to bring these violations to Sims' 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, Sims 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 Sims 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 June 30, 1993, and again on June 11, 1997, Sims submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as a scrap metal recycling facility under Standard Industrial Classification code 5093. Sims is and has been a member of the Metal Recyclers Monitoring Group ("MRMG") since at least February 13, 2003. The Facility collects and discharges storm water from its nine-acre industrial site through at least three discharge points to storm water drains on Dismantle Court, which drain to the South Folsom Canal 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 0.1 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 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.

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 Sims: pH – 6.0-9.0; zinc – 0.117 mg/L; lead – 0.0816 mg/L; iron – 1.0 mg/L; copper – 0.0636 mg/L; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and COD – 120 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmho/cm.

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

Sims 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.

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

Sims has discharged and continues to discharge stormwater with unacceptable levels of aluminum, copper, iron, lead, zinc, COD, specific conductivity, and total suspended solids 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. Sims' 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 Sims 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.

<b>Date</b>	<b>Parameter</b>	<b>Concentration</b>	<b>EPA Benchmark</b>
12/21/2006 (Outfall #1)	Spec. Cond.	236 µmho/cm	200 µmho/cm
12/21/2006 (Outfall #1)	COD	130 mg/L	120 mg/L
12/21/2006 (Outfall #1)	TSS	133 mg/L	100 mg/L
12/21/2006 (Outfall #1)	Aluminum	5.91 mg/L	0.75 mg/L
12/21/2006 (Outfall #1)	Copper	0.395 mg/L	0.0636 mg/L
12/21/2006 (Outfall #1)	Iron	7.47 mg/L	1.0 mg/L
12/21/2006 (Outfall #1)	Lead	0.327 mg/L	0.0816 mg/L
12/21/2006 (Outfall #1)	Zinc	0.366 mg/L	0.117 mg/L
12/21/2006 (Outfall #2)	Aluminum	3.89 mg/L	0.75 mg/L
12/21/2006 (Outfall #2)	Copper	0.094 mg/L	0.0636 mg/L
12/21/2006 (Outfall #2)	Iron	6.96 mg/L	1.0 mg/L
12/21/2006 (Outfall #2)	Lead	0.098 mg/L	0.0816 mg/L
12/21/2006 (Outfall #2)	Zinc	0.293 mg/L	0.117 mg/L
12/21/2006 (Outfall #3)	Aluminum	4.86 mg/L	0.75 mg/L
12/21/2006 (Outfall #3)	Copper	0.238 mg/L	0.0636 mg/L
12/21/2006 (Outfall #3)	Iron	8.62 mg/L	1.0 mg/L
12/21/2006 (Outfall #3)	Lead	0.247 mg/L	0.0816 mg/L
12/21/2006 (Outfall #3)	Zinc	0.433 mg/L	0.117 mg/L

CSPA is informed and believes that Sims has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 13, 2003. 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 13, 2003, 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 Sims has discharged storm water containing impermissible levels of aluminum copper, iron, lead, zinc, TSS, COD, and specific conductivity 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, Sims is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 13, 2003.

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

***1. Sims Has Failed to Collect at Least Two Storm Water Samples During Non-Consecutive Seasons Within the Last Five Years.***

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. As a member of a group monitoring plan, Sims is required to collect storm water samples from at least two storm events during a five-year period. Section B(15)(b). The storm water samples are to be collected evenly across the five-year period and in non-consecutive years. *Id.*

Based on its review of publicly available documents, CSPA is informed and believes that Sims has failed to collect storm water samples from all discharge points at the Facility for at least two storm events in non-consecutive years as required by Section B(15)(b). Notably, Sims failed to collect and analyze a sample from Outfall #1 for pH during the 2006-2007 Wet Season. Moreover, Sims failed to collect any storm water samples during the 2005-2006 Wet Season, despite being designated to do so by the Group Monitoring Plan. Sims’ 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. *Sims 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 Sims’ Annual Reports submitted to the Regional Board, CSPA believes Sims has failed to monitor for at least three pollutants likely to be present in storm water discharges in significant quantities – chromium, manganese, and nickel. 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 the Permit and Act.

**3. *Sims Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 13, 2003.***

CSPA is informed and believes that available documents demonstrate Sims’ 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, Sims is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 13, 2003.

**C. *Sims 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 Sims has not implemented BAT and BCT at the Facility for its discharges of aluminum, copper, chromium, iron, lead, manganese, nickel, zinc, total suspended solids, COD and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

On March 23, 2005, an inspector from Tetra Tech, acting as a contractor for the U.S. Environmental Protection Agency, conducted an inspection of the Facility for compliance with the General Industrial Storm Water Permit. On April 28, 2005, the Regional Board sent a letter to Sims with a copy of the inspector’s report. The Regional Board, on the inspector’s recommendation, noted that “additional BMPs should be implemented (such as good housekeeping, etc.)” and that the SWPPP should be revised. Based on available documents, CSPA is informed and believes that Sims failed to

implement any additional BMPs and/or to inform the Regional Board of any such improvements or revisions to the SWPPP.

Sims was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Sims 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 Sims fails to implement BAT and BCT. Sims is subject to penalties for violations of the Order and the Act occurring since February 13, 2003.

**D. Sims 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 waterbodies, 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 exceedence of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Sims has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Sims has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Sims has also failed to ensure that a properly prepared and certified SWPPP is available at the facility for review. Sims 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 Sims fails to develop and implement an effective SWPPP. Sims is subject to penalties for violations of the Order and the Act occurring since February 13, 2003.

**E. Sims 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, Sims is discharging elevated levels of aluminum, copper, iron, lead, zinc, COD, specific conductivity, and total suspended solids that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Sims 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, Sims was aware of high levels of many of these pollutants prior to February 13, 2003. Likewise, Sims 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). Sims 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 13, 2003, and will continue to be in violation every day that Sims fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Sims is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 13, 2003.

**F. Sims 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 Sims 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 2005-2006 Annual Report, Sims certified that it failed to collect storm water samples as required because there were no qualifying storm events during the rain 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, as indicated above, Sims has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Sims has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Sims submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Sims' failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Sims is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 13, 2003.

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

CSPA puts Sims on notice that they, including Sims Group USA Corporation and Sims Hugo Neu, 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 Sims 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  
Law Offices of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
(707) 763-7227

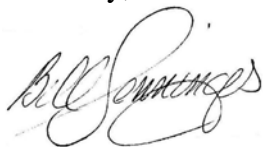
Michael R. Lozeau  
Law Office of Michael R. Lozeau  
1516 Oak Street, Suite 216  
Alameda, California 94501  
(510) 749-9102

**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 Sims 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 Sims 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**

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

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

Michael Mukasey, 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

CSC - LAWYERS INCORPORATING SERVICE  
Agent for Service of Process for  
Sims Group Corporation, Inc.  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833

**ATTACHMENT A**  
**Notice of Intent to File Suit, Sims USA Corporation**  
**Significant Rain Events, February 13, 2003-February 13, 2008**

Feb	12	2003	May	28	2004	June	08	2005	April	07	2006
Feb	15	2003	Sep	19	2004	Nov	25	2005	April	10	2006
Feb	16	2003	Oct	17	2004	Nov	28	2005	April	11	2006
Feb	19	2003	Oct	19	2004	Dec	01	2005	April	12	2006
March	14	2003	Oct	20	2004	Dec	17	2005	April	16	2006
March	15	2003	Oct	23	2004	Dec	18	2005	May	21	2006
March	16	2003	Oct	25	2004	Dec	21	2005	Oct	05	2006
March	19	2003	Oct	26	2004	Dec	22	2005	Nov	02	2006
March	23	2003	Nov	03	2004	Dec	25	2005	Nov	11	2006
April	04	2003	Nov	10	2004	Dec	26	2005	Nov	13	2006
April	12	2003	Nov	11	2004	Dec	27	2005	Nov	26	2006
April	13	2003	Nov	27	2004	Dec	28	2005	Nov	27	2006
April	24	2003	Dec	06	2004	Dec	30	2005	Dec	08	2006
April	27	2003	Dec	07	2004	Dec	31	2005	Dec	09	2006
April	28	2003	Dec	08	2004	Jan	01	2006	Dec	10	2006
May	02	2003	Dec	28	2004	Jan	02	2006	Dec	11	2006
May	03	2003	Dec	29	2004	Jan	07	2006	Dec	12	2006
Aug	21	2003	Dec	30	2004	Jan	14	2006	Dec	21	2006
Aug	22	2003	Dec	31	2004	Jan	17	2006	Dec	26	2006
Nov	03	2003	Jan	02	2005	Jan	18	2006	Dec	27	2006
Nov	07	2003	Jan	03	2005	Jan	28	2006	Feb	07	2007
Nov	08	2003	Jan	07	2005	Jan	30	2006	Feb	08	2007
Nov	15	2003	Jan	08	2005	Feb	01	2006	Feb	09	2007
Dec	01	2003	Jan	10	2005	Feb	17	2006	Feb	10	2007
Dec	06	2003	Jan	11	2005	Feb	18	2006	Feb	11	2007
Dec	10	2003	Jan	26	2005	Feb	19	2006	Feb	12	2007
Dec	12	2003	Jan	28	2005	Feb	26	2006	Feb	22	2007
Dec	14	2003	Feb	15	2005	Feb	27	2006	Feb	24	2007
Dec	19	2003	Feb	16	2005	Feb	28	2006	Feb	25	2007
Dec	20	2003	Feb	18	2005	March	02	2006	Feb	26	2007
Dec	23	2003	Feb	19	2005	March	03	2006	Feb	27	2007
Dec	24	2003	Feb	20	2005	March	05	2006	March	20	2007
Dec	29	2003	Feb	27	2005	March	06	2006	April	11	2007
Jan	01	2004	March	01	2005	March	07	2006	April	14	2007
Jan	06	2004	March	02	2005	March	12	2006	April	21	2007
Jan	07	2004	March	19	2005	March	14	2006	April	22	2007
Jan	27	2004	March	20	2005	March	16	2006	May	02	2007
Feb	02	2004	March	21	2005	March	20	2006	May	03	2007
Feb	03	2004	March	22	2005	March	24	2006	May	04	2007
Feb	06	2004	March	23	2005	March	25	2006	Oct	10	2007
Feb	16	2004	March	27	2005	March	27	2006	Oct	12	2007
Feb	17	2004	March	29	2005	March	28	2006	Nov	10	2007
Feb	18	2004	April	03	2005	March	29	2006	Nov	11	2007
Feb	24	2004	April	08	2005	March	31	2006	Dec	04	2007
Feb	25	2004	May	04	2005	April	02	2006	Dec	06	2007
Feb	26	2004	May	08	2005	April	03	2006	Dec	07	2007
March	01	2004	May	09	2005	April	04	2006	Dec	17	2007
March	25	2004	May	19	2005	April	05	2006	Dec	18	2007

**ATTACHMENT A**  
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**Significant Rain Events, February 13, 2003-February 13, 2008**

Dec	19	2007
Dec	20	2007
Dec	29	2007
Jan	03	2008
Jan	04	2008
Jan	05	2008
Jan	08	2008
Jan	10	2008
Jan	21	2008
Jan	22	2008
Jan	23	2008
Jan	24	2008
Jan	25	2008
Jan	27	2008
Jan	29	2008
Jan	31	2008
Feb	02	2008