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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.

CHICO SCRAP METAL, INC. a  
California corporation, GEORGE  
SCOTT, SR., an individual, and  
GEORGE SCOTT, JR., an individual,

Defendants,

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

**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 (“CSPA”), 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. Section 1251, *et seq.* (the “Clean Water Act”  
or “the Act”) against Chico Scrap Metal, Inc., Mr. George Scott, Sr., and Mr. George Scott,

Jr. (hereafter “Defendants”). 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 March 17, 2010, Plaintiff provided notices 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 Exhibits A, B and C, and are incorporated by reference.

3. More than sixty days have passed since these notices were served on Defendants 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 nor 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 Eastern District of California pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in Sacramento, California because the sources of the violations are located within Butte County.

## **II. INTRODUCTION**

5. This complaint seeks relief for Defendants’ discharges of pollutants from

1 three scrap metal recycling facilities owned and/or operated by Defendants.

2 6. The first of these three facilities is an approximately one-acre scrap metal  
3 recycling and vehicle crushing and recycling facility ("Facility 1") owned and/or operated by  
4 Defendants Chico Scrap Metal, Inc., George Scott, Sr., and George Scott, Jr. Facility 1 is  
5 located at 878 East 20<sup>th</sup> Street in Chico, California. Facility 1 discharges surface water to the  
6 storm water conveyance system for the City of Chico. The portion of the storm water  
7 conveyance system for the City of Chico into which Facility 1 discharges its storm water  
8 discharges and flows into Comanche Creek which flows into Butte Creek, which drains to  
9 the Sacramento River and the Sacramento-San Joaquin Delta.

10 7. The second of these three facilities is an approximately nine-acre scrap metal  
11 recycling and vehicle crushing and recycling facility ("Facility 2") owned and/or operated by  
12 Defendants Chico Scrap Metal, Inc., George Scott, Sr., and George Scott, Jr. Facility 2 is  
13 located at 1855 Kusel Road in Oroville, California. Facility 2 discharges surface water to a  
14 series of irrigation ditches that discharge to the North Fork Honcut Creek, which flows into  
15 Honcut Creek, which flows into the Feather River, which drains to the Sacramento River and  
16 the Sacramento-San Joaquin Delta.

17 8. The third of these three facilities is an approximately seven-acre scrap metal  
18 recycling and vehicle crushing and recycling facility ("Facility 3") owned and/or operated by  
19 Defendants Chico Scrap Metal, Inc., George Scott, Sr., and George Scott, Jr. Facility 3 is  
20 located at 766 Chico-Oroville Highway in Durham, California. Facility 3 discharges surface  
21 water to Butte Creek, which drains to the Sacramento River and the Sacramento-San Joaquin  
22 Delta.

23 9. Facility 1, Facility 2 and Facility 3 shall hereafter collectively be referred to  
24 as "the Facilities" unless otherwise noted.

25 10. Defendants' discharges of pollutants from the Facilities are in violation of the  
26 Act and the State of California's General Industrial Permit for storm water discharges, State  
27 Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as  
28 amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-

1 DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit No.  
2 CAS000001 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing,  
3 monitoring, reporting, discharge and management practice requirements, and other  
4 procedural and substantive requirements of the General Permit and the Act are ongoing and  
5 continuous.

6 11. The failure on the part of industrial facility operators such as Defendants to  
7 comply with the General Permit is recognized as a significant cause of the continuing decline  
8 in water quality of these receiving waters. The general consensus among regulatory agencies  
9 and water quality specialists is that storm water pollution amounts to more than half the total  
10 pollution entering the marine environment each year. With every rainfall event, hundreds of  
11 thousands of gallons of polluted storm water originating from industrial facilities discharge  
12 to Creek, Comanche Creek, North Fork Honcut Creek, Honcut Creek, the Feather River, the  
13 Sacramento River, and the Sacramento-San Joaquin Delta.

### 14 **III. PARTIES**

15 12. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
16 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
17 California with its main office in Stockton, California. CSPA has approximately 2,000  
18 members who live, recreate and work in and around waters of the State of California,  
19 including Butte Creek, Comanche Creek, North Fork Honcut Creek, Honcut Creek, the  
20 Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta. CSPA is  
21 dedicated to the preservation, protection, and defense of the environment, and the wildlife  
22 and the natural resources of all waters of California. To further these goals, CSPA actively  
23 seeks federal and state agency implementation of the Act and other laws and, where  
24 necessary, directly initiates enforcement actions on behalf of itself and its members.

25 13. Members of CSPA reside in California and use and enjoy California's  
26 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the  
27 waters of Butte Creek, Comanche Creek, North Fork Honcut Creek, Honcut Creek, the  
28 Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta, into which

1 Defendants have caused, are causing, and will continue to cause, pollutants to be discharged.  
2 Members of CSPA use these areas to fish, sail, boat, kayak, swim, birdwatch, view wildlife  
3 and engage in scientific study, including monitoring activities, among other things.  
4 Defendants' discharges of pollutants threaten or impair each of those uses or contribute to  
5 such threats and impairments. Thus, the interests of CSPA's members have been, are being,  
6 and will continue to be adversely affected by Defendants' ongoing failure to comply with the  
7 Clean Water Act. The relief sought herein will redress the harms to Plaintiff caused by  
8 Defendants' activities.

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

12 15. Plaintiff is informed and believes, and thereupon alleges: (a) that Defendant  
13 Chico Scrap Metal, Inc. is a corporation organized under the laws of the State of California,  
14 and that it is the operator of the Facilities; (b) that Defendant George Scott, Sr. is the  
15 President and part owner of Chico Scrap Metal, Inc.; and, (c) that Defendant George Scott,  
16 Jr. is the Vice President and part owner of Chico Scrap Metal, Inc. Accordingly, Defendants  
17 own and/or operate the Facility.

18 **IV. STATUTORY BACKGROUND**

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

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

1 water dischargers. 33 U.S.C. § 1342.

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

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

10 20. The General Permit contains certain absolute prohibitions. Discharge  
11 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
12 other than storm water ("non-storm water discharges"), which are not otherwise regulated by  
13 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
14 General Permit prohibits storm water discharges and authorized non-storm water discharges  
15 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water  
16 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
17 ground water that adversely impact human health or the environment. Receiving Water  
18 Limitation C(2) of the General Permit prohibits storm water discharges that cause or  
19 contribute to an exceedance of any applicable water quality standards contained in a  
20 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

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

27 22. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
28 or prevent pollutants in its storm water discharges through implementation of the Best

1 Available Technology Economically Achievable (“BAT”) for toxic and nonconventional  
2 pollutants and the Best Conventional Pollutant Control Technology (“BCT”) for  
3 conventional pollutants. BAT and BCT include both nonstructural and structural measures.  
4 General Permit, Section A(8).

5 23. EPA has established Benchmark Levels as guidelines for determining  
6 whether a facility discharging industrial storm water has implemented the requisite BAT and  
7 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
8 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –  
9 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –  
10 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L.  
11 The State Water Quality Control Board has proposed adding a benchmark level for specific  
12 conductance of 200  $\mu$ mhos/cm.

13 24. Dischargers must develop and implement a Storm Water Pollution  
14 Prevention Plan (“SWPPP”) before October 1, 1992. The SWPPP must comply with the  
15 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
16 (1) a narrative description and summary of all industrial activity, potential sources of  
17 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
18 water conveyance system, associated points of discharge, direction of flow, areas of  
19 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
20 storm water management practices, best management practices (“BMPs”) and preventive  
21 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
22 the location where Significant Materials are being shipped, stored, received and handled, as  
23 well as the typical quantities of such materials and the frequency with which they are  
24 handled; (5) a description of potential pollutant sources including industrial processes,  
25 material handling and storage areas, dust and particulate generating activities; (6) a summary  
26 of storm water sampling points; (7) a description of individuals and their responsibilities for  
27 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of  
28 potential pollutant sources including industrial processes, material handling and storage



1 areas, and dust and particulate generating activities; (9) a description of significant spills and  
2 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description  
3 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an  
4 assessment of potential pollutant sources at the Facility and a description of the BMPs to be  
5 implemented at the Facility that will reduce or prevent pollutants in storm water discharges  
6 and authorized non-storm water discharges, including structural BMPs where non-structural  
7 BMPs are not effective (Section A(7), (8)).

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

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

26         27. The General Permit requires dischargers commencing industrial activities  
27 before October 1, 1992 to develop and implement an adequate written Monitoring and  
28 Reporting Program no later than October 1, 1992. Existing facilities covered under the



1 General Permit must implement all necessary revisions to their monitoring programs no later  
2 than August 1, 1997.

3 28. The General Permit also requires dischargers to submit yearly "Annual  
4 Reports" to the Regional Board. As part of their monitoring program, dischargers must  
5 identify all storm water discharge locations that produce a significant storm water discharge,  
6 evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether  
7 pollution control measures set out in the SWPPP are adequate and properly implemented.  
8 Dischargers must then conduct visual observations of these discharge locations for at least  
9 one storm per month during the wet season (October through May) and record their findings  
10 in their Annual Report. Dischargers must also collect and analyze storm water samples from  
11 at least two storms per year. Section B requires dischargers to sample and analyze during the  
12 wet season for basic parameters such as pH, total suspended solids ("TSS"), specific  
13 conductance, and total organic carbon ("TOC") or oil and grease, certain industry-specific  
14 parameters, and toxic chemicals and other pollutants likely to be in the storm water  
15 discharged from the facility. Section B(5) and Table D of the General Permit requires  
16 dischargers whose industrial activities fall within SIC Code 5093 to analyze their storm  
17 water discharge samples for iron, lead, aluminum, copper, zinc and chemical oxygen  
18 demand. Dischargers must also conduct dry season visual observations to identify sources of  
19 non-storm water pollution. The monitoring and reporting program requires dischargers to  
20 certify, based upon the annual site inspections, that the facility is in compliance with the  
21 General Permit and report any non-compliance, and contains additional requirements as well.

22 29. In order to discharge storm water lawfully in California, industrial  
23 dischargers must comply with the terms of the General Permit or have obtained and  
24 complied with an individual NPDES permit.

25 30. The term "discharge of pollutants" means "any addition of any pollutant to  
26 navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to  
27 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
28 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

1           31.       A point source is defined as “any discernable, confined and discrete  
2 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .  
3 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

4           32.       “Navigable waters” means “the waters of the United States.” 33 U.S.C. §  
5 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.  
6 Waters of the United States include man-made water bodies that are tributary to waters that  
7 are navigable in fact. Waters of the United States include ephemeral waters that are tributary  
8 to waters that are navigable in fact.

9           33.       Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
10 enforcement actions against any “person,” including individuals, corporations, or  
11 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of  
12 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under  
13 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an  
14 assessment of civil penalties of up to \$32,500 per day for violations that occurred between  
15 March 15, 2004 and January 12, 2009, and an assessment of civil penalties of up to \$37,500  
16 per day for violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of  
17 the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

18           34.       The Regional Board has established water quality standards for the  
19 Sacramento River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan  
20 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin  
21 Plan.

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

25           36.       The Basin Plan establishes a standard for electrical conductivity in the Delta  
26 of 0.7  $\mu\text{mhos/cm}$  from April 1 through August 31 and 1.0  $\mu\text{mhos/cm}$  from September 1  
27 through March 31.

28           37.       The Basin Plan provides that “[w]aters shall not contain chemical constituents

1 in concentrations that adversely affect beneficial uses.”

2 38. The Basin Plan provides that “[a]t a minimum, water designated for use as  
3 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
4 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the  
5 Sacramento River and the Delta have been designated by the State Board for use as  
6 municipal and domestic supply.

7 **V. STATEMENT OF FACTS**

8 39. Each of the Facilities is classified as conforming to SIC Code 5093  
9 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”).  
10 Industrial activities occur throughout the Facilities. The Facilities’ primary industrial  
11 activities are receiving, storing, reclaiming, processing and recycling scrap materials and  
12 other waste. Additionally, the Facilities accept salvage vehicles for crushing and subsequent  
13 recycling. Other current industrial activities occurring at the Facilities involve the use,  
14 storage, and maintenance of heavy machinery. Virtually all of these activities occur outside  
15 in areas that are exposed to storm water and storm flows due to the lack of overhead  
16 coverage, functional berms and other storm water controls. Plaintiff is informed and  
17 believes that Defendants’ storm water controls, to the extent any exist, fail to achieve BAT  
18 and BCT standards.

19 40. The management practices at the Facilities are wholly inadequate to prevent  
20 the sources of contamination described above from causing the discharge of pollutants to  
21 waters of the United States and fail to meet BAT and BCT. The Facilities lack essential  
22 structural controls such as grading, berming and roofing to prevent rainfall and storm water  
23 flows from coming into contact with these and other sources of contaminants, thereby  
24 allowing storm water to flow over and across these materials and become contaminated prior  
25 to leaving the Facilities. In addition, the Facilities lack structural controls to prevent the  
26 discharge of water once contaminated. The Facilities also lack an adequate filtration system  
27 to treat water once it is contaminated.

28 41. Vehicle traffic at the Facilities tracks dust and particulate matter, increasing

1 the discharges of polluted water and mud into waters of the United States.

2 42. During rain events storm water laden with pollutants flows from the  
3 Facilities to Butte Creek, Comanche Creek, North Fork Honcut Creek, Honcut Creek, the  
4 Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta.

5 43. Information available to Plaintiff indicates that as a result of these practices,  
6 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
7 being discharged from the Facilities directly to these waters during significant rain events.

8 44. Butte Creek, Comanche Creek, North Fork Honcut Creek, Honcut Creek, the  
9 Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta are waters of  
10 the United States.

11 45. Information available to Plaintiff indicates that Defendants have not fulfilled  
12 the requirements set forth in the General Permit for discharges from the Facilities due to the  
13 continued discharge of contaminated storm water.

14 46. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
15 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan at  
16 any of the three Facilities.

17 47. Information available to Plaintiff indicates the continued existence of  
18 unlawful storm water discharges at each of the Facilities.

19 48. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
20 have failed to develop and implement adequate monitoring, reporting and sampling  
21 programs for any of the three Facilities. Plaintiff is informed and believes, and thereupon  
22 alleges, that Defendants have not sampled with adequate frequency, have not conducted  
23 visual monitoring, and have not analyzed the samples collected for the required pollutant  
24 parameters.

25 49. Plaintiff is informed and believes, and thereupon alleges, that all of the  
26 violations alleged in this Complaint are ongoing and continuing.

**VI. CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION**

**Discharges of Contaminated Storm Water From Facility 1  
in Violation of Permit Conditions and the Act  
(Violations of 33 U.S.C. §§ 1311(a), 1342)**

50. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

51. 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.

52. Plaintiff is informed and believes, and thereupon alleges, that since at least October 1, 1992, Defendants have been discharging polluted storm water from Facility 1 to the storm water conveyance system for the City of Chico, Comanche Creek, Butte Creek, the Sacramento River, and the Sacramento-San Joaquin Delta in violation of the General Permit.

53. During every significant rain event, storm water flowing over and through materials at Facility 1 becomes contaminated with pollutants, flowing untreated from Facility 1 through the storm water conveyance system for the City of Chico to Comanche Creek, Butte Creek, the Sacramento River, and the Sacramento-San Joaquin Delta.

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

55. 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.

56. Plaintiff is informed and believes, and thereupon alleges, that these discharges

of contaminated storm water are contributing to the violation of the applicable water quality standards in the 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.

57. Plaintiff is informed and believes, and thereupon alleges, that every day since March 30, 1992, Defendants have discharged and continue to discharge polluted storm water from the Facility in violation of the General Permit. Every day Defendants have discharged and continue 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.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

### **SECOND CAUSE OF ACTION**

#### **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan For Facility 1 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

58. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

59. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992.

60. Defendants have failed to develop and implement an adequate SWPPP for Facility 1. Defendants' ongoing failure to develop and implement an adequate SWPPP for Facility 1 is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials, including waste materials, without appropriate best management practices; the continued exposure of significant quantities of industrial material to storm water flows; 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 Facility 1 at levels in excess of EPA benchmark values and other applicable water quality standards.

61. Defendants have further failed to update Facility 1's SWPPP in response to the analytical results of Facility 1's storm water monitoring as required by the General Permit.

62. Each day since October 1, 1992 that Defendants have failed to develop and implement an adequate SWPPP for Facility 1 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).

63. Defendants have been in violation of the SWPPP requirement every day since October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to develop and fully implement an adequate SWPPP for Facility 1.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**THIRD CAUSE OF ACTION**

**Failure to Develop and Implement the Best Available  
And Best Conventional Treatment Technologies At Facility 1  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

64. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

65. 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.

66. Defendants have failed to implement BAT and BCT at Facility 1 for its discharges of total suspended solids, specific conductance, pH, iron, copper, aluminum, chemical oxygen demand, lead, zinc, and unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

67. Each day that Defendants have failed to develop and implement BAT and BCT at Facility 1 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).

68. Defendants have been in violation of the BAT and BCT requirements at Facility 1 every day since at least March 17, 2005. Defendants continue to be in violation of the BAT and BCT requirements each day that they fail to develop and fully implement an adequate BAT and BCT for Facility 1.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.



**FOURTH CAUSE OF ACTION**

**Failure to Develop and Implement an Adequate  
Monitoring and Reporting Program For Facility 1  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

69. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

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

71. Defendants have failed to develop and implement an adequate monitoring and reporting program for Facility 1. Defendants' ongoing failures to develop and implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing failure to collect and analyze storm water samples from all discharge locations, their continuing failure to analyze storm water samples for all toxic chemicals and other pollutants likely to be present in Facility 1's storm water discharges in significant quantities, and their failure to file required Annual Reports with the Regional Board which provide required information concerning Facility 1's visual observations and storm water sampling and analysis.

72. Each day since October 1, 1992 that Defendants have failed to develop and implement an adequate monitoring and reporting program for Facility 1 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.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**FIFTH CAUSE OF ACTION**

**Discharges of Contaminated Storm Water From Facility 2  
in Violation of Permit Conditions and the Act  
(Violations of 33 U.S.C. §§ 1311(a), 1342)**

73. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

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

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

7 75. Plaintiff is informed and believes, and thereupon alleges, that since at least  
8 October 1, 1992, Defendants have been discharging polluted storm water from Facility 2 to a  
9 series of irrigation ditches that discharge to the North Fork Honcut Creek, which flows into  
10 Honcut Creek, which flows into the Feather River, which in turn, ultimately flows into the  
11 Sacramento River, and the Sacramento-San Joaquin Delta in violation of the General Permit.

12 76. During every significant rain event, storm water flowing over and through  
13 materials at Facility 2 becomes contaminated with pollutants, flowing untreated from Facility  
14 2 to the North Fork Honcut Creek, which flows into Honcut Creek, which flows into the  
15 Feather River, which in turn, ultimately flows into the Sacramento River, and the  
16 Sacramento-San Joaquin Delta.

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

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

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

27 80. Plaintiff is informed and believes, and thereupon alleges, that every day since  
28 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water

1 from Facility 2 in violation of the General Permit. Every day Defendants have discharged and  
 2 continue to discharge polluted storm water from Facility 2 in violation of the General Permit is  
 3 a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These  
 4 violations are ongoing and continuous.

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

6 **SIXTH CAUSE OF ACTION**  
 7 **Failure to Develop and Implement an Adequate**  
 8 **Storm Water Pollution Prevention Plan For Facility 2**  
 9 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

10 81. Plaintiff incorporates the allegations contained in the above paragraphs as  
 11 though fully set forth herein.

12 82. Section A and Provision E of the General Permit requires dischargers of  
 13 storm water associated with industrial activity to develop and implement an adequate Storm  
 14 Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992.

15 83. Defendants have failed to develop and implement an adequate SWPPP for  
 16 Facility 2. Defendants' ongoing failure to develop and implement an adequate SWPPP for  
 17 Facility 2 is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,  
 18 including waste materials, without appropriate best management practices; the continued  
 19 exposure of significant quantities of industrial material to storm water flows; the failure to  
 20 either treat storm water prior to discharge or to implement effective containment practices;  
 21 and the continued discharge of storm water pollutants from Facility 2 at levels in excess of  
 22 EPA benchmark values and other applicable water quality standards.

23 84. Defendants have further failed to update Facility 2's SWPPP in response to the  
 24 analytical results of Facility 2's storm water monitoring as required by the General Permit.

25 85. Each day since October 1, 1992 that Defendants have failed to develop and  
 26 implement an adequate SWPPP for Facility 2 in violation of the General Permit is a separate  
 27 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

28 86. Defendants have been in violation of the SWPPP requirement every day since  
 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to

1 develop and fully implement an adequate SWPPP for Facility 2.

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

3 **SEVENTH CAUSE OF ACTION**

4 **Failure to Develop and Implement the Best Available**  
5 **And Best Conventional Treatment Technologies At Facility 2**  
6 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 87. Plaintiff incorporates the allegations contained in the above paragraphs as  
8 though fully set forth herein.

9 88. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
10 require dischargers to reduce or prevent pollutants in their storm water discharges through  
11 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
12 pollutants.

13 89. Defendants have failed to implement BAT and BCT at Facility 2 for its  
14 discharges of oil and grease, specific conductance, iron, copper, aluminum, chemical oxygen  
15 demand, lead, zinc, and unmonitored pollutants in violation of Effluent Limitation B(3) of  
16 the General Permit.

17 90. Each day since March 17, 2005 that Defendants have failed to develop and  
18 implement BAT and BCT at Facility 2 in violation of the General Permit is a separate and  
19 distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

20 91. Defendants have been in violation of the BAT and BCT requirements at Facility  
21 2 every day since at least March 17, 2005. Defendants continue to be in violation of the BAT  
22 and BCT requirements each day that they fail to develop and fully implement an adequate  
23 BAT and BCT for Facility 2.

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

25 **EIGHTH CAUSE OF ACTION**

26 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**  
27 **For Facility 2 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

28 92. Plaintiff incorporates the allegations contained in the above paragraphs as  
though fully set forth herein.

93. Section B of the General Permit requires dischargers of storm water associated

1 with industrial activity to develop and implement a monitoring and reporting program  
 2 (including, among other things, sampling and analysis of discharges) no later than October 1,  
 3 1992.

4 94. Defendants have failed to develop and implement an adequate monitoring  
 5 and reporting program for Facility 2. Defendants' ongoing failures to develop and implement  
 6 adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing  
 7 failure to collect and analyze storm water samples from all discharge locations, their  
 8 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants  
 9 likely to be present in Facility 2's storm water discharges in significant quantities, and their  
 10 failure to file required Annual Reports with the Regional Board which provide required  
 11 information concerning Facility 2's visual observations and storm water sampling and  
 12 analysis.

13 95. Each day since October 1, 1992 that Defendants have failed to develop and  
 14 implement an adequate monitoring and reporting program for Facility 2 in violation of the  
 15 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
 16 1311(a). These violations are ongoing and continuous.

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

18 **NINTH CAUSE OF ACTION**  
 19 **Discharges of Contaminated Storm Water From Facility 3**  
 20 **in Violation of Permit Conditions and the Act**  
 21 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

22 96. Plaintiff incorporates the allegations contained in the above paragraphs as  
 23 though fully set forth herein.

24 97. Discharge Prohibition A(2) of the General Permit requires that storm water  
 25 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
 26 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
 27 General Permit require that storm water discharges and authorized non-storm water discharges  
 28 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

1 Plan or the applicable Regional Board's Basin Plan.

2 98. Plaintiff is informed and believes, and thereupon alleges, that since at least  
3 October 1, 1992, Defendants have been discharging polluted storm water from Facility 3 into  
4 Butte Creek, which in turn ultimately discharges and flows into the Sacramento River, and  
5 the Sacramento-San Joaquin Delta in violation of the General Permit.

6 99. During every significant rain event, storm water flowing over and through  
7 materials at Facility 3 becomes contaminated with pollutants, flowing untreated from Facility  
8 3 to Butte Creek, which in turn ultimately discharges and flows into the Sacramento River,  
9 and the Sacramento-San Joaquin Delta.

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

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

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

20 103. Plaintiff is informed and believes, and thereupon alleges, that every day since  
21 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water  
22 from Facility 3 in violation of the General Permit. Every day Defendants have discharged and  
23 continue to discharge polluted storm water from the Facility in violation of the General Permit  
24 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These  
25 violations are ongoing and continuous.

26 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.  
27  
28

**TENTH CAUSE OF ACTION**

**Failure to Develop and Implement an Adequate  
Storm Water Pollution Prevention Plan For Facility 3  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

104. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

105. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992.

106. Defendants have failed to develop and implement an adequate SWPPP for Facility 3. Defendants' ongoing failure to develop and implement an adequate SWPPP for Facility 3 is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials, including waste materials, without appropriate best management practices; the continued exposure of significant quantities of industrial material to storm water flows; 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 Facility 3 at levels in excess of EPA benchmark values and other applicable water quality standards.

107. Defendants have further failed to update Facility 3's SWPPP in response to the analytical results of Facility 3's storm water monitoring as required by the General Permit.

108. Each day since October 1, 1992 that Defendants have failed to develop and implement an adequate SWPPP for Facility 3 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).

109. Defendants have been in violation of the SWPPP requirement every day since October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to develop and fully implement an adequate SWPPP for Facility 3.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.



**ELEVENTH CAUSE OF ACTION**

**Failure to Develop and Implement the Best Available  
And Best Conventional Treatment Technologies At Facility 3  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

110. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

111. 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.

112. Defendants have failed to implement BAT and BCT at Facility 3 for its discharges of total suspended solids, total organic carbon, specific conductance, iron, copper, aluminum, chemical oxygen demand, lead, zinc, and unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

113. Each day since March 17, 2005 that Defendants have failed to develop and implement BAT and BCT at Facility 3 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).

114. Defendants have been in violation of the BAT and BCT requirements at Facility 3 every day since at least March 17, 2005. Defendants continue to be in violation of the BAT and BCT requirements each day that they fail to develop and fully implement an adequate BAT and BCT for Facility 3.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**TWELFTH CAUSE OF ACTION**

**Failure to Develop and Implement an Adequate  
Monitoring and Reporting Program For Facility 3  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

115. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

116. Section B of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement a monitoring and reporting program

(including, among other things, sampling and analysis of discharges) no later than October 1, 1992.

117. Defendants have failed to develop and implement an adequate monitoring and reporting program for Facility 3. Defendants' ongoing failures to develop and implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing failure to collect and analyze storm water samples from all discharge locations, their continuing failure to analyze storm water samples for all toxic chemicals and other pollutants likely to be present in Facility 3's storm water discharges in significant quantities, and their failure to file required Annual Reports with the Regional Board which provide required information concerning Facility 3's visual observations and storm water sampling and analysis.

118. Each day since October 1, 1992 that Defendants have failed to develop and implement an adequate monitoring and reporting program for Facility 3 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.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

## **VII. RELIEF REQUESTED**

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

- a. Declare Defendants to have violated and to be in violation of the Act as alleged herein;
- b. Enjoin Defendants from discharging pollutants from the Facilities and to the surface waters surrounding and downstream from the Facilities;
- c. Enjoin Defendants from further violating the substantive and procedural requirements of the General Permit;
- d. Order Defendants to pay 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, for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4

(pp. 200-202) (Dec. 31, 1996);

e. Order Defendants to take appropriate actions to restore the quality of navigable waters impaired by their activities;

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

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

Dated: May 17, 2010

Respectfully Submitted,

LAW OFFICES OF ANDREW L. PACKARD

By: /s/ Erik Roper  
Erik M. Roper  
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](mailto:deltakeep@aol.com)

March 17, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. George Scott, Sr.  
Mr. George Scott, Jr.  
Chico Scrap Metal, Inc.  
878 East 20<sup>th</sup> Street  
Chico, CA 95928

Mr. Carl B. Leverenz, Agent for Service  
Chico Scrap Metal, Inc.  
515 Wall Street  
Chico, CA 95928

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

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Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Chico Scrap Metal, Inc. ("Chico Scrap Metal") scrap metal recycling facility located at 878 East 20<sup>th</sup> Street in Chico, California ("the Facility"). The WDID identification number for the Facility is 5R04I012784. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Comanche Creek, the Sacramento River, the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of Chico Scrap Metal, Inc. For purposes of this Notice of Violations and Intent to File Suit, "Chico Scrap Metal" shall also refer to George Scott, Sr. and George Scott, Jr.

This letter addresses Chico Scrap Metal's unlawful discharges of pollutants from the Facility to the storm water conveyance system for the City of Chico, which flows into Comanche Creek, which in turn 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, Chico Scrap Metal, Mr. George Scott, Sr. and Mr. George Scott, Jr. 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 Chico Scrap Metal, Mr. George Scott, Sr. and Mr. George Scott, Jr. 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.**

Chico Scrap Metal operates a scrap metal recycling facility located in Chico, California. The Facility receives, stores, reclaims, processes and recycles scrap materials and other waste. The Facility also accepts salvage vehicles for crushing and subsequent recycling. Other activities at the facility include the use, storage, and maintenance of heavy machinery.

On or about March 24, 1998, Chico Scrap Metal belatedly 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 (“Processing, Reclaiming and Wholesale Distribution of Scrap and Waste Materials”). The Facility collects and discharges storm water from its approximately one-acre industrial site through at least one discharge point to the local storm water conveyance system, which flows into Comanche Creek, which in turn 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; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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

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



The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Chico Scrap Metal: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; and, chemical oxygen demand – 120 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for specific conductance of 200 µmho/cm.

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

Chico Scrap Metal 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 March 4, 2005, a representative of the Regional Water Quality Control Board, Region 5, conducted an inspection of the Facility. Facility contacts present during the inspection included George Scott. The subsequently produced Inspection Report notes several ways in which the Facility’s inadequate implementation of BMPs fails to comply with the General Permit, including, but not limited to: (1) BMPs included in SWPPP not implemented or not implemented properly; (2) SWPPP § 9.1 states catch basins are to be cleaned out and oil absorbent socks are to be implemented on the south side of loading area – but the Inspection Report notes that the drains appear to be improperly maintained and the oil absorbent socks were not installed; (3) SWPPP § 9 states silt sacks with oil absorbent pillows are to be installed in storm drains located near the unloading and

processing area, west end material storage areas, and material storage at the east side of the yard – but the Inspection Report notes that this BMP was not implemented; (4) the storm drain near the heavy metal storage pile, near the middle of the west side of the yard, was not draining properly; and, (5) although the yard appeared to be swept regularly, there was fuel sheen on standing water in the area and the storm drain, approximately 6 inches below the water level, could not be seen. Unsurprisingly, the Inspection Report concludes: “The facility should review the effectiveness of BMPs implemented on site.”

Based on its review of available public documents, CSPA is informed and believes that Chico Scrap Metal continues to discharge myriad pollutants in excess of benchmarks and that Chico Scrap Metal has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. Chico Scrap Metal’s ongoing violations are discussed further below.

**A. Chico Scrap Metal Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

Chico Scrap Metal has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) 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. Chico Scrap Metal’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	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	TSS	120 mg/L	100 mg/L
11/01/2008	TSS	220 mg/L	100 mg/L

March 17, 2010

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**2. Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Proposed EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
11/08/2005	Spec. Con.	209 µmho/cm	200 µmhos/cm

**3. Discharges of Storm Water with a pH in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/01/2008	pH	9.08	6.0 – 9.0

**4. Discharges of Storm Water with Iron (Fe) in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/08/2005	Fe	7.20 mg/L	1 mg/L
02/27/2006	Fe	3.80 mg/L	1 mg/L
11/02/2006	Fe	10.00 mg/L	1 mg/L
02/09/2007	Fe	2.60 mg/L	1 mg/L
11/01/2008	Fe	7.69 mg/L	1 mg/L
02/17/2009	Fe	2.47 mg/L	1 mg/L

**5. Discharges of Storm Water with Lead (Pb) in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/08/2005	Pb	0.170 mg/L	0.0816 mg/L
02/27/2006	Pb	0.310 mg/L	0.0816 mg/L
11/02/2006	Pb	0.340 mg/L	0.0816 mg/L
02/09/2007	Pb	0.170 mg/L	0.0816 mg/L
11/01/2008	Pb	0.671 mg/L	0.0816 mg/L

**6. Discharges of Storm Water with Aluminum (Al) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
02/27/2006	Al	1.70 mg/L	0.75 mg/L
11/02/2006	Al	4.10 mg/L	0.75 mg/L
11/01/2008	Al	4.07 mg/L	0.75 mg/L
02/17/2009	Al	1.00 mg/L	0.75 mg/L

**7. Discharges of Storm Water with Copper (Cu) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	Cu	0.13 mg/L	0.0636 mg/L
02/27/2006	Cu	0.20 mg/L	0.0636 mg/L
11/02/2006	Cu	0.23 mg/L	0.0636 mg/L
02/09/2007	Cu	0.63 mg/L	0.0636 mg/L
11/01/2008	Cu	0.425 mg/L	0.0636 mg/L

**8. Discharges of Storm Water with Zinc (Zn) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	Zn	1.30 mg/L	0.117 mg/L
02/27/2006	Zn	0.71 mg/L	0.117 mg/L
11/02/2006	Zn	0.72 mg/L	0.117 mg/L
02/09/2007	Zn	1.70 mg/L	0.117 mg/L
11/01/2008	Zn	0.71 mg/L	0.117 mg/L
02/17/2009	Zn	0.456 mg/L	0.117 mg/L

**9. Discharges of Storm Water with Chemical Oxygen Demand (COD) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	COD	200 mg/L	120 mg/L
11/01/2008	COD	159 mg/L	120 mg/L

CSPA's investigation, including its review of Chico Scrap Metal'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 Chico Scrap Metal has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Specific Conductivity (SC), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) and unacceptable levels of pH, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Chico Scrap Metal was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Chico Scrap Metal is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Chico Scrap Metal has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 17, 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 17, 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 Chico Scrap Metal has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) 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, Chico Scrap Metal is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 17, 2005.

**B. Chico Scrap Metal 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 Chico Scrap Metal, designated under SIC 5093 are also required to sample for Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu) and Chemical Oxygen Demand (COD). 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 Chico Scrap Metal has failed to develop and implement an adequate Monitoring & Reporting Plan. CSPA’s review of publicly available records reveals that there is no 2007-2008 Annual Report for Chico Scrap Metal on file at the Regional Board office. This suggests that Chico Scrap Metal may have 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. Similarly, the absence of the 2007-2008 Annual Report suggests that Chico Scrap Metal may have 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, Chico Scrap Metal is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 17, 2005. These violations are set forth in greater detail below:

**1. Chico Scrap Metal 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 Chico Scrap Metal 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 Chico Scrap Metal. 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. Chico Scrap Metal 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 Chico Scrap Metal to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as Chico Scrap Metal which are designated as SIC 5093 to analyze its storm water discharge for Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu) and Chemical Oxygen Demand

(COD). Further, based on its investigation, CSPA is informed and believes that Chico Scrap Metal has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Other pollutants likely to be present in the Facility's storm water discharges include: benzene, toluene, antimony, arsenic, boron, beryllium, cadmium, chromium, cobalt, manganese, mercury, molybdenum, nickel, selenium, silver, thallium and vanadium. Chico Scrap Metal's failure to monitor these pollutants extends back to at least March 17, 2005. Chico Scrap Metal's failure to monitor these other pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. Chico Scrap Metal Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since March 17, 2005.**

CSPA is informed and believes that available documents demonstrate Chico Scrap Metal'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, Chico Scrap Metal is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since March 17, 2005.

**C. Chico Scrap Metal 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 Chico Scrap Metal has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity, pH, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn) and Chemical Oxygen Demand (COD) 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, Chico Scrap Metal 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 Chico Scrap Metal 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. Chico Scrap Metal has failed to adequately implement such measures.



Chico Scrap Metal was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Chico Scrap Metal 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 Chico Scrap Metal fails to implement BAT and BCT. Chico Scrap Metal is subject to penalties for violations of the Order and the Act occurring since March 17, 2005.

**D. Chico Scrap Metal 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 Chico Scrap Metal has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Chico Scrap Metal has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Chico Scrap Metal 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 Chico Scrap Metal fails to develop and implement an effective SWPPP. Chico Scrap Metal is subject to penalties for violations of the Order and the Act occurring since March 17, 2005.

**E. Chico Scrap Metal 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, Chico Scrap Metal is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity, pH, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn) and Chemical Oxygen Demand (COD) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Chico Scrap Metal 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, Chico Scrap Metal was aware of high levels of these pollutants prior to March 17, 2005. Likewise, Chico Scrap Metal has not filed any reports describing its non-compliance 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). Chico Scrap Metal 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 17, 2005, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Chico Scrap Metal is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since March 17, 2005.

**F. Chico Scrap Metal 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 Chico Scrap Metal 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, Chico Scrap Metal failed to indicate on Form 2 and Form 3 the dates its personnel conducted the required quarterly visual observations of authorized and unauthorized storm water discharges. As indicated above, Chico Scrap Metal has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Chico Scrap Metal has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Chico Scrap Metal's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Chico Scrap Metal is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since March 17, 2005.

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

CSPA puts Chico Scrap Metal, Mr. George Scott, Sr. and Mr. George Scott, Jr. 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 Chico Scrap Metal 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](mailto:Andrew@PackardLawOffices.com)  
[Erik@PackardLawOffices.com](mailto:Erik@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](mailto: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 Chico Scrap Metal, Mr. George Scott, Sr. and Mr. George Scott, Jr. 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 Chico Scrap Metal and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", is written over a faint, rectangular background.

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, Chico Scrap Metal (Chico, CA)**  
**Significant Rain Events,\* March 16, 2005 -March 16, 2010**

March 19 2005	Jan. 11 2006	Dec. 09 2006	Jan. 12 2008
March 20 2005	Jan. 14 2006	Dec. 10 2006	Jan. 21 2008
March 21 2005	Jan. 17 2006	Dec. 11 2006	Jan. 22 2008
March 22 2005	Jan. 18 2006	Dec. 12 2006	Jan. 24 2008
March 27 2005	Jan. 30 2006	Dec. 13 2006	Jan. 25 2008
March 28 2005	Jan. 31 2006	Jan. 09 2007	Jan. 26 2008
April 02 2005	Feb. 02 2006	Feb. 08 2007	Jan. 27 2008
April 07 2005	Feb. 26 2006	Feb. 09 2007	Jan. 28 2008
April 08 2005	Feb. 27 2006	Feb. 10 2007	Jan. 29 2008
April 09 2005	Feb. 28 2006	Feb. 12 2007	Jan. 31 2008
April 11 2005	Mar. 02 2006	Feb. 13 2007	Feb. 02 2008
April 24 2005	Mar. 03 2006	Feb. 22 2007	Feb. 19 2008
April 25 2005	Mar. 05 2006	Feb. 24 2007	Feb. 20 2008
April 28 2005	Mar. 06 2006	Feb. 26 2007	Feb. 21 2008
May 05 2005	Mar. 07 2006	Feb. 28 2007	Feb. 22 2008
May 06 2005	Mar. 12 2006	Mar. 26 2007	Feb. 23 2008
May 08 2005	Mar. 13 2006	Mar. 27 2007	Feb. 24 2008
May 09 2005	Mar. 14 2006	April 11 2007	Mar. 15 2008
May 10 2005	Mar. 16 2006	April 12 2007	April 23 2008
May 18 2005	Mar. 17 2006	April 14 2007	May 24 2008
May 19 2005	Mar. 20 2006	April 16 2007	Oct. 06 2008
Oct. 15 2005	Mar. 21 2006	April 19 2007	Oct. 31 2008
Oct. 17 2005	Mar. 24 2006	April 21 2007	Nov. 01 2008
Oct. 26 2005	Mar. 25 2006	April 23 2007	Nov. 03 2008
Oct. 28 2005	Mar. 27 2006	May 02 2007	Nov. 04 2008
Oct. 31 2005	Mar. 28 2006	May 04 2007	Nov. 10 2008
Nov. 04 2005	Mar. 29 2006	Oct. 01 2007	Dec. 15 2008
Nov. 08 2005	April 02 2006	Oct. 10 2007	Dec. 24 2008
Nov. 25 2005	April 03 2006	Oct. 12 2007	Dec. 25 2008
Nov. 28 2005	April 04 2006	Oct. 17 2007	Jan. 05 2009
Nov. 29 2005	April 05 2006	Nov. 10 2007	Jan. 12 2009
Dec. 01 2005	April 10 2006	Nov. 11 2007	Jan. 13 2009
Dec. 17 2005	April 11 2006	Nov. 13 2007	Jan. 20 2009
Dec. 18 2005	April 12 2006	Dec. 04 2007	Jan. 28 2009
Dec. 19 2005	April 13 2006	Dec. 07 2007	Feb. 06 2009
Dec. 20 2005	April 16 2006	Dec. 18 2007	Feb. 09 2009
Dec. 21 2005	April 17 2006	Dec. 19 2007	Feb. 11 2009
Dec. 22 2005	April 22 2006	Dec. 20 2007	Feb. 12 2009
Dec. 25 2005	April 24 2006	Dec. 21 2007	Feb. 13 2009
Dec. 26 2005	May 21 2006	Dec. 28 2007	Feb. 15 2009
Dec. 27 2005	May 22 2006	Dec. 29 2007	Feb. 16 2009
Dec. 28 2005	Oct. 05 2006	Jan. 03 2008	Feb. 17 2009
Dec. 29 2005	Nov. 03 2006	Jan. 04 2008	Feb. 18 2009
Dec. 30 2005	Nov. 11 2006	Jan. 05 2008	Feb. 23 2009
Dec. 31 2005	Nov. 13 2006	Jan. 07 2008	Feb. 24 2009
Jan. 01 2006	Nov. 16 2006	Jan. 08 2008	Feb. 26 2009
Jan. 03 2006	Nov. 26 2006	Jan. 09 2008	Mar. 01 2009
Jan. 04 2006	Nov. 27 2006	Jan. 11 2008	Mar. 02 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, Chico Scrap Metal (Chico, CA)  
Significant Rain Events,\* March 16, 2005 -March 16, 2010**

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

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

## **EXHIBIT B**



**California Sportfishing Protection Alliance**

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

3536 Rainier Avenue, Stockton, CA 95204

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

March 17, 2010

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. George Scott, Sr.

Mr. George Scott, Jr.

Nor-Cal Recyclers, a subsidiary of Chico Scrap Metal, Inc.

878 20<sup>th</sup> Street

Chico, CA 95928

Mr. Carl B. Leverenz, Agent for Service

Chico Scrap Metal, Inc.

515 Wall Street

Chico, CA 95928

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

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Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the scrap metal recycling facility operated by Chico Scrap Metal, Inc. ("Chico Scrap Metal") located at 1855 Kusel Road in Oroville, California ("the Facility"). The WDID identification number for the Facility is 5R04I021330. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Honcut Creek, the Feather River, the Sacramento River, the Sacramento – San Joaquin Delta 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 that Chico Scrap Metal commonly refers to, and may be formally doing business at the Facility as "Nor-Cal Recyclers" (hereafter, "NCR"). CSPA is further informed and believes that NCR is a wholly-owned subsidiary of Chico Scrap Metal. 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 Chico Scrap Metal, NCR, George Scott, Sr. and George Scott, Jr. as "NCR" within this Notice.

This letter addresses NCR's unlawful discharges of pollutants from the Facility to the North Fork Honcut Creek, which flows into Honcut Creek, which flows into the Feather River, which in turn 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, Mr. George Scott, Sr., Mr. George Scott, Jr. and NCR 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 NCR and the Scotts 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.**

NCR operates a scrap metal recycling facility located in Oroville, California. The Facility receives, stores, reclaims, processes and recycles scrap materials and other waste. The Facility also accepts salvage vehicles for crushing and subsequent recycling. Other activities at the facility include the use, storage, and maintenance of heavy machinery.

On or about November 23, 2007, NCR belatedly submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. However, as a result of its investigation, CSPA believes the NCR Facility has been in operation since at least March 17, 2005, and likely was operating for many years prior to that date. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, NCR is subject to penalties for violations of the Act since March 17, 2005, and is subject to penalties for violations of both the General Industrial Storm Water Permit and the Act since November 23, 2007.

The Facility is classified as a scrap metal recycling facility under Standard Industrial Classification code 5093 ("Processing, Reclaiming and Wholesale Distribution of Scrap and Waste Materials"). The Facility collects and discharges storm water from its approximately nine-acre industrial site through at least two discharge points to a series of ditches that discharge to the North Fork Honcut Creek, which flows into Honcut Creek, which flows into the Feather River, which in turn ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta,

the Sacramento River, the Feather River, and the creeks and ditches 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 (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; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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

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

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by NCR: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; and, chemical oxygen demand – 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.**

NCR 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 November 5, 2007, Michael Huerta, a representative of the Butte County Public Health Department Environmental Health Division, conducted an inspection of the Facility, the primary purpose of which was to observe the “status of the workable waste piles.” Counsel for NCR were present during this inspection. On November 8, 2007, Mr. Huerta sent a letter to counsel for NCR memorializing observations noted during the inspection. Mr. Huerta observed that: “(1) the piles are surprisingly large and appear to consist mainly of soil; (2) the piles are not covered, accessible to the elements (wind and rain); (3) although the piles were placed on a concrete surface, storm water containment and retention were minimal or non-existent; and, (4) ...the pile at Kusel Road appeared to encroach on the adjacent property and as such, off-site migration of workable waste is highly probable....” Additionally, Mr. Huerta noted that it was the understanding of the Butte County Public Health Department Environmental Health Division “and reflected in the TRO that workable scrap waste would be handled and stored in covered containers. This specified handling of the material in question was a condition under which the county signed the agreement. The piles of waste...violate the TRO. Please provide containered [*sic*] storage of this material.”

The “minimal or non-existent” storm water containment discussed in Mr. Huerta’s letter is amply evidenced by correspondence from a testing lab to Dale Stultz of the Regional Board, dated January 2, 2008. This correspondence conveyed the results of analysis of storm water samples collected at the Facility on or around December 6, 2007. The test results conveyed indicate exceedances of numerous pollutant benchmarks.

Shortly after the Regional Board received these test results, on January 28, 2008, Mr. Scott Zaitz of the Regional Board sent NCR a letter requesting that it “submit a copy of the SWPPP to this office by 20 February 2008.” NCR failed to submit its SWPPP to the Regional Board by 20 February 2008.

This failure is evidenced by the Notice of Violation issued by the Regional Board’s George Day to NCR on May 27, 2008. This Notice of Violation states: “To date we have not received a copy of the SWPPP. Development and implementation of the SWPPP is required by the General Industrial Activities Storm Water Permit (Order No. 97-03-DWQ) and is necessary to assure compliance with the permit. It is a violation of the...Permit to initiate industrial activities without a site specific SWPPP.... Please submit a copy of the SWPPP to this office no later than 13 June 2008.”

Based on its review of available public documents, CSPA is informed and believes that NCR continues to discharge myriad pollutants in excess of benchmarks and that NCR has failed to implement BMPs adequate to bring its discharge of these pollutants into compliance with the General Permit. NCR’s ongoing violations are discussed further below.



**A. NCR Has Discharged Storm Water Containing Pollutants in Violation of the Permit and the Act.**

NCR has discharged and continues to discharge storm water with unacceptable levels of Oil & Grease (O&G), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn) and Chemical Oxygen Demand (COD) 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. NCR's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water 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 Oil & Grease at Concentrations in Excess of Applicable EPA Benchmarks**

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
12/06/2007	NCR-1*	O&G	39.2 mg/L	15 mg/L

\* Data derived not from an NCR Annual Report, but rather, from lab test data reported directly to Regional Board.

**2. Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Proposed EPA Benchmark**

Date	Discharge Point	Parameter	Concentration in Discharge	Proposed Benchmark Value
11/01/2008	Location 2	Spec. Con.	266 µmho/cm	200 µmhos/cm

**3. Discharges of Storm Water with Iron (Fe) in Excess of Applicable EPA Benchmark**

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
11/01/2008	Location 1	Fe	2.14 mg/L	1 mg/L
11/01/2008	Location 2	Fe	1.42 mg/L	1 mg/L
02/17/2009	Location 1	Fe	5.61 mg/L	1 mg/L
02/17/2009	Location 2	Fe	5.63 mg/L	1 mg/L

**4. Discharges of Storm Water with Lead (Pb) in Excess of Applicable EPA Benchmark**

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
12/06/2007	NCR-1 *	Pb	0.543 mg/L	0.0816 mg/L
12/06/2007	NCR-B*	Pb	0.238 mg/L	0.0816 mg/L

\* Data derived not from an NCR Annual Report, but rather, from lab test data reported directly to Regional Board.

**5. Discharges of Storm Water with Aluminum (Al) in Excess of Applicable EPA Benchmark**

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
11/01/2008	Location 1	Al	1.82 mg/L	0.75 mg/L
11/01/2008	Location 2	Al	0.97 mg/L	0.75 mg/L
02/17/2009	Location 1	Al	5.25 mg/L	0.75 mg/L
02/17/2009	Location 2	Al	5.73 mg/L	0.75 mg/L

**6. Discharges of Storm Water with Copper (Cu) in Excess of Applicable EPA Benchmark**

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
12/06/2007	NCR-1 *	Cu	0.414 mg/L	0.0636 mg/L
12/06/2007	NCR-B*	Cu	0.179 mg/L	0.0636 mg/L
11/01/2008	Location 2	Cu	0.135 mg/L	0.0636 mg/L

\* Data derived not from an NCR Annual Report, but rather, from lab test data reported directly to Regional Board.

**7. Discharges of Storm Water with Zinc (Zn) in Excess of Applicable EPA Benchmark**

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
12/06/2007	NCR-1 *	Zn	0.778 mg/L	0.117 mg/L
12/06/2007	NCR-B*	Zn	0.489 mg/L	0.117 mg/L
12/06/2007	NCR-Front*	Zn	0.217 mg/L	0.117 mg/L
11/01/2008	Location 1	Zn	0.156 mg/L	0.117 mg/L
11/01/2008	Location 2	Zn	0.165 mg/L	0.117 mg/L
02/17/2009	Location 1	Zn	0.178 mg/L	0.117 mg/L

02/17/2009	Location 2	Zn	0.185 mg/L	0.117 mg/L
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\* Data derived not from an NCR Annual Report, but rather, from lab test data reported directly to Regional Board.

**8. Discharges of Storm Water with Chemical Oxygen Demand (COD) in Excess of Applicable EPA Benchmark**

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
11/01/2008	Location 2	COD	225 mg/L	120 mg/L

CSPA's investigation, including its review of NCR'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 NCR has not implemented BAT and BCT at the Facility for its discharges of Oil & Grease (O&G), Iron (Fe), Specific Conductivity (SC), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. NCR was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, NCR is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that NCR has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 17, 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 17, 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 NCR has discharged storm water containing impermissible levels of Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) 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. CSPA further alleges that each of NCR's discharges of pollutants in storm water from the Facility after initiating operations but prior to November 23, 2007 constitute violations of the Act. The dates of these discharges in violation of the Act are also listed on Attachment A.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing 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, NCR is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 17, 2005.

**B. NCR 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 NCR, designated under SIC 5093 are also required to sample for Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu) and Chemical Oxygen Demand (COD). Section B(5)(c)(ii) of the General Permit further 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 NCR has failed to develop and implement an adequate Monitoring & Reporting Plan. CSPA’s review of publicly available records reveals that NCR 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. Additionally, based on its 2007-2008 Annual Report, CSPA believes NCR 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, NCR is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 17, 2005. These violations are set forth in greater detail below:

**1. NCR 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 NCR 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 Wet Seasons. CSPA notes that the Facility’s 2007-2008 Annual Report explains its failure to collect at least two storm water samples by stating: “I was not able to take storm water samples from February on because there was not enough rain from the sprinkles in this area to generate a runoff to collect a sample, even from my paved areas.”

However, this does not credibly explain why NCR was unable to sample any qualifying storm events from November 23, 2007 (the date George Scott, Jr. signed its Notice of Intent to Comply with the terms of the General Industrial Storm Water Permit) until February, 2008. Furthermore, as evidenced by the lab results of samples collected on December 6, 2007 and conveyed to the Regional Board on January 2, 2008, as discussed above, storm water discharges were collected from a qualifying storm event during the 2007-2008 Wet Season. Accordingly, NCR's explanation is inadequate and its continuing failure to sample and analyze storm water discharges from at least two qualifying storm events constitutes a separate and ongoing violation of the General Permit and the Act.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the two discharge points currently designated by NCR. This failure to identify and designate all discharge points and the failure to adequately monitor storm water discharges constitute separate and ongoing violations of the General Industrial Storm Water Permit and the Clean Water Act.

**2. NCR 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 NCR to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as NCR which are designated as SIC 5093 to analyze its storm water discharge for Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu) and Chemical Oxygen Demand (COD). General Permit, Table D. As discussed above, NCR failed to analyze its storm water discharges for any pollutants as required by the General Permit during the 2007-2008 wet season. Further, based on its investigation, CSPA is informed and believes that NCR has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Other pollutants likely to be present in the Facility's storm water discharges include: benzene, toluene, antimony, arsenic, boron, beryllium, cadmium, chromium, cobalt, manganese, mercury, molybdenum, nickel, selenium, silver, thallium and vanadium. NCR's failure to monitor these pollutants extends back to at least November 23, 2007. NCR's failure to monitor these other pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. NCR Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since November 23, 2007.**

CSPA is informed and believes that available documents demonstrate NCR'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, NCR is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since March 17, 2005.

**C. NCR 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 NCR has not implemented BAT and BCT at the Facility for its discharges of Oil & Grease (O&G), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) 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, NCR 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 NCR 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. NCR has failed to adequately implement any such measures.

NCR was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, NCR 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 NCR fails to implement BAT and BCT. NCR is subject to civil penalties for all violations of the Act occurring between March 17, 2005 and November 23, 2007 and for all violations of the General Permit and the Act occurring between November 23, 2007 through the present (and continuing).

**D. NCR 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 NCR has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. NCR has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. NCR 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 NCR fails to develop and implement an effective SWPPP. NCR is subject to penalties for violations of the Permit and the Act occurring since March 17, 2005.

**E. NCR 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. General Permit, 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, NCR is discharging elevated levels of Oil & Grease (O&G), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn) and Chemical Oxygen Demand (COD) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, NCR 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, NCR was aware of high levels of these pollutants prior to November 23, 2007. Likewise, NCR 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). NCR 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 November 23, 2007, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. NCR is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since March 17, 2005.

**F. NCR 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 NCR has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit

March 17, 2010

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despite significant noncompliance at the Facility. For example, in its 2007-2008 Annual Report, NCR failed to report the monthly wet weather observations required by the General Permit for December, 2007 and January, 2008. CSPA notes that NCR explains this failure by stating in the 2007-2008 Annual Report that: "I have no observations of storm water discharges to report for the months of October-December, 2007, and January, 2008, since the facility was not covered under the permit until January, 2008."

However, this explanation does not square with reality. CSPA notes that George Scott, Jr. signed NCR's Notice of Intent to Comply with the terms of the General Industrial Storm Water Permit on November 23, 2007. Further, the copy of this document on file with the Regional Board is stamped with the date of December 10, 2007. Thus, the Facility was covered under the General Permit at least as early as December 10, 2007, and arguably as early as November 23, 2007. Accordingly, NCR's explanation is inadequate and its failure to conduct the required observations of monthly storm water discharges constitutes a separate and ongoing violation of the General Permit and the Act.

The Clean Water Act is a strict liability statute. As indicated above, NCR has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, NCR has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. NCR's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. NCR is therefore subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since November 23, 2007.

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

CSPA puts Chico Scrap Metal, Inc., NCR, Mr. George Scott, Sr. and Mr. George Scott, Jr. 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 Chico Scrap Metal, Inc., NCR, Mr. George Scott, Sr. and Mr. George Scott, Jr. 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](mailto:Andrew@PackardLawOffices.com), and,  
[Erik@PackardLawOffices.com](mailto:Erik@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](mailto: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 Chico Scrap Metal, NCR, George Scott, Sr. and George Scott, Jr., 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 Chico Scrap Metal, NCR and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", is written over a faint, rectangular background.

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, NCR (Oroville, CA)**  
**Significant Rain Events,\* March 17, 2005-March 17, 2010**

Mar.	19	2005	Jan.	04	2006	May	20	2006	Oct.	01	2007
Mar.	20	2005	Jan.	03	2006	May	22	2006	Oct.	10	2007
Mar.	21	2005	Jan.	07	2006	Oct.	05	2006	Oct.	12	2007
Mar.	22	2005	Jan.	11	2006	Nov.	02	2006	Oct.	17	2007
Mar.	23	2005	Jan.	14	2006	Nov.	03	2006	Nov.	10	2007
Mar.	24	2005	Jan.	15	2006	Nov.	10	2006	Nov.	11	2007
Mar.	27	2005	Jan.	17	2006	Nov.	11	2006	Nov.	13	2007
Mar.	28	2005	Jan.	18	2006	Nov.	13	2006	Dec.	04	2007
Apr.	02	2005	Jan.	26	2006	Nov.	14	2006	Dec.	07	2007
Apr.	04	2005	Jan.	28	2006	Nov.	16	2006	Dec.	09	2007
Apr.	07	2005	Jan.	31	2006	Nov.	18	2006	Dec.	15	2007
Apr.	08	2005	Feb.	02	2006	Nov.	23	2006	Dec.	18	2007
Apr.	09	2005	Feb.	04	2006	Nov.	25	2006	Dec.	20	2007
Apr.	11	2005	Feb.	05	2006	Nov.	27	2006	Dec.	21	2007
Apr.	24	2005	Feb.	18	2006	Dec.	09	2006	Dec.	24	2007
May	05	2005	Feb.	27	2006	Dec.	10	2006	Dec.	25	2007
May	08	2005	Feb.	28	2006	Dec.	11	2006	Dec.	27	2007
May	09	2005	Mar.	01	2006	Dec.	12	2006	Dec.	28	2007
May	10	2005	Mar.	02	2006	Dec.	13	2006	Dec.	29	2007
May	18	2005	Mar.	03	2006	Jan.	01	2007	Dec.	30	2007
May	19	2005	Mar.	04	2006	Jan.	02	2007	Dec.	31	2007
Oct.	04	2005	Mar.	06	2006	Jan.	03	2007	Jan.	01	2008
Oct.	15	2005	Mar.	07	2006	Jan.	04	2007	Jan.	02	2008
Oct.	17	2005	Mar.	09	2006	Jan.	05	2007	Jan.	03	2008
Oct.	26	2005	Mar.	13	2006	Jan.	07	2007	Jan.	04	2008
Oct.	27	2005	Mar.	14	2006	Jan.	08	2007	Jan.	05	2008
Oct.	28	2005	Mar.	15	2006	Jan.	09	2007	Jan.	07	2008
Oct.	29	2005	Mar.	17	2006	Feb.	08	2007	Jan.	08	2008
Oct.	31	2005	Mar.	18	2006	Feb.	09	2007	Jan.	09	2008
Nov.	04	2005	Mar.	20	2006	Feb.	11	2007	Jan.	10	2008
Nov.	08	2005	Mar.	21	2006	Feb.	12	2007	Jan.	11	2008
Nov.	25	2005	Mar.	24	2006	Feb.	13	2007	Jan.	12	2008
Nov.	26	2005	Mar.	25	2006	Feb.	21	2007	Jan.	13	2008
Nov.	29	2005	Mar.	27	2006	Feb.	22	2007	Jan.	14	2008
Nov.	30	2005	Mar.	28	2006	Feb.	26	2007	Jan.	15	2008
Dec.	01	2005	Mar.	29	2006	Feb.	28	2007	Jan.	16	2008
Dec.	02	2005	Mar.	31	2006	Mar.	22	2007	Jan.	17	2008
Dec.	18	2005	Apr.	01	2006	Mar.	23	2007	Jan.	18	2008
Dec.	19	2005	Apr.	03	2006	Mar.	24	2007	Jan.	19	2008
Dec.	21	2005	Apr.	04	2006	Mar.	25	2007	Jan.	20	2008
Dec.	22	2005	Apr.	05	2006	Mar.	27	2007	Jan.	21	2008
Dec.	23	2005	Apr.	08	2006	Apr.	11	2007	Jan.	23	2008
Dec.	26	2005	Apr.	11	2006	Apr.	12	2007	Jan.	24	2008
Dec.	28	2005	Apr.	12	2006	Apr.	16	2007	Jan.	25	2008
Dec.	29	2005	Apr.	13	2006	Apr.	19	2007	Jan.	26	2008
Dec.	30	2005	Apr.	16	2006	Apr.	23	2007	Jan.	27	2008
Dec.	31	2005	Apr.	17	2006	May	02	2007	Jan.	28	2008
Jan.	02	2006	Apr.	22	2006	May	04	2007	Jan.	29	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, NCR (Oroville, CA)**  
**Significant Rain Events,\* March 17, 2005-March 17, 2010**

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

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



## **EXHIBIT C**



**California Sportfishing Protection Alliance**

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

3536 Rainier Avenue, Stockton, CA 95204

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

March 17, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. George Scott, Sr.

Mr. George Scott, Jr.

Chico Scrap Metal-South, operated by Chico Scrap Metal, Inc.

878 East 20<sup>th</sup> Street

Chico, CA 95928

Chico Scrap Metal, Inc.

c/o Mr. Carl B. Leverenz, Agent for Service

515 Wall Street

Chico, CA 95928

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

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Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the scrap metal recycling facility operated by Chico Scrap Metal, Inc. ("Chico Scrap Metal") located at 766 Chico-Oroville Highway in Durham, California ("the Facility"). The WDID identification number for the Facility is 5R04I021331. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Butte Creek, the Sacramento River, the Sacramento – San Joaquin Delta 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 Chico Scrap Metal commonly refers to, and may be formally doing business at the Facility as "Chico Scrap Metal-South" (hereafter, "CSM-South"). 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 Chico Scrap Metal, CSM-South, George Scott, Sr. and George Scott, Jr. as "CSM-South" within this Notice.

This letter addresses CSM-South's unlawful discharges of pollutants from the Facility to Butte Creek, which in turn ultimately flows into the Sacramento River and the

March 17, 2010

Page 2 of 16

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, CSM-South 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 Chico Scrap Metal, Inc, Mr. George Scott, Sr. and Mr. George Scott, Jr. 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.**

CSM-South operates a scrap metal recycling facility located in Durham, California. The Facility receives, stores, reclaims, processes and recycles scrap materials and other waste. The Facility also accepts salvage vehicles for crushing and subsequent recycling. Other activities at the facility include the use, storage, and maintenance of heavy machinery.

On or about November 23, 2007, CSM-South belatedly submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. However, as a result of its investigation, CSPA believes the CSM-South Facility has been in operation since at least March 17, 2005, and likely was operating for many years prior to that date. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CSM-South is subject to penalties for violations of the Act since March 17, 2005, and is subject to penalties for violations of both the General Industrial Storm Water Permit and the Act since November 23, 2007.

The Facility is classified as a scrap metal recycling facility under Standard Industrial Classification code 5093 ("Processing, Reclaiming and Wholesale Distribution of Scrap and Waste Materials"). The Facility collects and discharges storm water from its approximately seven-acre industrial site through at least one discharge point to a series of ditches discharging to Butte Creek, which in turn ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). The Delta, the

Sacramento River, and the ditches 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; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous

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

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by CSM-South: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; and, chemical oxygen demand – 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 and The Act.**

CSM-South has violated and continues to violate the terms and conditions of the General Permit and the Act. 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 November 5, 2007, Michael Huerta, a representative of the Butte County Public Health Department Environmental Health Division, conducted an inspection of the Facility, the primary purpose of which was to observe the “status of the workable waste piles.” Counsel for CSM-South were present during this inspection. On November 8, 2007, Mr. Huerta sent a letter to counsel for CSM-South memorializing observations noted during the inspection. Mr. Huerta observed that: “(1) the piles are surprisingly large and appear to consist mainly of soil; (2) the piles are not covered, accessible to the elements (wind and rain); (3) although the piles were placed on a concrete surface, storm water containment and retention were minimal or non-existent; and, (4) drainage trenches surrounded the Durham facility pile,” and as such, “off-site migration of workable waste is highly probable....” Additionally, Mr. Huerta noted that it was the understanding of the Butte County Public Health Department Environmental Health Division “and reflected in the TRO that workable scrap waste would be handled and stored in covered containers. This specified handling of the material in question was a condition under which the county signed the agreement. The piles of waste...violate the TRO. Please provide containered [*sic*] storage of this material.”

On January 28, 2008, the Regional Board’s Scott Zaitz sent CSM-South a letter requesting that it “submit a copy of the SWPPP to this office by 20 February 2008.” CSM-South failed to submit its SWPPP to the Regional Board by 20 February 2008, as evidenced by the Notice of Violation issued by the Regional Board’s George Day to CSM-South on May 27, 2008. The Notice of Violation states: “To date we have not received a copy of the SWPPP. Development and implementation of the SWPPP is required by the General Industrial Activities Storm Water Permit (Order No. 97-03-DWQ) and is necessary to assure compliance with the permit. It is a violation of the...Permit to initiate industrial activities without a site specific SWPPP.... Please submit a copy of the SWPPP to this office no later than 13 June 2008.”

Based on its review of available public documents, CSPA is informed and believes that CSM-South continues to discharge myriad pollutants in excess of benchmarks and that CSM-South has failed to implement BMPs adequate to bring its discharge of these pollutants into compliance with the General Permit. CSM-South’s ongoing violations are discussed further below.

**A. CSM-South Has Discharged Storm Water Containing Pollutants in Violation of the Permit and the Act.**

CSM-South has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) and Total Organic Carbon (TOC) 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. CSM-South’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.

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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 Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	TSS	1100 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed EPA Benchmark**

Date	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/19/2008	Spec. Con.	670 $\mu$ mho/cm	200 $\mu$ mhos/cm

**3. Discharges of Storm Water with Iron (Fe) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	Fe	61	1 mg/L

**4. Discharges of Storm Water with Lead (Pb) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	Pb	0.33	0.0816 mg/L

**5. Discharges of Storm Water with Aluminum (Al) in Excess of Applicable EPA Benchmark**



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Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	Al	35	0.75 mg/L

**6. Discharges of Storm Water with Copper (Cu) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	Cu	0.37	0.0636 mg/L

**7. Discharges of Storm Water with Zinc (Zn) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	Zn	2.3	0.117 mg/L

**8. Discharges of Storm Water with Chemical Oxygen Demand (COD) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	COD	450	120 mg/L

**9. Discharges of Storm Water with Total Organic Carbon (TOC) in Excess of Applicable EPA Benchmark**

Date	Parameter	Concentration in Discharge	EPA Benchmark Value
03/19/2008	TOC	130	110 mg/L

CSPA's investigation, including its review of CSM-South'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 CSM-South has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Iron (Fe), Specific Conductivity (SC), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD), Total Organic Carbon (TOC) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. CSM-South was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, CSM-South is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that CSM-South has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 17, 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 17, 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 CSM-South has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD), Total Organic Carbon (TOC) 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. CSPA further alleges that each of CSM-South's discharges of pollutants in storm water from the Facility after initiating operations but prior to November 23, 2007 constitute violations of the Act. The dates of these discharges in violation of the Act are also listed on Attachment A.

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, CSM-South is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 17, 2005.

**B. CSM-South 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 CSM-South, designated under SIC 5093 are also required to sample for Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu) and Chemical Oxygen Demand (COD). 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 CSM-South has failed to develop and implement an adequate Monitoring & Reporting Plan. CSPA's review of publicly available records reveals that CSM-South 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. Additionally, based on its 2007-2008 Annual Report, CSPA believes CSM-South 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, CSM-South is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 17, 2005. These violations are set forth in greater detail below:

**1. CSM-South 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 CSM-South 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 notes that the Facility's 2007-2008 Annual Report attempts to explain its failure to collect at least two storm water samples by stating:

"I was not able to take the second storm water sample (the first sample was actually not a run off but from an on-site puddle that never reached the discharge location) after the first was taken in March 2008, because there was not enough rain from the rain events (in April) in this area to generate runoff to collect a sample, and owner & facility manager tends to capture and retain runoff on-site during business hours."

However, this does not adequately explain why CSM-South was unable to sample any qualifying storm events from November 23, 2007 (the date George Scott, Jr. signed its Notice of Intent to Comply with the terms of the General Industrial Storm Water Permit) to March, 2008. In its 2007-2008 Annual Report, CSM-South reported that it analyzed a sample of storm water collected from a qualifying storm event on March 19, 2008. Self-monitoring reports under the General 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).

Publicly available precipitation records for the Facility's location indicate that on March 19, 2008, only 0.13 inches of rain fell in the area of the Facility. Using this as a baseline, CSPA notes that by comparing publicly available precipitation records and calendars for 2007 and 2008, there were at least four dates in the 2007-2008 wet season in which qualifying storm events occurred and CSM-South was subject to the

requirements of the General Permit (i.e., 0.39 inches of rain fell on the Facility on December 3, 2007; 0.56 inches of rain fell on the Facility on January 3, 2008; 0.26 inches of rain fell on the Facility on February 19, 2008; and, 0.44 inches of rain fell on the Facility on April 3, 2008). Furthermore, CSM-South's explanation of its failure to sample and analyze storm water discharges from two qualifying storm events betrays its misapprehension of the requirements of the General Permit. Accordingly, CSM-South's explanation is inadequate and its failure to sample and analyze storm water discharges from at least two qualifying storm events constitutes a separate and ongoing violation of the General Permit and the Act.

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 CSM-South. 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. CSM-South 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 CSM-South to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as CSM-South which are designated as SIC 5093 to analyze its storm water discharge for Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu) and Chemical Oxygen Demand (COD). Further, based on its investigation, CSPA is informed and believes that CSM-South has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Other pollutants likely to be present in the Facility's storm water discharges include: benzene, toluene, antimony, arsenic, boron, beryllium, cadmium, chromium, cobalt, manganese, mercury, molybdenum, nickel, selenium, silver, thallium and vanadium. CSM-South's failure to monitor these pollutants extends back to at least November 23, 2007. CSM-South's failure to monitor these other pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. CSM-South Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since November 23, 2007.**

CSPA is informed and believes that available documents demonstrate CSM-South'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, CSM-South is subject to penalties for these

violations of the General Industrial Storm Water Permit and the Act since March 17, 2005.

**C. CSM-South 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 CSM-South has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) and Total Organic Carbon (TOC) 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, CSM-South 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 CSM-South 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. CSM-South has failed to adequately implement such measures.

CSM-South was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, CSM-South 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 CSM-South fails to implement BAT and BCT. CSM-South is subject to penalties for violations of the Permit occurring since November 23, 2007 and of the Act occurring prior to that time.

**D. CSM-South 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 CSM-South has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. CSM-South has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. CSM-South 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 CSM-South fails to develop and implement an effective SWPPP. CSM-South is subject to penalties for the violations of the Permit and the Act occurring since March 17, 2005.



**E. CSM-South 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, CSM-South is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Chemical Oxygen Demand (COD) and Total Organic Carbon (TOC) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, CSM-South 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, CSM-South was aware of high levels of these pollutants prior to November 23, 2007. Likewise, CSM-South 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). CSM-South 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 November 23, 2007, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. CSM-South is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since March 17, 2005.

**F. CSM-South 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 CSM-South 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 2007-2008 Annual Report, CSM-South failed to report the monthly wet weather observations required by the General Permit for December, 2007 and January, 2008. CSPA notes that CSM-South explains this failure by stating in the 2007-2008 Annual Report that:

I have no observations of storm water discharges to report for the months of October-December, 2007, since the facility was not covered under the permit until mid-December. I have no observations of storm water discharges to report for the months of January-May, 2008, since the facility did not actually experience any runoff during normal business hours. The owner contains storm water on site using pumps and hoses during business hours. I kept a monthly log of precipitation and housekeeping activities on business days on the reverse side of the wet season forms.

However, this explanation does not square with reality. As discussed above, there were at least two other qualifying storm events that occurred between December, 2007 and the end of January, 2008. CSPA notes that George Scott, Jr. signed CSM-South's Notice of Intent to Comply with the terms of the General Industrial Storm Water Permit on November 23, 2007. Further, the copy of this document on file with the Regional Board is stamped with the date of December 10, 2007. Thus, the Facility was covered under the General Permit at least as late as December 10, 2007, and possibly as early as November 23, 2007. CSPA notes that CSM-South's 2007-2008 Annual Report states that the Facility "was permitted in mid-December, 2007, and began its monitoring program the beginning of February, 2008." Thus, by its own admission, CSM-South failed to conduct the required monthly observations of storm water while it was subject to the requirements of the General Permit. Moreover, in its Notice of Intent to Comply with the terms of the General Industrial Storm Water Permit, CSM-South indicated that its Monitoring Program would commence on December 15, 2007. Accordingly, CSM-South's explanation is inadequate and its failure to conduct the required observations of monthly storm water discharges constitutes a separate and ongoing violation of the General Permit and the Act.

Another assertion CSM-South makes in its 2007-2008 Annual Report that does not square with reality is its reporting that the "owner & facility manager tends to capture and retain runoff on-site during business hours," and that "the owner contains storm water on site using pumps and hoses during business hours." Contrary to these assertions, in Section VI on Receiving Water Information in the Notice of Intent to Comply with the terms of the General Industrial Storm Water Permit, CSM-South states:

“Storm water runs off into sump along street, under the street and into a ditch along the Hwy. Ditch water may percolate into the ground, vacant fields, or drain through ditches to the lower ditch along Hwy 99E.” Thus, again, by its own admission, CSM-South has failed to file true and correct Annual Reports.

As indicated above, CSM-South has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, CSM-South has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. CSM-South’s failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. CSM-South is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since March 17, 2005.

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

CSPA puts Chico Scrap Metal, Inc., CSM-South, including Mr. George Scott, Sr. and Mr. George Scott, Jr., 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 Chico Scrap Metal, Inc. and CSM-South 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](mailto:Andrew@PackardLawOffices.com), and,  
[Erik@PackardLawOffices.com](mailto:Erik@PackardLawOffices.com)

And to:

March 17, 2010

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Robert J. Tuerck  
Jackson & Tuerck  
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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 Chico Scrap Metal, Inc., CSM-South, George Scott, Sr. and George Scott, Jr. 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 Chico Scrap Metal, Inc., CSM-South, George Scott, Sr. and George Scott, Jr. and their 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, CSM-South (Durham, CA)**  
**Significant Rain Events,\* March 17, 2005 - March 17, 2010**

March 19 2005	Feb. 27 2006	April 11 2007	Dec. 24 2008
March 20 2005	Feb. 28 2006	April 14 2007	Dec. 25 2008
March 21 2005	Mar. 01 2006	April 21 2007	Jan. 22 2009
March 27 2005	Mar. 03 2006	May 01 2007	Jan. 23 2009
April 03 2005	Mar. 05 2006	May 03 2007	Jan. 24 2009
April 07 2005	Mar. 06 2006	May 24 2007	Feb. 05 2009
April 08 2005	Mar. 12 2006	Oct. 09 2007	Feb. 10 2009
April 24 2005	Mar. 13 2006	Oct. 10 2007	Feb. 11 2009
April 27 2005	Mar. 16 2006	Oct. 16 2007	Feb. 13 2009
May 04 2005	Mar. 20 2006	Nov. 10 2007	Feb. 15 2009
May 05 2005	Mar. 24 2006	Nov. 11 2007	Feb. 16 2009
May 08 2005	Mar. 25 2006	Dec. 03 2007	Feb. 17 2009
May 09 2005	Mar. 27 2006	Dec. 04 2007	Feb. 22 2009
May 17 2005	Mar. 28 2006	Dec. 06 2007	Feb. 23 2009
May 18 2005	Mar. 29 2006	Dec. 07 2007	Mar. 01 2009
Oct. 08 2005	Mar. 31 2006	Dec. 18 2007	Mar. 02 2009
Oct. 11 2005	April 02 2006	Dec. 19 2007	Mar. 03 2009
Oct. 15 2005	April 03 2006	Dec. 20 2007	April 10 2009
Oct. 26 2005	April 04 2006	Dec. 28 2007	April 13 2009
Oct. 28 2005	April 10 2006	Dec. 29 2007	May 01 2009
Nov. 07 2005	April 11 2006	Jan. 03 2008	May 02 2009
Nov. 08 2005	April 12 2006	Jan. 04 2008	Oct. 13 2009
Nov. 25 2005	April 16 2006	Jan. 05 2008	Oct. 19 2009
Nov. 28 2005	April 22 2006	Jan. 08 2008	Nov. 17 2009
Nov. 29 2005	May 19 2006	Jan. 12 2008	Nov. 20 2009
Nov. 30 2005	May 21 2006	Jan. 21 2008	Nov. 27 2009
Dec. 17 2005	Oct. 05 2006	Jan. 24 2008	Dec. 11 2009
Dec. 18 2005	Oct. 26 2006	Jan. 25 2008	Dec. 12 2009
Dec. 19 2005	Nov. 02 2006	Jan. 26 2008	Dec. 13 2009
Dec. 20 2005	Nov. 11 2006	Jan. 27 2008	Dec. 15 2009
Dec. 21 2005	Nov. 13 2006	Jan. 29 2008	Dec. 16 2009
Dec. 22 2005	Nov. 26 2006	Jan. 31 2008	Dec. 20 2009
Dec. 25 2005	Dec. 08 2006	Feb. 02 2008	Dec. 21 2009
Dec. 26 2005	Dec. 09 2006	Feb. 19 2008	Dec. 27 2009
Dec. 27 2005	Dec. 10 2006	Feb. 20 2008	Dec. 29 2009
Dec. 28 2005	Dec. 11 2006	Feb. 21 2008	Dec. 30 2009
Dec. 29 2005	Dec. 12 2006	Feb. 22 2008	Jan. 12 2010
Dec. 30 2005	Dec. 21 2006	Feb. 23 2008	Jan. 13 2010
Dec. 31 2005	Dec. 26 2006	Feb. 24 2008	Jan. 17 2010
Jan. 01 2006	Feb. 07 2007	Mar. 15 2008	Jan. 18 2010
Jan. 03 2006	Feb. 08 2007	Mar. 19 2008	Jan. 19 2010
Jan. 07 2006	Feb. 09 2007	April 03 2008	Jan. 20 2010
Jan. 14 2006	Feb. 10 2007	Oct. 30 2008	Jan. 21 2010
Jan. 17 2006	Feb. 12 2007	Oct. 31 2008	Jan. 24 2010
Jan. 18 2006	Feb. 22 2007	Nov. 01 2008	Jan. 25 2010
Jan. 30 2006	Feb. 24 2007	Nov. 03 2008	Jan. 26 2010
Feb. 01 2006	Feb. 27 2007	Dec. 14 2008	Jan. 30 2010
Feb. 26 2006	Mar. 26 2007	Dec. 21 2008	Feb. 04 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, CSM-South (Durham, CA)  
Significant Rain Events,\* March 17, 2005 - March 17, 2010**

Feb.	06	2010
Feb.	09	2010
Feb.	23	2010
Feb.	24	2010
Feb.	26	2010
Mar.	03	2010
Mar.	12	2010
Mar.	14	2010
Mar.	15	2010
Mar.	16	2010

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