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18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

17	_____)	Case No. _____
18	CALIFORNIA SPORTFISHING)	
19	PROTECTION ALLIANCE, a nonprofit)	
20	corporation)	COMPLAINT FOR DECLARATORY AND
21	Plaintiff,)	INJUNCTIVE RELIEF AND CIVIL
22)	PENALTIES
23	v.)	(Federal Water Pollution Control Act, 33
24)	U.S.C. §§ 1251 to 1387)
25	NORTH STATE RENDERING, CO.,)	
26	INC., a California corporation, and)	
27	CHRISTOPHER J. OTTONE, an)	
28	individual)	
)	
	Defendants,)	
)	
	_____)	

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

1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit enforcement provisions of the
3 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act” or
4 “the Act”) against North State Rendering, Co., Inc., and Mr. Christopher J. Ottone (hereafter
5 “Defendants”). This Court has subject matter jurisdiction over the parties and the subject matter
6 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
7 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
8 authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in case of actual
9 controversy and further necessary relief based on such a declaration), 33 U.S.C. §§ 1319(b),
10 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil penalties).

11 2. On or about April 8, 2010, Plaintiff provided notice of Defendants’ violations of
12 the Act, and of its intention to file suit against Defendants, to the Administrator of the United
13 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
14 Executive Director of the State Water Resources Control Board (“State Board”); the Executive
15 Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional
16 Board”); the U.S. Attorney General; and to Defendants, as required by the Act, 33 U.S.C. §
17 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and is
18 incorporated by reference.

19 3. More than sixty days have passed since notice was served on Defendants and the
20 State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
21 neither the EPA nor the State of California has commenced or is diligently prosecuting a court
22 action to redress the violations alleged in this complaint. This action’s claim for civil penalties
23 is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. §
24 1319(g).

25 4. Venue is proper in the Eastern District of California pursuant to Section
26 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
27 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in
28 Sacramento, California because the source of the violations is located within Butte County.

1 **II. INTRODUCTION**

2 5. This complaint seeks relief for Defendants' discharges of pollutants from an
3 approximately twenty-eight acre tallow plant facility ("the Facility") owned and/or operated by
4 Defendants North State Rendering, Co., Inc., ("North State") and Mr. Christopher J. Ottone.
5 The Facility discharges surface water to an unnamed tributary to Gold Run, which flows into
6 Dry Creek. Dry Creek is a tributary to Butte Creek, which flows into the Sacramento River
7 and, ultimately, the Sacramento-San Joaquin Delta. Defendants' discharges of pollutants from
8 the Facility are in violation of the Act and the State of California's General Industrial Permit for
9 storm water discharges, State Water Resources Control Board ("State Board") Water Quality
10 Order No. 91-13-DWQ, as amended by Water Quality Order No. 92- 12-DWQ and Water
11 Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System ("NPDES")
12 General Permit No. CAS000001 (hereinafter "General Permit" or "Permit"). Defendants'
13 violations of the filing, monitoring, reporting, discharge and management practice
14 requirements, and other procedural and substantive requirements of the General Permit and the
15 Act are ongoing and continuous.

16 6. The failure on the part of industrial facility operators such as Defendants to
17 comply with the General Permit is recognized as a significant cause of the continuing decline in
18 water quality of these receiving waters. The general consensus among regulatory agencies and
19 water quality specialists is that storm water pollution amounts to more than half the total
20 pollution entering the marine environment each year. With every rainfall event, hundreds of
21 thousands of gallons of polluted storm water originating from industrial facilities discharge to
22 the Sacramento River and the Sacramento-San Joaquin Delta.

23 **III. PARTIES**

24 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
25 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
26 California with its main office in Stockton, California. CSPA has approximately 2,000
27 members who live, recreate and work in and around waters of the State of California, including
28 Dry Creek, the Sacramento River, and the Sacramento-San Joaquin Delta. CSPA is dedicated to

1 the preservation, protection, and defense of the environment, and the wildlife and the natural
2 resources of all waters of California. To further these goals, CSPA actively seeks federal and
3 state agency implementation of the Act and other laws and, where necessary, directly initiates
4 enforcement actions on behalf of itself and its members.

5 8. Members of CSPA reside in California and use and enjoy California's numerous
6 rivers for recreation and other activities. Members of CSPA use and enjoy the waters of Dry
7 Creek, the Sacramento River, and the Sacramento-San Joaquin Delta, into which Defendants
8 have caused, are causing, and will continue to cause, pollutants to be discharged. Among other
9 things, members of CSPA use these areas to fish, sail, boat, kayak, swim, bird watch, view
10 wildlife and engage in scientific study, including monitoring activities. Defendants' discharges
11 of pollutants threaten or impair each of those uses or contribute to such threats and
12 impairments. Thus, the interests of CSPA's members have been, are being, and will continue to
13 be adversely affected by Defendants' ongoing failure to comply with the Clean Water Act. The
14 relief sought herein will redress the harms to Plaintiff caused by Defendants' activities.

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

18 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant North
19 State is a corporation organized under the laws of the State of California, and that Defendant
20 Christopher J. Ottone is the President of the company and operator of the Facility. Accordingly,
21 Defendants own and/or operate the Facility.

22 **IV. STATUTORY BACKGROUND**

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

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

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

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

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

26 16. In addition to absolute prohibitions, the General Permit contains a variety of
27 substantive and procedural requirements that dischargers must meet. Facilities discharging, or
28 having the potential to discharge, storm water associated with industrial activity that have not

1 obtained an individual NPDES permit must apply for coverage under the State's General Permit
2 by filing a Notice of Intent ("NOI"). The General Permit requires existing dischargers to file
3 their NOIs before March 30, 1992.

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

9 18. The EPA has established Benchmark Levels as guidelines for determining
10 whether a facility discharging industrial storm water has implemented the requisite BAT and
11 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been
12 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids – 100
13 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; biochemical oxygen
14 demand – 30 mg/L; and nitrate + nitrite nitrogen – 0.68 mg/L. The State Water Quality Control
15 Board has proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

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

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

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

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

27 22. The General Permit requires dischargers commencing industrial activities before
28 October 1, 1992 to develop and implement an adequate written Monitoring and Reporting

1 Program no later than October 1, 1992. Existing facilities covered under the General Permit
2 must implement all necessary revisions to their monitoring programs no later than August 1,
3 1997.

4 23. The General Permit also requires dischargers to submit yearly “Annual Reports”
5 to the Regional Board. As part of their monitoring program, dischargers must identify all storm
6 water discharge locations that produce a significant storm water discharge, evaluate the
7 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
8 measures set out in the SWPPP are adequate and properly implemented. Dischargers must then
9 conduct visual observations of these discharge locations for at least one storm per month during
10 the wet season (October through May) and record their findings in their Annual Report.
11 Dischargers must also collect and analyze storm water samples from at least two storms per
12 year. Section B requires dischargers to sample and analyze during the wet season for basic
13 parameters such as pH, total suspended solids (“TSS”), specific conductance, and total organic
14 content (“TOC”) or oil and grease, certain industry-specific parameters, and toxic chemicals
15 and other pollutants likely to be in the storm water discharged from the facility. Section B(5)
16 and Table D of the General Permit requires dischargers whose industrial activities fall within
17 Standard Industrial Classification (“SIC”) Code 2077 to analyze their storm water discharge
18 samples for chemical oxygen demand, biochemical oxygen demand, and nitrate + nitrite
19 nitrogen. Dischargers must also conduct dry season visual observations to identify sources of
20 non-storm water pollution. The monitoring and reporting program requires dischargers to
21 certify, based upon the annual site inspections, that the facility is in compliance with the
22 General Permit and report any non-compliance, and contains additional requirements as well.

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

26 25. The term “discharge of pollutants” means “any addition of any pollutant to
27 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to
28

1 include, among other examples, industrial waste, chemical wastes, biological materials, heat,
2 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

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

6 27. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §
7 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.
8 Waters of the United States also include man-made water bodies that are tributary to waters
9 that are navigable in fact, as well as ephemeral waters that are tributary to waters that are
10 navigable in fact.

11 28. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement
12 actions against any “person,” including individuals, corporations, or partnerships, for violations
13 of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C.
14 §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by
15 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of
16 up to \$32,500 per day for violations that occurred between March 15, 2004 and January 12,
17 2009, and an assessment of civil penalties of up to \$37,500 per day for violations occurring
18 after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d),
19 1365 and 40 C.F.R. §§ 19.1 - 19.4.

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

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

26 31. The Basin Plan establishes a standard for electrical conductivity in the Delta of
27 0.7 µmhos/cm from April 1 through August 31 and 1.0 µmhos/cm from September 1 through
28 March 31.

1 32. The Basin Plan provides that “[w]aters shall not contain chemical constituents in
2 concentrations that adversely affect beneficial uses.”

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

8 **V. STATEMENT OF FACTS**

9 34. Defendants operate an approximately thirteen-acre recycling facility located at
10 15 Shippee Road, in Oroville, California (the "Facility"). The Facility discharges surface water
11 to an unnamed tributary to Gold Run, which flows into Dry Creek and, ultimately, to the
12 Sacramento River, and the Sacramento-San Joaquin Delta.

13 35. The Facility is classified under SIC Code 2077 (“Fats and Oils”). The main
14 industrial activities occurring at the Facility involve the processing of tallow, grease, and other
15 animal by-products to make soap, candles, and pet and livestock feed. Other activities at the
16 Facility include the use, storage, and maintenance of motorized vehicles, including trucks used
17 to haul materials to and from the Facility. Many of these activities occur outside in areas that
18 are exposed to storm water and storm flows due to the lack of overhead coverage, functional
19 berms and other storm water controls. Plaintiff is informed and believes that Defendants’ storm
20 water controls, to the extent any exist, fail to achieve BAT and BCT standards.

21 36. The management practices at the Facility are wholly inadequate to prevent the
22 sources of contamination described above from causing the discharge of pollutants to waters of
23 the United States and fail to meet BAT and BCT. The Facility lacks essential structural controls
24 such as grading, berming and roofing to prevent rainfall and storm water flows from coming
25 into contact with these and other sources of contaminants, thereby allowing storm water to flow
26 over and across these materials and become contaminated prior to leaving the Facility. In
27 addition, the Facility lacks structural controls to prevent the discharge of water once
28

1 contaminated. The Facility also lacks an adequate filtration system to treat water once it is
2 contaminated.

3 37. Vehicle traffic at the Facility tracks dust and particulate matter, increasing the
4 discharges of polluted water and mud into waters of the United States.

5 38. During rain events storm water laden with pollutants flows from the Facility into
6 Dry Creek, which ultimately flows to the Sacramento River, and the Sacramento-San Joaquin
7 Delta.

8 39. Information available to Plaintiff indicates that as a result of these practices,
9 storm water containing pollutants harmful to fish, plant and bird life, and human health are
10 being discharged from the Facility directly to these waters during significant rain events.

11 40. Dry Creek, the Sacramento River, and the Sacramento-San Joaquin Delta are
12 waters of the United States.

13 41. Information available to Plaintiff indicates that Defendants have not fulfilled the
14 requirements set forth in the General Permit for discharges from the Facility due to the
15 continued discharge of contaminated storm water.

16 42. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
17 failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

18 43. Information available to Plaintiff indicates the continued existence of unlawful
19 storm water discharges at the Facility.

20 44. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
21 failed to develop and implement adequate monitoring, reporting and sampling programs for the
22 Facility. Plaintiffs are informed and believe, and thereupon allege, that Defendants have not
23 sampled with adequate frequency, have not conducted visual monitoring, and have not
24 analyzed the samples collected for the required pollutant parameters.

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

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1 **VI. CLAIMS FOR RELIEF**

2
3 **FIRST CAUSE OF ACTION**

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

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

9 47. Discharge Prohibition A(2) of the General Permit requires that storm water
10 discharges and authorized non-storm water discharges shall not cause or threaten to cause
11 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
12 General Permit require that storm water discharges and authorized non-storm water discharges
13 shall not adversely impact human health or the environment, and shall not cause or contribute
14 to a violation of any water quality standards contained in a Statewide Water Quality Control
15 Plan or the applicable Regional Board's Basin Plan.

16 48. Plaintiff is informed and believes, and thereupon alleges, that since at least
17 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to
18 Dry Creek, the Sacramento River, and the Sacramento-San Joaquin Delta in violation of the
19 General Permit.

20 49. During every significant rain event, storm water flowing over and through
21 materials at the Facility becomes contaminated with pollutants, flowing untreated from the
22 Facility to the Feather River, the Sacramento River, and the Sacramento-San Joaquin Delta.

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

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

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

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

6 59. Defendants have been in violation of the SWPPP requirement every day since at
7 least April 8, 2005. Defendants continue to be in violation of the Act each day that they fail to
8 develop and fully implement an adequate SWPPP for the Facility.

9 WHEREFORE, Plaintiffs pray for relief as set forth hereinafter.

10
11 **THIRD CAUSE OF ACTION**
12 **Failure to Develop and Implement the Best Available**
13 **And Best Conventional Treatment Technologies**
14 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

15 60. Plaintiff incorporates the allegations contained in the above paragraphs as
16 though fully set forth herein.

17 61. The General Permit's SWPPP requirements and Effluent Limitation B(3) require
18 dischargers to reduce or prevent pollutants in their storm water discharges through
19 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
20 pollutants.

21 62. Defendants have failed to implement BAT and BCT at the Facility for its
22 discharges of total suspended solids, specific conductance, chemical oxygen demand,
23 biochemical oxygen demand, nitrate+nitrite nitrogen, and unmonitored pollutants in violation
24 of Effluent Limitation B(3) of the General Permit.

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

28 64. Defendants have been in violation of the BAT and BCT requirements every day
since at least April 8, 2005. Defendants continue to be in violation of the BAT and BCT

1 requirements each day that they fail to develop and fully implement an adequate BAT and BCT
2 for the Facility.

3 WHEREFORE, Plaintiffs pray for relief as set forth hereinafter.

4
5 **FOURTH CAUSE OF ACTION**
6 **Failure to Develop and Implement an**
7 **Adequate Monitoring and Reporting Program**
8 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

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

11 66. Section B of the General Permit requires dischargers of storm water associated
12 with industrial activity to develop and implement a monitoring and reporting program
13 (including, among other things, sampling and analysis of discharges) no later than October 1,
14 1992.

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

23 68. Each day since October 1, 1992 that Defendants have failed to develop and
24 implement an adequate monitoring and reporting program for the Facility in violation of the
25 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §
26 1311(a). These violations are ongoing and continuous.

27 69. Defendants have been in violation of the monitoring and reporting program
28 requirements every day since at least April 8, 2005. Defendants continue to be in violation of

1 the program requirements each day that they fail to develop and fully implement an adequate
2 monitoring and reporting program for the Facility.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

4
5 **FIFTH CAUSE OF ACTION**

6 **False Certification of Compliance in Annual Report**
7 **(Violations of Permit conditions and the Act 33 U.S.C. §§ 1311, 1342)**

8 70. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set
9 forth herein.

10 71. As required by section B(14) of the General Permit, Defendants have submitted
11 signed annual reports certifying that the Facility is in compliance with the General Permit each
12 of the last five years.

13 72. Defendants have falsely certified compliance with the General Permit in each of
14 the Annual Reports submitted to the Regional Board since at least April 8, 2005.

15 73. Each day since at least April 8, 2005, that Defendants have falsely certified
16 compliance with the General Permit is a separate and distinct violation of the General Permit
17 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of
18 the General Permit's verification requirement each day that they maintain their false
19 certification of its compliance with the General Permit.

20 WHEREFORE, Plaintiffs pray for relief as set forth hereinafter.

21 **VII. RELIEF REQUESTED**

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

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

25 b. Enjoin Defendants from discharging pollutants from the Facility and to the
26 surface waters surrounding and downstream from the Facility;

27 c. Enjoin Defendants from further violating the substantive and procedural
28 requirements of the General Permit;

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

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

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

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

12 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for all
13 violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations
14 occurring after January 12, 2009, for each violation of the Act pursuant to Sections 309(d) and
15 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4 (pp. 200-
16 202) (Dec. 31, 1996);

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

19 j. Award Plaintiffs' costs (including reasonable attorney, witness, and consultant
20 fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

22 Dated: June 10, 2010

23 Respectfully submitted,

24 **JACKSON & TUERCK**

25
26 By: s/ Robert J. Tuerck
27 Robert J. Tuerck
28 Attorney for Plaintiff
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE