



**California Sportfishing Protection Alliance**

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

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April 29, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

William Short  
Northstate Recycling  
2041 Girvan  
Redding, CA 96001

William Short  
Northstate Recycling  
P.O. Box 720350  
Redding, CA 96099

Cindy Jackson, Agent for Service  
Northstate Recycling  
P.O. Box 515  
Cottonwood, CA 96022

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

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Dear Sir and Madam:

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 Northstate Recycling (formerly Shorts Scrap), facility owned and/or operated by William Short, located at 2041 Girvan Road, Redding, CA 96001 ("the Facility"). The WDID identification number for the Facility is 5R45I016539. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento River, its tributaries, and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Northstate Recycling ("Northstate") facility.

This letter addresses Northstate's unlawful discharges of pollutants from the Facility directly and indirectly to Clear Creek, which flows into the Sacramento River and, ultimately, the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General Permit").

CSPA is particularly concerned about these ongoing unlawful discharges because Northstate has been repeatedly warned by the Regional Water Quality Control Board that storm water runoff from the facility exceeds U.S. EPA benchmark values for common

storm water pollutants, and that the General Permit requires discharges to implement best management practices (BMPs) using best available pollutant control technology (BAT) and best available pollutant control technology (BCT) to reduce or eliminate the discharge of pollutants.<sup>1</sup> It is CSPA's intention, through this letter, to bring these violations to Northstate's attention so that they may be resolved in a comprehensive and efficient manner.

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

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Northstate 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 Northstate under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

On or about May 24, 2001, Northstate submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is primarily used to recycle scrap metals, redemption glass, aluminum cans, non-ferrous metals, plastics, and cardboard. The Facility is also used for vehicle storage and dismantling. Accordingly, the Facility is classified as a scrap recycling facility under Standard Industrial Classification ("SIC") code 5093, and as a automotive salvage yard under SIC code 5015. Northstate is not a member of any monitoring group. The Facility collects and discharges storm water from its roughly 13-acre industrial site through at least one discharge point to storm water drains which drain to Clear Creek, which flows into the Sacramento River and, ultimately, to the Delta.

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

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<sup>1</sup> CSPA is aware of at least one letter from the California Regional Water Quality Control Board, Central Valley Region, sent to the Northstate on August 25, 2005, warning Northstate of benchmark exceedances in its storm water discharges and the need for the employment of BMPs, BATs, and BCTs. CSPA is also aware of at least two letters from the California Regional Water Quality Control Board, Central Valley Region, that were sent to the Northstate on March 25, 2008, and December 15, 2009, informing Northstate that it was in violation of the General Permit.

Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L) 0.01 mg/L for arsenic, 0.1 mg/L for copper, 0.3 mg/L for iron, and 0.1 mg/L for zinc. *Id.* at III-4.00. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.*, at III-3.0. The EPA has issued recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; and iron – 0.3 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1.0 mg/L (primary) and 0.2 mg/L (secondary); arsenic – 0.01 mg/L (primary); cadmium – 0.005 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; mercury 0.002 mg/L (primary); selenium – 0.05 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: 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 identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a

discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit also 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 Northstate: pH – 6.0-9.0; total suspended solids (“TSS”) – 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L; aluminum – 0.75 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

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

Northstate has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

The General Permit further prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water

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

Based on its review of available public documents, CSPA is informed and believes that Northstate failed to comply with the requirements of the General Permit and has continued to operate in violation of the General Permit despite the Regional Board’s repeated warnings and notices of violation issued to Northstate. Northstate’s ongoing violations are discussed further below.

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

Northstate has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids, specific conductivity, oil & grease, copper, lead, zinc, aluminum, iron, and chemical oxygen demand in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto. Northstate’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 Northstate Recycling Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

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

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	“Storm Water”	TSS	250 mg/L	100 mg/L
11/13/2006	“Storm Water”	TSS	120 mg/L	100 mg/L
02/27/2007	“Storm Water”	TSS	160 mg/L	100 mg/L
10/16/2007	“Storm Water”	TSS	460 mg/L	100 mg/L
02/21/2008	“Storm Water”	TSS	150 mg/L	100 mg/L
03/16/2009	“Perimeter”	TSS	160 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity (SC) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	"Storm Water"	SC	240 µmhos/cm	200 µmhos/cm
02/27/2006	"Storm Water"	SC	260 µmhos/cm	200 µmhos/cm
11/13/2006	"Storm Water"	SC	340 µmhos/cm	200 µmhos/cm
02/27/2007	"Storm Water"	SC	280 µmhos/cm	200 µmhos/cm
10/16/2007	"Storm Water"	SC	480 µmhos/cm	200 µmhos/cm
11/03/2008	"Perimeter"	SC	277 µmhos/cm	200 µmhos/cm
03/16/2009	"Perimeter"	SC	591 µmhos/cm	200 µmhos/cm

**3. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	"Storm Water"	O&G	140 mg/L	15 mg/L
02/27/2007	"Storm Water"	O&G	29 mg/L	15 mg/L

**4. Discharges of Storm Water Containing Copper (Cu) at Levels in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	"Storm Water"	Cu	2.3 mg/L	0.0636 mg/L
02/27/2006	"Storm Water"	Cu	0.15 mg/L	0.0636 mg/L
11/13/2006	"Storm Water"	Cu	0.23 mg/L	0.0636 mg/L
02/27/2007	"Storm Water"	Cu	0.48 mg/L	0.0636 mg/L
10/16/2007	"Storm Water"	Cu	0.77 mg/L	0.0636 mg/L
02/21/2008	"Storm Water"	Cu	0.15 mg/L	0.0636 mg/L
11/03/2008	"Perimeter"	Cu	0.216 mg/L	0.0636 mg/L
03/16/2009	"Perimeter"	Cu	0.309 mg/L	0.0636 mg/L

**5. Discharges of Storm Water Containing Lead (Pb) at Levels in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	"Storm Water"	Pb	3.6 mg/L	0.0816 mg/L
02/27/2006	"Storm Water"	Pb	0.19 mg/L	0.0816 mg/L
11/13/2006	"Storm Water"	Pb	0.26 mg/L	0.0816 mg/L
02/27/2007	"Storm Water"	Pb	0.57 mg/L	0.0816 mg/L
10/16/2007	"Storm Water"	Pb	0.91 mg/L	0.0816 mg/L
02/21/2008	"Storm Water"	Pb	0.17 mg/L	0.0816 mg/L
11/03/2008	"Perimeter"	Pb	.241 mg/L	0.0816 mg/L
03/16/2009	"Perimeter"	Pb	0.317 mg/L	0.0816 mg/L

**6. Discharges of Storm Water Containing Zinc (Zn) at Levels in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	"Storm Water"	Zn	8.9 mg/L	0.117 mg/L
02/27/2006	"Storm Water"	Zn	0.62 mg/L	0.117 mg/L
11/13/2006	"Storm Water"	Zn	0.75 mg/L	0.117 mg/L
02/27/2007	"Storm Water"	Zn	1.8 mg/L	0.117 mg/L
10/16/2007	"Storm Water"	Zn	2.8 mg/L	0.117 mg/L
02/21/2008	"Storm Water"	Zn	0.70 mg/L	0.117 mg/L
11/03/2008	"Perimeter"	Zn	0.642 mg/L	0.117 mg/L
03/16/2009	"Perimeter"	Zn	0.923 mg/L	0.117 mg/L

**7. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	"Storm Water"	Al	14 mg/L	0.75 mg/L
02/27/2006	"Storm Water"	Al	1.5 mg/L	0.75 mg/L
11/13/2006	"Storm Water"	Al	5.7 mg/L	0.75 mg/L
02/27/2007	"Storm Water"	Al	16 mg/L	0.75 mg/L
10/16/2007	"Storm Water"	Al	19 mg/L	0.75 mg/L

02/21/2008	“Storm Water”	Al	12 mg/L	0.75 mg/L
11/03/2008	“Perimeter”	Al	4.99 mg/L	0.75 mg/L
03/16/2009	“Perimeter”	Al	4.99 mg/L	0.75 mg/L

**8. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/07/2005	“Storm Water”	Fe	22 mg/L	1.0 mg/L
02/27/2006	“Storm Water”	Fe	2.7 mg/L	1.0 mg/L
11/13/2006	“Storm Water”	Fe	10 mg/L	1.0 mg/L
02/27/2007	“Storm Water”	Fe	25 mg/L	1.0 mg/L
10/16/2007	“Storm Water”	Fe	37 mg/L	1.0 mg/L
02/21/2008	“Storm Water”	Fe	14 mg/L	1.0 mg/L
11/03/2008	“Perimeter”	Fe	8.4 mg/L	1.0 mg/L
03/16/2009	“Perimeter”	Fe	10.6 mg/L	1.0 mg/L

**9. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
10/16/2007	“Storm Water”	COD	300 mg/L	120 mg/L
11/03/2008	“Perimeter”	COD	124 mg/L	120 mg/L
03/16/2009	“Perimeter”	COD	210 mg/L	120 mg/L

CSPA’s investigation, including its review of Northstate’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the Basin Plan’s benchmark for pH, indicates that Northstate has not implemented BAT and BCT at the Facility for its discharges of total suspended solids (TSS), specific conductivity (SC), chemical oxygen demand (COD), copper (Cu), lead (Pb), zinc (Zn), aluminum (Al), iron (Fe), and other pollutants. Northstate was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Northstate is discharging polluted storm water associated with its industrial operations in violation of the General Permit without having implemented BAT and BCT.



CSPA is informed and believes that Northstate has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 29, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since April 29, 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 Northstate has discharged storm water containing impermissible levels of total suspended solids, specific conductivity, oil & grease, copper, lead, zinc, aluminum, iron, and chemical oxygen demand 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, Northstate is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 29, 2005.

**B. Northstate 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 Northstate, designated under SIC codes 5093 and 5015 are also required to sample for copper, lead, zinc, aluminum, iron, and chemical oxygen demand. Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that Northstate has failed to develop and implement an adequate Monitoring & Reporting Plan. Northstate has failed to collect storm water samples from each of its discharge points during at least two qualifying storm events (as defined by the General Permit) during each of the past

five years and has failed to analyze its storm water for all pollutants likely to be present in significant quantities in its storm water discharge. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Northstate is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 29, 2005. These violations are set forth in greater detail below.

**1. Northstate Has Failed to Collect at Least Two Storm Water Samples From Each Facility Discharge Point During Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that Northstate has failed to collect storm water samples from all discharge points at the Facility for at least two storm events during each Wet Season as required by Section B(5)(a). Based on the annual reports, and attached laboratory testing documents filed by Northstate over the past five years, the facility has made a practice of reporting the existence of fewer discharge points than actually exist at the facility. Northstate has routinely failed to collect and analyze samples from more than one discharge location during the past five years. Based on CSPA's review of the Facility description and Storm Water Site Map included in the SWPPP prepared by NEST Environmental Services, Inc., and sent to regional board on May 22, 2008, additional storm water discharge points exist at the facility. Northstate's failure to comply with the sampling requirements of the Act and the Permit constitute separate and ongoing violations of the Permit and the Act.

**2. Northstate Has Failed to Analyze Its Storm Water for All Pollutants Likely to Be Present in Significant Quantities in Its Storm Water Discharge.**

Section B(5)(c)(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 Northstate, designated under SIC codes 5093 and 5015 are also required to sample for chemical oxygen demand, iron, lead, aluminum, copper, and zinc. Based on CSPA's review of publically available documents, Northstate has failed to test for all of these constituents on at least one occasion. For example, the Accutest Lab testing results attached to the 2007-2008 Annual Report, indicate that Northstate failed to analyze the February 21, 2008 storm water sample for chemical oxygen demand. Section B(5)(c)(ii) of the General Permit also requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on a review of Northstate's Annual Reports submitted to the Regional Board over the past five years, CSPA believes that Northstate has failed to monitor for at least five pollutants likely to be present in storm water discharges in significant quantities – arsenic, chromium, manganese, mercury, and nickel. Each failure to monitor for each separate

parameter constitutes a separate violation of the General Industrial Storm Water Permit and the Act. The Facility's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and Act.

**3. Northstate Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 29, 2005.**

CSPA is informed and believes that available documents demonstrate Northstate'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, Northstate is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since April 29, 2005.

**C. Northstate 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 Northstate has not implemented BAT and BCT at the Facility for its discharges of total suspended solids, specific conductivity, chemical oxygen demand, oil and grease, copper, zinc, iron, lead, aluminum, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Despite the numerous, substantial and ongoing Benchmark exceedences described herein, Northstate routinely certifies in its annual reports that, "no additional or revised BMPs are necessary" at the facility. Yet on March 22, 2005, and February 20, 2008 agents from Tetra Tech conducted inspections of the Facility on behalf of the EPA and the Regional Board. Findings made during those inspections prompted an agent from the Storm Water and Water Certification Unit of the Regional Board to send Northstate notifications on August 25, 2005, and March 25, 2008, that the Facility was in violation of the General Permit. Northstate failed to remedy the problem, and on December 15, 2009, the Regional Board also sent a letter warning Northstate that U.S. EPA benchmarks were being exceeded at the facility. The Regional Board noted that the "storm water samples indicate that the current BMPs implemented at the site are not sufficient to reduce pollutant concentrations below benchmark levels." The Regional Board ordered that additional BMPs must be implemented to reduce or eliminate the discharge of pollutants from the site. The Board further ordered Northstate to modify its existing Storm Water Pollution Prevention Plan ("SWPPP"). Indeed, Northstate's own self-

evaluation conducted on June 3, 2009, and reported in the 2008-2009 Annual Report admits that there are deficiencies in the Facility's BMPs or BMP implementation.

To meet the BAT/BCT requirement of the General Permit, Northstate 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 Northstate 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. Northstate has failed to implement such measures adequately.

Northstate was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Northstate 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 Northstate fails to implement BAT and BCT. DWP is subject to penalties for violations of the Order and the Act occurring since April 29, 2005.

**D. Northstate 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 SWPPP no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby waterbodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities,

a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Northstate has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Northstate has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Northstate 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 Northstate fails to develop and implement an effective SWPPP. Northstate is subject to penalties for violations of the Order and the Act occurring since April 29, 2005.

**E. Northstate 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, Northstate is discharging elevated levels of total suspended solids, specific conductivity, oil and grease, chemical oxygen demand, copper, lead, zinc, iron, and aluminum that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Northstate 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. Northstate has failed to do so.

Based on CSPA's review of available documents, Northstate was aware of high levels of these pollutants prior to April 29, 2005. Likewise, Northstate 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). Northstate has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since April 29, 2005, and will continue to be in violation every day that Northstate fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Northstate is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since April 29, 2005.

**F. Northstate 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 Northstate has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, Northstate has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Northstate has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Northstate submitted an incomplete, untimely, or incorrect annual report, that falsely certified compliance with the Act in the past years. Northstate's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Northstate is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 29, 2005.

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

CSPA puts Mr. William Short and Northstate 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 Northstate on notice that it intends to include those persons in this action.

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

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

**V. Counsel.**

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

Robert J. Tuerck  
Jackson & Tuerck  
429 Main Street, Suite C  
P.O. Box 148  
Quincy, CA 95971  
Tel: (530) 283-0406  
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**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Mr. William Short and Northstate to civil penalties of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Northstate 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

Notice of Violation and Intent To File Suit  
April 29, 2010  
Page 16 of 16

completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance



## **SERVICE LIST**

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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  
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William Short  
Northstate Recycling  
2041 Girvan  
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William Short  
Northstate Recycling  
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Cindy Jackson, Agent for Service  
Northstate Recycling  
P.O. Box 515  
Cottonwood, CA 96022

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**Northstate Recycling, Inc.**  
**Significant Rain Events, April 29, 2005 – April 28, 2010**

May 4, 2005	January 28, 2006	November 13, 2006
May 5, 2005	January 30, 2006	November 14, 2006
May 8, 2005	February 1, 2006	November 16, 2006
May 9, 2005	February 4, 2006	November 26, 2006
May 16, 2005	February 26, 2006	December 8, 2006
May 17, 2005	February 27, 2006	December 9, 2006
May 18, 2005	March 2, 2006	December 10, 2006
June 8, 2005	March 3, 2006	December 11, 2006
June 16, 2005	March 5, 2006	December 12, 2006
June 17, 2005	March 6, 2006	December 13, 2006
October 3, 2005	March 7, 2006	December 15, 2006
October 15, 2005	March 9, 2006	December 21, 2006
October 26, 2005	March 10, 2006	December 26, 2006
October 28, 2005	March 12, 2006	December 27, 2006
November 3, 2005	March 13, 2006	February 7, 2007
November 7, 2005	March 14, 2006	February 8, 2007
November 8, 2005	March 16, 2006	February 9, 2007
November 25, 2005	March 17, 2006	February 10, 2007
November 28, 2005	March 20, 2006	February 11, 2007
November 29, 2005	March 24, 2006	February 12, 2007
November 30, 2005	March 25, 2006	February 22, 2007
December 1, 2005	March 27, 2006	February 24, 2007
December 18, 2005	March 28, 2006	February 26, 2007
December 19, 2005	March 31, 2006	February 27, 2007
December 20, 2005	April 2, 2006	March 26, 2007
December 21, 2005	April 3, 2006	April 11, 2007
December 22, 2005	April 4, 2006	April 14, 2007
December 25, 2005	April 5, 2006	April 21, 2007
December 26, 2005	April 7, 2006	April 22, 2007
December 27, 2005	April 10, 2006	May 1, 2007
December 28, 2005	April 11, 2006	May 2, 2007
December 29, 2005	April 12, 2006	May 4, 2007
December 30, 2005	April 15, 2006	June 5, 2007
December 31, 2005	April 16, 2006	July 18, 2007
January 1, 2006	April 22, 2006	September 22, 2007
January 3, 2006	May 19, 2006	September 23, 2007
January 7, 2006	October 5, 2006	September 28, 2007
January 11, 2006	November 2, 2006	October 5, 2007
January 14, 2006	November 11, 2006	October 10, 2007
January 17, 2006	November 12, 2006	October 16, 2007

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**Northstate Recycling, Inc.**  
**Significant Rain Events, April 29, 2005 – April 28, 2010**

October 19, 2007	October 31, 2008	May 4, 2009
November 10, 2007	November 1, 2008	May 5, 2009
November 11, 2007	November 3, 2008	June 3, 2009
December 3, 2007	December 14, 2008	June 4, 2009
December 4, 2007	December 15, 2008	September 14, 2009
December 6, 2007	December 18, 2008	October 13, 2009
December 7, 2007	December 21, 2008	October 19, 2009
December 16, 2007	December 24, 2008	November 17, 2009
December 17, 2007	December 25, 2008	November 20, 2009
December 19, 2007	January 2, 2009	November 27, 2009
December 20, 2007	January 22, 2009	December 11, 2009
December 28, 2007	January 23, 2009	December 12, 2009
December 29, 2007	January 24, 2009	December 13, 2009
January 3, 2008	January 25, 2009	December 16, 2009
January 4, 2008	February 5, 2009	December 20, 2009
January 5, 2008	February 6, 2009	December 21, 2009
January 6, 2008	February 8, 2009	December 27, 2009
January 8, 2008	February 9, 2009	December 29, 2009
January 10, 2008	February 10, 2009	December 30, 2009
January 12, 2008	February 11, 2009	January 1, 2010
January 21, 2008	February 12, 2009	January 12, 2010
January 24, 2008	February 13, 2009	January 13, 2010
January 25, 2008	February 15, 2009	January 17, 2010
January 26, 2008	February 16, 2009	January 18, 2010
January 27, 2008	February 17, 2009	January 19, 2010
January 29, 2008	February 18, 2009	January 20, 2010
January 31, 2008	February 22, 2009	January 21, 2010
February 2, 2008	February 23, 2009	January 22, 2010
February 19, 2008	February 24, 2009	January 23, 2010
February 20, 2008	February 25, 2009	January 24, 2010
February 21, 2008	February 26, 2009	January 25, 2010
February 22, 2008	March 1, 2009	January 30, 2010
February 23, 2008	March 2, 2009	February 4, 2010
February 24, 2008	March 3, 2009	February 5, 2010
March 19, 2008	March 21, 2009	February 6, 2010
March 29, 2008	March 22, 2009	February 8, 2010
April 22, 2008	April 9, 2009	February 9, 2010
April 23, 2008	April 10, 2009	February 20, 2010
October 3, 2008	May 1, 2009	February 23, 2010
October 4, 2008	May 2, 2009	February 24, 2010
October 30, 2008	May 3, 2009	February 26, 2010

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**Northstate Recycling, Inc.**  
**Significant Rain Events, April 29, 2005 – April 28, 2010**

February 27, 2010  
March 2, 2010  
March 3, 2010  
March 9, 2010  
March 10, 2010  
March 12, 2010

March 24, 2010  
March 30, 2010  
April 2, 2010  
April 4, 2010  
April 11, 2010  
April 12, 2010

April 13, 2010  
April 14, 2010  
April 18, 2010  
April 20, 2010  
April 27, 2010