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CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation, Plaintiff, vs. MELROSE METAL PRODUCTS, INC., a corporation, Defendant.	Case No. C09-03666 WHA **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES** (Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387)

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the "Clean Water Act" or "the Act"). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28

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

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

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

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

II. INTRODUCTION

5. This complaint seeks relief for Defendant's discharges of polluted storm water and non-storm water pollutants from Defendant MELROSE METAL PRODUCTS, INC.'s metal work manufacturing facility located at 44533 South Grimmer Blvd. in Fremont, California ("the Facility") in violation of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control

Board Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ (hereinafter "the Order" or "Permit" or "General Permit"). Defendant's violations of the discharge, treatment technology, monitoring requirements, and other procedural and substantive requirements of the Permit and the Act are ongoing and continuous.

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

III. PARTIES

7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Stockton, California. CSPA has approximately 2,000 members who live, recreate and work in and around waters of the State of California, including the San Francisco Bay. CSPA is dedicated to the preservation, protection, and defense of the environment, the wildlife and the natural resources of all waters of California. To further these goals, CSPA actively seeks federal and state agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

8. Members of CSPA reside in and around the San Francisco Bay (the "Bay") and enjoy using the Bay for recreation and other activities. Members of CSPA use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife and engage in scientific study including monitoring

activities, among other things. Defendant's discharges of pollutants threaten or impair each of those uses or contribute to such threats and impairments. Thus, the interests of CSPA's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

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

10. Defendant MELROSE METAL PRODUCTS, INC. ("Melrose Metal") is a corporation organized under the laws of California. Defendant Melrose Metal operates a metal work manufacturing facility in Fremont, California.

IV. STATUTORY BACKGROUND

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

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

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

14. The State Board elected to issue a statewide general permit for industrial storm water discharges. The State Board issued the General Permit on or about November 19,

1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

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

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

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

18. EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established

Parameter Benchmark Values for the following parameters, among others: total suspended solids – 100 mg/L; oil & grease – 15 mg/L; total organic carbon – 110 mg/L; pH – 6.0 – 9.0 s.u.; iron – 1.0 mg/L; zinc – 0.117 mg/L; nitrate plus nitrite nitrogen ("N+N") – 0.68 mg/L; and aluminum – 0.75 mg/L. The State Board has proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

19. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures that comply with the BAT and BCT standards. The General Permit requires that an initial SWPPP have been developed and implemented before October 1, 1992. The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (Section A(2)). The SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (Section

A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Section A(9),(10)).

20. Section C(3) of the General Permit requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60 days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Section C(4)(a).

21. Section C(11)(d) of the General Permit's Standard Provisions requires dischargers to report any noncompliance to the Regional Board. *See also* Section E(6). Section A(9) of the General Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

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

23. As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report. Dischargers must also collect and analyze storm water samples from at least two storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall

collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) requires dischargers to sample and analyze during the wet season for basic parameters, such as pH, total suspended solids, electrical conductance, and total organic content or oil & grease, certain industry-specific parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii) requires discharges to sample for parameters dependent on a facility's standard industrial classification ("SIC") code. Facilities that fall under SIC Code 3444 are required to analyze their storm water discharge samples for zinc, N+N, iron, and aluminum. Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution. Section B(7)(a) indicates that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event." Section B(7)(c) requires that "if visual observation and sample collection locations are difficult to observe or sample…facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event."

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

25. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up

$32,500 per day per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

26. The Regional Board has established water quality standards for Mowry Slough, Coyote Creek, and the San Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally referred to as the Basin Plan.

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

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

29. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses."

30. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses."

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

32. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average).

33. The EPA has adopted saltwater numeric water quality standards for zinc of 0.090 mg/L (Criteria Maximum Concentration – "CMC") and 0.081 mg/L (Criteria Continuous Concentration – "CCC").

V. STATEMENT OF FACTS

34. Defendant Melrose Metal operates a metal work manufacturing facility located at 44533 South Grimmer Blvd. in Fremont, California. The Facility designs, manufactures, and installs a variety of metal work products, including emission control systems, heat exchangers, automotive plant systems, process machinery, conveyors, elevators, and food processing equipment. The Facility falls within SIC Code 3444. The Facility covers

approximately 4 acres, the majority of which is paved and used for transporting and storing materials throughout the Facility. On information and belief, Plaintiff alleges that there is at least one large building located on the property. On information and belief, Plaintiff alleges that metal work manufacturing and the movement of materials occurs both inside and outside of this building. Metal materials and finished products are transported in and out of this building for storage in the paved areas of the Facility.

35. Defendant channels and collects storm water falling on the Facility through a series of storm water drains that lead to at least four storm water outfalls. Each outfall collects storm water runoff from a particular area of the Facility. The Facility's outfalls discharge either to a channel adjacent to the Facility, which flows to the Bay, or to the City of Fremont's storm drain system, which empties into either Coyote Creek or Mowry Slough, and then flows to the Bay.

36. On information and belief, Plaintiff alleges that the industrial activities at the site include the fabrication of industrial sheet metal, plate, and structural steel into a variety of finished metal products designed for application in a variety of industries. Industrial activities also include the outdoor handling, processing, and storage of these materials as well as other materials used in the production process.

37. Significant activities at the site take place outside and are exposed to rainfall. These activities include the storage and movement of raw materials and finished products, equipment used in the production processes; the storage and use of vehicles and equipment for materials handling; and the storage, handling, and disposal of waste materials. Loading and delivery of raw materials and finished products occurs outside. Trucks enter and exit the Facility directly from and to public roads. Fork lifts are the primary means of moving raw materials and finished products around the storage areas of the Facility. These areas are exposed to storm water and storm flows due to the lack of overhead coverage, berms, and other storm water controls.

38. Industrial machinery, heavy equipment and vehicles, including fork lifts, are operated and stored at the Facility in areas exposed to storm water flows. Plaintiff is

informed and believes, and thereupon alleges, that such machinery and equipment leak contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows, and that such machinery and equipment track sediment and other contaminants throughout the Facility.

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

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

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

42. Since at least October 19, 2004, the Facility has detected total suspended solids, zinc, N+N, iron, pH, and electrical conductance in storm water discharged from the Facility. Levels of these pollutants detected in the Facility's storm water have been in excess of EPA's numeric parameter benchmark values and the State Board's proposed value for electrical conductance. Levels of these pollutants detected in the Facility's storm water have been in excess of water quality standards established in the Basin Plan.

43. The following discharges on the following dates contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan:

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
1/25/2008	pH	5.93	6.5 – 8.5	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
1/25/2008	pH	5.87	6.5 – 8.5	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
1/25/2008	pH	5.88	6.5 – 8.5	Drain #3
1/25/2008	Zinc	0.31 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
1/25/2008	Zinc	0.31 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
1/25/2008	pH	6.11	6.5 – 8.5	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
10/12/2007	Zinc	0.51 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1

10/12/2007	Zinc	0.51 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
10/12/2007	Zinc	1.4 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
10/12/2007	Zinc	1.4 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
10/12/2007	Zinc	2 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
10/12/2007	Zinc	2 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
10/12/2007	Zinc	0.62 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
10/12/2007	Zinc	0.62 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
1/5/2007	Zinc	0.32 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
1/5/2007	Zinc	0.32 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
1/5/2007	Zinc	0.43 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
1/5/2007	Zinc	0.43 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
1/5/2007	Zinc	0.85 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/5/2007	Zinc	0.85 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
12/12/2006	Zinc	0.11 mg/L	0.081 mg/L (4-day	Drain #2

			average) – Marine	
12/12/2006	Zinc	0.11 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
12/12/2006	Zinc	0.13 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
12/12/2006	Zinc	0.13 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
12/12/2006	Zinc	0.72 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
12/12/2006	Zinc	0.72 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
1/3/2006	Zinc	0.38 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
1/3/2006	Zinc	0.38 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
1/3/2006	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/3/2006	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
10/19/2004	pH	6.2	6.5 – 8.5	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
10/19/2004	pH	5.8	6.5 – 8.5	Drain #2
10/19/2004	Zinc	0.26 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2

10/19/2004	Zinc	0.26 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
10/19/2004	pH	5.7	6.5 – 8.5	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
10/19/2004	pH	5.5	6.5 – 8.5	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
5/28/2004	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
5/28/2004	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
5/28/2004	Zinc	0.3 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
5/28/2004	Zinc	0.3 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
5/28/2004	Zinc	2.6 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
5/28/2004	Zinc	2.6 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
5/28/2004	Zinc	2.9 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
5/28/2004	Zinc	2.9 mg/L	0.09 mg/L (1-hour	Drain #4

			average) – Marine	

44. The levels of total suspended solids in storm water detected by the Facility have exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA as well as the standard for suspended materials articulated in the Basin Plan. For example, on October 12, 2007, the level of total suspended solids measured by Defendant in the Facility's discharged storm water was 590 mg/L. That level of total suspended solids is nearly six times the benchmark value for total suspended solids established by EPA. The Facility also has measured levels of total suspended solids in storm water discharged from the Facility in excess of EPA's benchmark value of 100 mg/L on January 5, 2007 and October 19, 2004.

45. The levels of zinc in storm water detected by the Facility have exceeded the benchmark value for zinc of 0.117 mg/L established by EPA. For example, on October 12, 2007, the level of zinc measured by Defendant in the Facility's discharged storm water was 2 mg/L. That level of zinc is over seventeen times the benchmark value for zinc established by EPA. The Facility also has measured levels of zinc in storm water discharged from the Facility in excess of EPA's benchmark value of 0.117 mg/L on January 25, 2008; January 5, 2007; December 12, 2006; January 3, 2006; and October 19, 2004.

46. The levels of N+N in storm water detected by the Facility have exceeded the benchmark value for N+N of 0.68 mg/L established by EPA. For example, on October 12, 2007, the level of N+N measured by Defendant in the Facility's discharged storm water was 2.5 mg/L. That level of N+N is over three and a half times the benchmark value for N+N established by EPA. The Facility also has measured levels of N+N in storm water discharged from the Facility in excess of EPA's benchmark value of 0.68 mg/L on January 5, 2007; December 12, 2006; January 3, 2006; and October 19, 2004.

47. The levels of iron in storm water detected by the Facility have exceeded the benchmark value for iron of 1.0 mg/L established by EPA. For example, on October 12, 2007, the level of iron measured by Defendant in the Facility's discharged storm water was 7.6 mg/L. That level of iron is over seven and a half times the benchmark value for iron

established by EPA. The Facility also has measured levels of iron in storm water discharged from the Facility in excess of EPA's benchmark value of 1.0 mg/L on January 25, 2008; January 5, 2007; December 12, 2006; January 3, 2006; and October 19, 2004.

48. The levels of pH in storm water detected by the Facility have been outside the benchmark value for pH of 6.0 – 9.0 established by EPA. For example, on January 25, 2008, the level of pH measured by Defendant in the Facility's discharged storm water was 5.88. The Facility also has measured levels of pH in storm water discharged from the Facility outside of the EPA's benchmark value of 6.0 – 9.0 on October 19, 2004.

49. The electrical conductance levels detected by the Facility in its storm water have been greater than the numeric water quality standards applicable to electrical conductance in California. The electrical conductance levels detected by the Facility in its storm water have been greater than the benchmark value of 200 µmho/cm proposed by the State Board. For example, on January 5, 2007, the electrical conductance level measured by Defendant in the Facility's discharged storm water was 580 µmho/cm. That electrical conductance level is nearly three times the State Board's proposed benchmark value. The Facility also has measured levels of electrical conductance in storm water discharged from the Facility in excess of the proposed benchmark value of 200 µmho/cm on October 12, 2007; December 12, 2006; and January 3, 2006.

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

51. On information and belief, Plaintiff alleges that since at least August 11, 2004, Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not set forth site-specific best management practices for the

Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an adequate assessment of potential pollutant sources, structural pollutant control measures employed by the Defendant, a list of actual and potential areas of pollutant contact, or an adequate description of best management practices to be implemented at the Facility to reduce pollutant discharges. According to information available to CSPA, Defendant's SWPPP has not been evaluated to ensure its effectiveness and revised where necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not include each of the mandatory elements required by Section A of the General Permit.

52. Information available to CSPA indicates that as a result of these practices, storm water containing excessive pollutants is being discharged during rain events from the Facility directly to either a channel adjacent to the Facility, which flows to the Bay, or to the City of Fremont's storm drain system, which empties into either Coyote Creek or Mowry Slough, and then flows to the Bay.

53. On information and belief, Plaintiff alleges that Defendants have failed to analyze its storm water samples for aluminum as required by the Table D of the General Permit since at least October 19, 2004.

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

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

the General Permit when there was significant noncompliance at the Facility.

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

VI. CLAIMS FOR RELIEF

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

57. Plaintiff realleges and incorporate Paragraphs 1-56, as if fully set forth herein.

58. The General Permit's SWPPP requirements and Effluent Limitation B(3) require dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. Defendant has failed to implement BAT and BCT at the Facility for its discharges of suspended solids, zinc, N+N, iron, pH, electrical conductance, and other un-monitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

59. Each day since August 11, 2004, that Defendant has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

60. Defendant has been in violation of the BAT/BCT requirements every day since August 11, 2004. Defendant continues to be in violation of the BAT/BCT requirements each day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

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

61. Plaintiff re-alleges and incorporates Paragraphs 1-59, inclusive, as if fully set forth herein.

62. 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.

63. Plaintiff is informed and believes, and thereupon alleges, that since at least August 11, 2004, Defendant has been discharging polluted storm water from the Facility in excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of the General Permit.

64. During every rain event, storm water flows freely over exposed materials, waste products, and other accumulated pollutants at the Facility, becoming contaminated with pH, suspended solid, zinc, N+N, iron, electrical conductance and other unmonitored pollutants at levels above applicable water quality standards. The storm water then flows untreated from the Facility into either a channel adjacent to the Facility or into the City of Fremont storm drain system. This contaminated storm water then flows either directly into San Francisco Bay, or into Coyote Creek or Mowry Slough, and then into the Bay.

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

66. 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.

67. Every day since at least August 11, 2004, that Defendant has discharged and continues to discharge polluted storm water from the Facility in violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

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

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

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

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

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

72. Each day since August 11, 2004, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

73. Defendant has been in violation of the SWPPP requirements every day since August 11, 2004. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

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

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

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

with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

76. Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to analyze storm water samples for aluminum.

77. Each day since August 11, 2004, that Defendant has failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

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

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

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

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

VII. RELIEF REQUESTED

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

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

b. Enjoin Defendant from discharging polluted storm water from the Facility

unless authorized by the Permit;

c. Enjoin Defendant from further violating the substantive and procedural requirements of the Permit;

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

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

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

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

h. Order Defendant to pay civil penalties of $32,500 per day per violation for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

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

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

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

Dated: August 11, 2009

Respectfully submitted,

LOZEAU DRURY LLP

By: */s/ Douglas J. Chermak*
Douglas J. Chermak
Attorneys for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

EXHIBIT A

California Sportfishing Protection Alliance
"An Advocate for Fisheries, Habitat and Water Quality"
3536 Rainier Avenue, Stockton, CA 95204
Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 26, 2009

Mitchell A. Hoppe
Owner, President, and Agent for Service of Process
Melrose Metal Products, Inc.
44533 S. Grimmer Blvd.
Fremont, CA 94538

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

Dear Mr. Hoppe:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("Act") that CSPA believes are occurring at Melrose Metal Products, Inc., located at 44533 S. Grimmer Blvd. in Fremont, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay ("Bay") and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility (all recipients are hereinafter collectively referred to as "Melrose Metal").

This letter addresses Melrose Metal's unlawful discharge of pollutants from the Facility into channels that flow into the Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the Regional Board is 201I013003. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

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

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility.

Consequently, Melrose Metal is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Melrose Metal and Mitchell A. Hoppe under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On February 20, 1998, Melrose Metal filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI"). Melrose Metal certifies that the Facility is classified under SIC code 3444 ("sheet metal work"). The Facility collects and discharges storm water from its approximately 40-acre industrial site into at least four storm water discharge locations at the Facility. The storm water discharged by Melrose Metal is discharged to either a channel adjacent to the Facility or to the City of Fremont storm drain system, which flows into either Mowry Slough or Coyote Creek. The channel adjacent to the Facility, Mowry Slough, and Coyote Creek all flow into San Francisco Bay.

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

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id*. at 3.3.21. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id*. at 3.3.14. The Basin Plan provides that "[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a

manner as to cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.12. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at 3.3.9.

The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); for copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and for lead of 0.0081 mg/L (4-day average) and 0.21 mg/L (1-hour average). *Id.* at Table 3-3. The Basin Plan establishes Freshwater Water Quality Objectives for zinc of 0.120 mg/L (4-day average and 1-hour average); for copper of 0.009 mg/L (4-day average) and 0.013 mg/L (1-hour average); and for lead of 0.0025 mg/L (4-day average) and 0.065 mg/L (1-hour average). *Id.* at Table 3-4. The EPA has adopted saltwater numeric water quality standards for zinc of 0.090 mg/L (Criteria Maximum Concentration – "CMC") and 0.081 mg/L (Criteria Continuous Concentration – "CCC"); for copper of 0.0031 mg/L (CMC) and 0.0048 mg/L (CCC); and for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). 65 Fed.Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Melrose Metal: pH – 6.0-9.0 units; total suspended solids ("TSS") – 100 mg/L, oil and grease ("O&G") – 15 mg/L, aluminum – 0.75 mg/L, nitrate + nitrite nitrogen ("N+N") – 0.68 mg/L; zinc – 0.117 mg/L, and iron – 1 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

Melrose Metal has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

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

Melrose Metal has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, specific conductivity, iron, N+N, zinc and other pollutants in violation of the General Permit. Melrose Metal's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
1/25/2008	pH	5.93	6.5 – 8.5	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
1/25/2008	pH	5.87	6.5 – 8.5	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
1/25/2008	pH	5.88	6.5 – 8.5	Drain #3
1/25/2008	Zinc	0.31 mg/L	0.081 mg/L (4-day	Drain #3

			average) – Marine	
1/25/2008	Zinc	0.31 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
1/25/2008	pH	6.11	6.5 – 8.5	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
10/12/2007	Zinc	0.51 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
10/12/2007	Zinc	0.51 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
10/12/2007	Zinc	1.4 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
10/12/2007	Zinc	1.4 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
10/12/2007	Zinc	2 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
10/12/2007	Zinc	2 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
10/12/2007	Zinc	0.62 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
10/12/2007	Zinc	0.62 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
1/5/2007	Zinc	0.32 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
1/5/2007	Zinc	0.32 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
1/5/2007	Zinc	0.43 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
1/5/2007	Zinc	0.43 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
1/5/2007	Zinc	0.85 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/5/2007	Zinc	0.85 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
12/12/2006	Zinc	0.11 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
12/12/2006	Zinc	0.11 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
12/12/2006	Zinc	0.13 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
12/12/2006	Zinc	0.13 mg/L	0.09 mg/L (1-hour	Drain #3

			average) – Marine	
12/12/2006	Zinc	0.72 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
12/12/2006	Zinc	0.72 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
1/3/2006	Zinc	0.38 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
1/3/2006	Zinc	0.38 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
1/3/2006	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
1/3/2006	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
10/19/2004	pH	6.2	6.5 – 8.5	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
10/19/2004	pH	5.8	6.5 – 8.5	Drain #2
10/19/2004	Zinc	0.26 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
10/19/2004	Zinc	0.26 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
10/19/2004	pH	5.7	6.5 – 8.5	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
10/19/2004	pH	5.5	6.5 – 8.5	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4
5/28/2004	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Drain #1
5/28/2004	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #1
5/28/2004	Zinc	0.3 mg/L	0.081 mg/L (4-day average) – Marine	Drain #2
5/28/2004	Zinc	0.3 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #2
5/28/2004	Zinc	2.6 mg/L	0.081 mg/L (4-day average) – Marine	Drain #3

5/28/2004	Zinc	2.6 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #3
5/28/2004	Zinc	2.9 mg/L	0.081 mg/L (4-day average) – Marine	Drain #4
5/28/2004	Zinc	2.9 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #4

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

Date	**Parameter**	**Observed Concentration**	**Benchmark Value**	**Location (as identified by the Facility)**
1/25/2008	pH	5.93	6 – 9	Drain #1
1/25/2008	Iron	3.8 mg/L	1.0 mg/L	Drain #1
1/25/2008	Zinc	0.24 mg/L	0.117 mg/L	Drain #1
1/25/2008	pH	5.87	6 – 9	Drain #2
1/25/2008	Iron	3.5 mg/L	1.0 mg/L	Drain #2
1/25/2008	Zinc	0.27 mg/L	0.117 mg/L	Drain #2
1/25/2008	pH	5.88	6 – 9	Drain #3
1/25/2008	Iron	1.7 mg/L	1.0 mg/L	Drain #3
1/25/2008	Zinc	0.31 mg/L	0.117 mg/L	Drain #3
1/25/2008	Iron	4.1 mg/L	1.0 mg/L	Drain #4
1/25/2008	Zinc	0.45 mg/L	0.117 mg/L	Drain #4
10/12/2007	Total Suspended Solids	170 mg/L	100 mg/L	Drain #1
10/12/2007	Specific Conductivity	220 µmho/cm	200 µmho/cm (proposed)	Drain #1
10/12/2007	Iron	7.6 mg/L	1.0 mg/L	Drain #1
10/12/2007	Zinc	0.51 mg/L	0.117 mg/L	Drain #1
10/12/2007	N +N	1.3 mg/L	0.68 mg/L	Drain #1
10/12/2007	Total Suspended Solids	150 mg/L	100 mg/L	Drain #2
10/12/2007	Specific Conductivity	330 µmho/cm	200 µmho/cm (proposed)	Drain #2
10/12/2007	Iron	12 mg/L	1.0 mg/L	Drain #2
10/12/2007	Zinc	1.4 mg/L	0.117 mg/L	Drain #2
10/12/2007	N + N	2.5 mg/L	0.68 mg/L	Drain #2
10/12/2007	Total Suspended Solids	590 mg/L	100 mg/L	Drain #3
10/12/2007	Specific Conductivity	380 µmho/cm	200 µmho/cm (proposed)	Drain #3
10/12/2007	Iron	21 mg/L	1.0 mg/L	Drain #3
10/12/2007	Zinc	2 mg/L	0.117 mg/L	Drain #3

10/12/2007	N + N	2.2 mg/L	0.68 mg/L	Drain #3
10/12/2007	Total Suspended Solids	200 mg/L	100 mg/L	Drain #4
10/12/2007	Specific Conductivity	320 µmho/cm	200 µmho/cm (proposed)	Drain #4
10/12/2007	Iron	9.5 mg/L	1.0 mg/L	Drain #4
10/12/2007	Zinc	0.62 mg/L	0.117 mg/L	Drain #4
10/12/2007	N + N	1.93 mg/L	0.68 mg/L	Drain #4
1/5/2007	Specific Conductivity	580 µmho/cm	200 µmho/cm (proposed)	Drain #1
1/5/2007	Iron	3.5 mg/L	1.0 mg/L	Drain #1
1/5/2007	Zinc	0.32 mg/L	0.117 mg/L	Drain #1
1/5/2007	N + N	3.41 mg/L	0.68 mg/L	Drain #1
1/5/2007	Specific Conductivity	560 µmho/cm	200 µmho/cm (proposed)	Drain #2
1/5/2007	Iron	7.3 mg/L	1.0 mg/L	Drain #2
1/5/2007	Zinc	0.43 mg/L	0.117 mg/L	Drain #2
1/5/2007	N + N	3.64 mg/L	0.68 mg/L	Drain #2
1/5/2007	Specific Conductivity	560 µmho/cm	200 µmho/cm (proposed)	Drain #3
1/5/2007	N + N	3.18 mg/L	0.68 mg/L	Drain #3
1/5/2007	Total Suspended Solids	140 mg/L	100 mg/L	Drain #4
1/5/2007	Specific Conductivity	560 µmho/cm	200 µmho/cm (proposed)	Drain #4
1/5/2007	Iron	6.1 mg/L	1.0 mg/L	Drain #4
1/5/2007	Zinc	0.85 mg/L	0.117 mg/L	Drain #4
1/5/2007	N + N	2.95 mg/L	0.68 mg/L	Drain #4
12/12/2006	Specific Conductivity	440 µmho/cm	200 µmho/cm (proposed)	Drain #1
12/12/2006	Iron	1.1 mg/L	1.0 mg/L	Drain #1
12/12/2006	N + N	2.27 mg/L	0.68 mg/L	Drain #1
12/12/2006	Specific Conductivity	390 µmho/cm	200 µmho/cm (proposed)	Drain #2
12/12/2006	Iron	1.8 mg/L	1.0 mg/L	Drain #2
12/12/2006	N + N	3.64 mg/L	0.68 mg/L	Drain #2
12/12/2006	Specific Conductivity	400 µmho/cm	200 µmho/cm (proposed)	Drain #3
12/12/2006	Iron	1.1 mg/L	1.0 mg/L	Drain #3
12/12/2006	Zinc	0.13 mg/L	0.117 mg/L	Drain #3
12/12/2006	N + N	3.18 mg/L	0.68 mg/L	Drain #3
12/12/2006	Specific Conductivity	370 µmho/cm	200 µmho/cm (proposed)	Drain #4
12/12/2006	Iron	3.6 mg/L	1.0 mg/L	Drain #4

12/12/2006	Zinc	0.72 mg/L	0.117 mg/L	Drain #4
12/12/2006	N + N	2.5 mg/L	0.68 mg/L	Drain #4
1/3/2006	Specific Conductivity	470 µmho/cm	200 µmho/cm (proposed)	Drain #1
1/3/2006	N + N	2.73 mg/L	0.68 mg/L	Drain #1
1/3/2006	Specific Conductivity	540 µmho/cm	200 µmho/cm (proposed)	Drain #2
1/3/2006	Iron	2.5 mg/L	1.0 mg/L	Drain #2
1/3/2006	N + N	2.73 mg/L	0.68 mg/L	Drain #2
1/3/2006	Specific Conductivity	520 µmho/cm	200 µmho/cm (proposed)	Drain #3
1/3/2006	Iron	3.4 mg/L	1.0 mg/L	Drain #3
1/3/2006	Zinc	0.38 mg/L	0.117 mg/L	Drain #3
1/3/2006	N + N	56.82 mg/L	0.68 mg/L	Drain #3
1/3/2006	Specific Conductivity	530 µmho/cm	200 µmho/cm (proposed)	Drain #4
1/3/2006	Zinc	0.12 mg/L	0.117 mg/L	Drain #4
1/3/2006	N + N	2.73 mg/L	0.68 mg/L	Drain #4
10/19/2004	Total Suspended Solids	250 mg/L	100 mg/L	Drain #1
10/19/2004	Iron	1.2 mg/L	1.0 mg/L	Drain #1
10/19/2004	Zinc	0.18 mg/L	0.117 mg/L	Drain #1
10/19/2004	pH	5.8	6 – 9	Drain #2
10/19/2004	Total Suspended Solids	130 mg/L	100 mg/L	Drain #2
10/19/2004	Zinc	0.26 mg/L	0.117 mg/L	Drain #2
10/19/2004	pH	5.7	6 – 9	Drain #3
10/19/2004	Zinc	0.4 mg/L	0.117 mg/L	Drain #3
10/19/2004	pH	5.5	6 – 9	Drain #4
10/19/2004	Total Suspended Solids	110 mg/L	100 mg/L	Drain #4
10/19/2004	Iron	1.5 mg/L	1.0 mg/L	Drain #4
10/19/2004	Zinc	1.2 mg/L	0.117 mg/L	Drain #4
10/19/2004	N + N	2.02 mg/L	0.68 mg/L	Drain #4
5/28/2004	Total Suspended Solids	250 mg/L	100 mg/L	Drain #1
5/28/2004	Specific Conductivity	890 µmho/cm	200 µmho/cm (proposed)	Drain #1
5/28/2004	Iron	1.4 mg/L	1.0 mg/L	Drain #1
5/28/2004	Specific Conductivity	760 µmho/cm	200 µmho/cm (proposed)	Drain #2
5/28/2004	Zinc	0.3 mg/L	0.117 mg/L	Drain #2
5/28/2004	N + N	0.82 mg/L	0.68 mg/L	Drain #2
5/28/2004	Total Suspended Solids	120 mg/L	100 mg/L	Drain #3
5/28/2004	Specific Conductivity	590 µmho/cm	200 µmho/cm (proposed)	Drain #3

5/28/2004	Iron	5.7 mg/L	1.0 mg/L	Drain #3
5/28/2004	Zinc	2.6 mg/L	0.117 mg/L	Drain #3
5/28/2004	N + N	1.41 mg/L	0.68 mg/L	Drain #3
5/28/2004	Total Suspended Solids	230 mg/L	100 mg/L	Drain #4
5/28/2004	Specific Conductivity	550 µmho/cm	200 µmho/cm (proposed)	Drain #4
5/28/2004	Iron	31 mg/L	1.0 mg/L	Drain #4
5/28/2004	Zinc	2.9 mg/L	0.117 mg/L	Drain #4
5/28/2004	N + N	2.2 mg/L	0.68 mg/L	Drain #4

CSPA's investigation, including its review of Melrose Metal's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that Melrose Metal has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, specific conductivity, iron, N+N, zinc and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Melrose Metal was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Melrose Metal is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT. In addition, the above numbers indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least May 26, 2004, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Melrose Metal has discharged storm water containing impermissible levels of TSS, pH, specific conductivity, iron, N+N, and zinc in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Melrose Metal is subject to penalties for violations of the General Permit and the Act since May 26, 2004.

B. Failure to Sample and Analyze Storm Events and Mandatory Parameters

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *Id*. "All storm water discharge locations shall be sampled." *Id*. "Facility operators that do not collect samples from the first storm event of the wet season are still

required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled." *Id*. Melrose Metal failed to sample a second storm event during the 2004-2005 rainy season.

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id*. at Section B(5)(c)(i). Facilities also must analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id*. at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id*. at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 3444, including Melrose Metal, must analyze each of its storm water samples for zinc, N + N, iron, and aluminum. *Id.*, Table D (Sector N). CSPA's review of Melrose Metal's monitoring data indicates that you have failed to analyze for aluminum in the following samples taken on the following dates at the identified storm water discharge locations at the Facility:

Date	**Location (as identified by the Facility)**
1/25/2008	Drain #1
1/25/2008	Drain #2
1/25/2008	Drain #3
1/25/2008	Drain #4
10/12/2007	Drain #1
10/12/2007	Drain #2
10/12/2007	Drain #3
10/12/2007	Drain #4
1/5/2007	Drain #1
1/5/2007	Drain #2
1/5/2007	Drain #3
1/5/2007	Drain #4
12/12/2006	Drain #1
12/12/2006	Drain #2
12/12/2006	Drain #3
12/12/2006	Drain #4
1/3/2006	Drain #1
1/3/2006	Drain #2
1/3/2006	Drain #3
1/3/2006	Drain #4
10/19/2004	Drain #1
10/19/2004	Drain #2
10/19/2004	Drain #3
10/19/2004	Drain #4
5/28/2004	Drain #1

5/28/2004	Drain #2
5/28/2004	Drain #3
5/28/2004	Drain #4

Each of the above listed failures to analyze for aluminum is a violation of General Permit, Section B(5)(c)(iii). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Melrose Metal is subject to penalties for violations of the General Permit and the Act since May 26, 2004.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA's investigation of the conditions at the Facility as well as Melrose Metal's Annual Reports indicate that Melrose Metal has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Melrose Metal has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Melrose Metal has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least May 26, 2004, and will continue to be in violation every day that Melrose Metal fails to prepare, implement, review, and update an effective SWPPP. Melrose Metal is subject to penalties for violations of the Order and the Act occurring since May 26, 2004.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Melrose Metal is not representative of the quality of the Facility's various storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Melrose Metal is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 26, 2004.

E. Failure to File True and Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm

Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

In addition, since 2004, Melrose Metal and its agent, Mitchell A. Hoppe, inaccurately certified in their Annual Reports that the Facility was in compliance with the General Permit. Consequently, Melrose Metal has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Melrose Metal failed to submit a complete or correct report and every time Melrose Metal or its agent falsely purported to comply with the Act. Melrose Metal is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since May 26, 2004.

IV. Persons Responsible for the Violations.

CSPA puts Melrose Metal and Mitchell A. Hoppe 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 Melrose Metal and Mitchell A. Hoppe on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director;
California Sportfishing Protection Alliance,
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067

VI. Counsel.

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

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
michael@lozeaudrury.com
doug@lozeaudrury.com

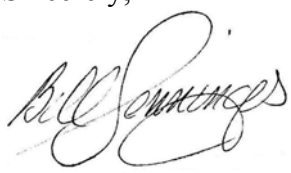
Andrew L. Packard
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, California 94952
Tel. (707) 763-7227
andrew@packardlawoffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Melrose Metal to a penalty of up to $32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Melrose Metal and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

Dorothy R. Rice, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Laura Yoshii, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A

Rain Dates, Melrose Metal Products, Inc., Fremont, California

May 28, 2004
May 29, 2004
September 20, 2004
October 17, 2004
October 18, 2004
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November 3, 2004
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November 5, 2004
November 10, 2004
November 11, 2004
November 12, 2004
November 27, 2004
November 28, 2004
December 1, 2004
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ATTACHMENT A

Rain Dates, Melrose Metal Products, Inc., Fremont, California

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ATTACHMENT A

Rain Dates, Melrose Metal Products, Inc., Fremont, California

January 30, 2008
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ATTACHMENT A

Rain Dates, Melrose Metal Products, Inc., Fremont, California

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