



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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April 26, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Chris Skinner, Division Manager
Sierra Pacific Industries
P.O. Box 2677
36336 Highway 299 East
Burney, CA 96013

Sierra Pacific Industries
c/o Mr. David H. Dun, Agent for Service
2313 I Street
Eureka, CA 95501

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

Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Sierra Pacific Industries ("SPI") sawmill facility located at 36336 Highway 299 East in Burney, California ("the Facility"). The WDID identification number for the Facility is 5R45I021356. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Canyon Creek, Burney Creek, the Sacramento River, the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility.

This letter addresses SPI's unlawful discharges of pollutants from the Facility to Canyon Creek and/or Burney Creek, which in turn ultimately flow(s) into the Sacramento River and the Sacramento - San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

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

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, SPI and Mr. Chris Skinner are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against SPI and Mr. Chris Skinner 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.

SPI operates a sawmill facility located in Burney, California. The Facility receives, stores and processes wood-based products for commercial use. Other activities at the Facility include the use, storage, and maintenance of heavy machinery.

On or about December 20, 2007, SPI belatedly submitted its notice of intent to comply with the terms of the General Permit (“NOI”). The Facility is classified as a sawmill facility under Standard Industrial Classification (“SIC”) Code 2421 (“General Sawmills and Planing Mills”). The Facility collects and discharges storm water from its approximately 60-acre industrial site through at least four discharge points to Canyon Creek and/or Burney Creek, which in turn ultimately drain to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters

shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

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

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

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

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by SPI at the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron

– 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L; and, chemical oxygen demand – 120 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

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

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

On December 15, 2009, a representative of the Regional Water Quality Control Board, Region 5, sent SPI a letter entitled “Storm Water Sampling and Analysis Results.” The letter requested additional information relating to the Facility’s storm water discharges exceeding US EPA benchmarks for certain pollutants and what actions SPI planned to take to reduce or eliminate the discharge of such pollutants. Specifically, the Regional Board’s letter instructed SPI to: (1) identify sources of pollutants at the Facility which contribute to the exceedances reported in the 2008-2009 Annual Report; (2) review current BMPs; and, (3) modify existing BMPs or implement new BMPs to reduce or eliminate the discharge of new pollutants.

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

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

SPI has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. SPI'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, 1492 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of Applicable EPA Benchmarks

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
10/03/2008	TSS	SW-002	115 mg/L	100 mg/L
01/04/2009	TSS	SW-003	204 mg/L	100 mg/L
01/06/2009	TSS	SW-004	1490 mg/L	100 mg/L
01/22/2009	TSS	SW-004	6580 mg/L	100 mg/L
01/22/2009	TSS	SW-002	1550 mg/L	100 mg/L

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

Date	Parameter	Discharge Point	Concentration in Discharge	Proposed Benchmark Value
10/03/2008	Spec. Con.	SW-002	545 µmhos/cm	200 µmhos/cm
01/04/2009	Spec. Con.	SW-003	593 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-004	208 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-001	593 µmhos/cm	200 µmhos/cm
01/06/2009	Spec. Con.	SW-002	487 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-001	368 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-004	254 µmhos/cm	200 µmhos/cm
01/22/2009	Spec. Con.	SW-002	488 µmhos/cm	200 µmhos/cm

3. Discharges of Storm Water Containing Oil and Grease at Levels in Excess of EPA Benchmark

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
01/22/2009	O&G	SW-004	18.8 mg/L	15 mg/L
01/22/2009	O&G	SW-002	79.2 mg/L	15 mg/L

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

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
01/06/2009	Zn	SW-004	0.19 mg/L	0.117 mg/L
01/22/2009	Zn	SW-004	0.792 mg/L	0.117 mg/L
01/22/2009	Zn	SW-002	0.827 mg/L	0.117 mg/L

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

Date	Parameter	Discharge Point	Concentration in Discharge	EPA Benchmark Value
01/06/2009	COD	SW-004	220 mg/L	120 mg/L
01/06/2009	COD	SW-001	177 mg/L	120 mg/L
01/22/2009	COD	SW-001	256 mg/L	120 mg/L
01/22/2009	COD	SW-004	1170 mg/L	120 mg/L
01/22/2009	COD	SW-002	632 mg/L	120 mg/L

CSPA’s investigation, including its review of SPI’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for specific conductivity, indicates that SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Oil and Grease (O&G), Specific Conductivity (SC), Zinc (Zn) and Chemical Oxygen Demand (COD), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. SPI was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, SPI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that SPI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 26, 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 26, 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 SPI has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD), and other unmonitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

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, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

B. SPI 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 SPI, designated under SIC Code 2421 are also required to sample for Zinc (Zn) and Chemical Oxygen Demand (COD). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that SPI has failed to develop and implement an adequate Monitoring & Reporting Plan. CSPA’s review of publicly available records reveals that there is no 2007-2008 Annual Report for SPI on file at the Regional Board office. This suggests that SPI failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. CSPA notes that SPI filed its NOI for the Facility on December 20, 2007. CSPA notes that entities subject to the General Permit are required to collect and analyze samples of storm water discharges from each discharge point from at least two qualifying storm events each wet season; and, for purposes of storm water sampling under the General Permit, the “wet season”

runs from October 1st to May 31st of any given year. Accordingly, SPI's failure to file a 2007-2008 Annual Report, and its failure to sample and analyze the Facility's discharges of storm water from all discharge points from two qualifying storm events at any time from December 21, 2007 through May 31, 2008 constitute violations of the Act and the General Permit.

Similarly, the absence of the 2007-2008 Annual Report suggests that SPI failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since April 26, 2005. These violations are set forth in greater detail below:

1. SPI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that SPI has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the four discharge points currently designated by SPI. This failure to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

2. SPI Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires SPI to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as SPI which are designated as SIC Code 2421 to analyze its storm water discharge for Zinc (Zn) and Chemical Oxygen Demand (COD). Further, based on its investigation, CSPA is informed and believes that SPI has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Other pollutants likely to be present in the Facility's storm water discharges include: aluminum, ammonia, arsenic, biological oxygen demand, copper, iron, lead, mercury and nitrate + nitrite (N+N). SPI's failure to monitor these pollutants extends back to at least April 26, 2005. SPI's failure to monitor these other pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

3. SPI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 26, 2005.

CSPA is informed and believes that available documents demonstrate SPI'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, SPI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since April 26, 2005.

C. SPI 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 SPI has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity, Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

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

SPI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, SPI 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 SPI fails to implement BAT and BCT. SPI is subject to penalties for violations of the Order and the Act occurring since April 26, 2005.

D. SPI Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no

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

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

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

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that SPI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. SPI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. SPI 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 SPI fails to develop and implement an effective SWPPP. SPI is subject to penalties for violations of the Order and the Act occurring since April 26, 2005.

E. SPI 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, SPI is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity, Oil and Grease (O&G), Zinc (Zn) and Chemical Oxygen Demand (COD) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, SPI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, SPI was aware of high levels of these pollutants prior to April 26, 2005. Likewise, SPI has not filed any reports describing its non-compliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). SPI 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 26, 2005, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. SPI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

F. SPI 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 SPI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, in response to item E.7. SPI reported that all storm water sampling was preceded by three (3) working days without a storm water discharge. However, a cursory glance at the dates of storm water discharge sampling as reported in SPI's 2008-2009 Annual Report reveal that assertion to be patently false. To wit, in its 2008-2009 Annual Report SPI reported that it collected storm water discharge samples on January 4, 2009 and then again on January 6, 2009. Clearly, January 4th is less than three (3) working days prior to January 6th. As indicated above, SPI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, SPI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time it submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. SPI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. SPI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 26, 2005.

III. Persons Responsible for the Violations.

CSPA puts Sierra Pacific Industries and Mr. Chris Skinner 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 Sierra Pacific Industries and Mr. Chris Skinner 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:

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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 Sierra Pacific Industries and Mr. Chris Skinner to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

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

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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ATTACHMENT A
Notice of Intent to File Suit, SPI (Burney, CA)
Significant Rain Events,* April 23, 2005 – April 23, 2010

April 30 2005	Jan. 29 2006	Nov. 16 2006	Nov. 19 2007
May 01 2005	Jan. 31 2006	Nov. 23 2006	Nov. 20 2007
May 02 2005	Feb. 01 2006	Nov. 26 2006	Dec. 04 2007
May 05 2005	Feb. 02 2006	Nov. 27 2006	Dec. 07 2007
May 06 2005	Feb. 04 2006	Nov. 28 2006	Dec. 17 2007
May 09 2005	Feb. 18 2006	Dec. 09 2006	Dec. 18 2007
May 10 2005	Feb. 27 2006	Dec. 10 2006	Dec. 19 2007
May 16 2005	Feb. 28 2006	Dec. 12 2006	Dec. 20 2007
May 18 2005	Mar. 01 2006	Dec. 13 2006	Dec. 24 2007
May 19 2005	Mar. 02 2006	Dec. 15 2006	Dec. 30 2007
Oct. 15 2005	Mar. 03 2006	Dec. 22 2006	Jan. 04 2008
Oct. 27 2005	Mar. 04 2006	Dec. 26 2006	Jan. 05 2008
Nov. 02 2005	Mar. 06 2006	Dec. 27 2006	Jan. 06 2008
Nov. 03 2005	Mar. 07 2006	Jan. 04 2007	Jan. 07 2008
Nov. 04 2005	Mar. 08 2006	Jan. 05 2007	Jan. 09 2008
Nov. 07 2005	Mar. 11 2006	Feb. 07 2007	Jan. 21 2008
Nov. 08 2005	Mar. 13 2006	Feb. 08 2007	Jan. 22 2008
Nov. 25 2005	Mar. 14 2006	Feb. 09 2007	Jan. 25 2008
Nov. 26 2005	Mar. 15 2006	Feb. 10 2007	Jan. 26 2008
Nov. 29 2005	Mar. 16 2006	Feb. 11 2007	Jan. 27 2008
Dec. 01 2005	Mar. 24 2006	Feb. 12 2007	Jan. 28 2008
Dec. 02 2005	Mar. 25 2006	Feb. 13 2007	Jan. 30 2008
Dec. 08 2005	Mar. 26 2006	Feb. 21 2007	Feb. 01 2008
Dec. 18 2005	Mar. 28 2006	Feb. 22 2007	Feb. 03 2008
Dec. 19 2005	Mar. 29 2006	Feb. 23 2007	Feb. 22 2008
Dec. 20 2005	Mar. 31 2006	Feb. 25 2007	Feb. 23 2008
Dec. 21 2005	April 01 2006	Feb. 26 2007	Feb. 24 2008
Dec. 22 2005	April 02 2006	Feb. 27 2007	Feb. 25 2008
Dec. 23 2005	April 03 2006	Feb. 28 2007	Mar. 01 2008
Dec. 25 2005	April 04 2006	Mar. 08 2007	Mar. 15 2008
Dec. 26 2005	April 05 2006	Mar. 20 2007	Mar. 20 2008
Dec. 27 2005	April 08 2006	Mar. 27 2007	Mar. 27 2008
Dec. 28 2005	April 09 2006	April 08 2007	April 08 2008
Dec. 29 2005	April 10 2006	April 09 2007	April 15 2008
Dec. 30 2005	April 11 2006	April 12 2007	April 23 2008
Dec. 31 2005	April 12 2006	April 22 2007	April 24 2008
Jan. 01 2006	April 13 2006	April 23 2007	May 25 2008
Jan. 02 2006	April 16 2006	May 02 2007	May 28 2008
Jan. 04 2006	April 17 2006	May 03 2007	Oct. 04 2008
Jan. 07 2006	April 22 2006	May 04 2007	Oct. 31 2008
Jan. 08 2006	May 23 2006	Oct. 05 2007	Nov. 01 2008
Jan. 11 2006	May 27 2006	Oct. 10 2007	Nov. 02 2008
Jan. 14 2006	Nov. 02 2006	Oct. 13 2007	Nov. 03 2008
Jan. 15 2006	Nov. 03 2006	Oct. 16 2007	Nov. 04 2008
Jan. 18 2006	Nov. 08 2006	Oct. 17 2007	Nov. 06 2008
Jan. 19 2006	Nov. 11 2006	Oct. 20 2007	Nov. 09 2008
Jan. 21 2006	Nov. 13 2006	Oct. 30 2007	Dec. 15 2008
Jan. 26 2006	Nov. 14 2006	Nov. 11 2007	Dec. 16 2008

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

ATTACHMENT A
Notice of Intent to File Suit, SPI (Burney, CA)
Significant Rain Events,* April 23, 2005 – April 23, 2010

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

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