

1 ANDREW L. PACKARD (State Bar No. 168690)
2 ERIK M. ROPER (State Bar No. 259756)
3 HALLIE B. ALBERT (State Bar No. 258737)
4 Law Offices of Andrew L. Packard
5 100 Petaluma Blvd. N., Suite 301
6 Petaluma, CA 94952
7 Tel: (707) 763-7227
8 Fax: (707) 763-9227
9 E-mail: Andrew@packardlawoffices.com
10 Erik@packardlawoffices.com
11 Hallie@packardlawoffices.com

12 ROBERT J. TUERCK (State Bar No. 255741)
13 Jackson & Tuerck
14 P. O. Box 148
15 429 W. Main Street, Suite C
16 Quincy, CA 95971
17 Tel: (530) 283-0406
18 E-mail: bob@jacksontuerck.com

19 Attorneys for Plaintiff
20 CALIFORNIA SPORTFISHING
21 PROTECTION ALLIANCE

22 UNITED STATES DISTRICT COURT
23 EASTERN DISTRICT OF CALIFORNIA

24 CALIFORNIA SPORTFISHING
25 PROTECTION ALLIANCE, a non-profit
26 corporation,

27 Plaintiff,

28 vs.

29 VIKING TRUCK & AUTO, INC., a
30 California corporation, and KENNETH
31 HOFFMAN, an individual,

32 Defendants.

Case No. 2:10-CV-03193-MCE-EFB

[PROPOSED] CONSENT AGREEMENT

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387; and, California Health
& Safety Code § 25249.5 *et seq.*)

33 WHEREAS, Plaintiff California Sportfishing Protection Alliance (hereinafter "Plaintiff" or
34 "CSPA") is a non-profit public benefit corporation dedicated to the preservation, protection, and
35 defense of the environment, wildlife, and natural resources of California's waters;

36 WHEREAS, Defendant Viking Truck & Auto, Inc. (hereinafter "VTA") leases an
37 approximately 8.49-acre automotive vehicle dismantling and automotive parts recycling facility

1 located at 19980 Viking Way, in Redding, California (the “Facility”), Defendant Kenneth Hoffman is
2 the president of VTA and that in this capacity he directs the operations and maintenance of the Facility
3 (collectively, “Defendants”);

4 **WHEREAS**, CSPA and Defendants shall be collectively referred to herein as the “Parties;”

5 **WHEREAS**, the Facility collects and discharges storm water to Churn Creek, which ultimately
6 discharges to the Sacramento River, and the Sacramento-San Joaquin Delta (a map of the Facility is
7 attached hereto as **Exhibit A** and incorporated herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant
9 to National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001,
10 State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Water
11 Quality Order 92-12 DWQ and 97-03-DWQ, issued pursuant to Section 402 of the Clean Water Act,
12 33 U.S.C. § 1342, (hereinafter “General Permit”);

13 **WHEREAS**, on or about September 3, 2010, Plaintiff provided notice of Defendants’ alleged
14 violations of the Act (“CWA Notice Letter”) and of Plaintiff’s intention to file suit against Defendants
15 to the Administrator of the United States Environmental Protection Agency (“EPA”); the
16 Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board
17 (“State Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley
18 Region (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A)
19 (true and correct copies of CSPA’s CWA Notice Letter is attached as **Exhibit B** and incorporated
20 herein by reference);

21 **WHEREAS**, on or about September 20, 2010, Plaintiff provided notice of Defendant VTA’s
22 alleged violations of California Health & Safety Code Section 25249.5 (also referred to as
23 “Proposition 65”) (“Proposition 65 Notice Letter”) and of its intention to file suit against Defendant
24 VTA to the Proposition 65 Enforcement Reporting section of the office of the California Attorney
25 General (“California Attorney General”); the District Attorney of each California county containing
26 sources of drinking water potentially impacted by Defendant VTA’s alleged violations of Proposition
27 65; and, to Defendant VTA, as required by California Health & Safety Code Section 25249.5 *et seq.*

1 (true and correct copies of CSPA’s Proposition 65 Notice Letter is attached as **Exhibit C** and
2 incorporated herein by reference);

3 **WHEREAS**, CSPA’s CWA Notice Letter and its Proposition 65 Notice Letter shall be
4 collectively referred to herein as the “Notices;”

5 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and
6 maintain that they have complied at all times with the provisions of the General Permit and
7 Proposition 65;

8 **WHEREAS**, CSPA filed a Complaint against Defendants in the United States District Court,
9 Eastern District of California, on November 29, 2010 (“Complaint”);

10 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is proper
11 in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this
12 Consent Agreement;

13 **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of
14 Justice and United States Environmental Protection Agency for the 45-day statutory review period,
15 pursuant to 33 U.S.C. § 1365(c) and 40 C.F.R. § 135.5;

16 **WHEREAS**, this Consent Agreement shall be submitted to the California Attorney General
17 pursuant to California Health & Safety Code § 25249.7(f) and 11 C.C.R. §§ 3001(a) and 3003(b);

18 **WHEREAS**, the period during which this Consent Agreement is being reviewed by the United
19 States Department of Justice, the United States Environmental Protection Agency and the California
20 Attorney General shall be referred to herein as the “**Agency Review Period**”;

21 **WHEREAS**, absent objection from the California Attorney General, and upon receiving notice
22 from the United States Department of Justice indicating that the United States has no objection to this
23 Consent Agreement, the Consent Agreement shall thereafter be submitted for approval by the District
24 Court;

25 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the District
26 Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall stipulate
27 and request that the Court retain jurisdiction for the enforcement of this Consent Agreement as
28

1 provided herein;

2 **WHEREAS**, the date of the District Court’s Order granting dismissal of CSPA’s Complaint
3 and retaining jurisdiction for the enforcement of this Consent Agreement shall be referred to herein as
4 the “**Court Approval Date**”;

5 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter
6 without further litigation.

7 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
8 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

9 **I. COMMITMENT OF DEFENDANTS**

10 **1. Compliance With General Permit & Clean Water Act.** Subject to the contingencies
11 described below, throughout the term of this Consent Agreement, Defendants agree to operate the
12 Facility in compliance with the applicable requirements of the Clean Water Act, the General Permit,
13 and Proposition 65, subject to any defenses available under the law.

14 **2. Cessation Of Industrial Operations & Filing A Notice Of Termination With The**
15 **Regional Board.** Defendants shall cease industrial operations at the Facility no later than August 1,
16 2011. Defendants’ cessation of industrial operations at the Facility will result in the removal of all
17 VTA inventory (*e.g.*, all automotive vehicles, all automotive vehicle parts, etc.) from the Facility.
18 Further, no later than July 15, 2011, Defendants shall publicly declare their intent to terminate
19 regulation of the Facility under the General Permit by filing a Notice of Termination (“NOT”) with the
20 Regional Board at its office in Redding, California. Consistent with General Permit Provision No. 9,
21 Defendants’ NOT shall provide all documentation requested by the Regional Board. In the event that
22 the Regional Board denies Defendants’ NOT, Defendants are responsible for continued compliance
23 with the General Permit throughout the term of this Consent Agreement.

24 **3. Defendants’ Implementation of Specific Storm Water Best Management Practices.**
25 In the event that the Regional Board denies Defendants’ NOT or fails to approve Defendants’ NOT by
26 October 1, 2011, Defendants shall complete the implementation of the following storm water control
27 measures/best management practices (“BMPs”) as prescribed below:
28

1 (a) By October 1, 2011, Defendants shall install storm water gutters around those
2 portions of the Facility's roof along the western Facility border where storm water flows
3 unabated off the roof and discharges over the Facility's fence. Defendants shall install these
4 storm water roof gutters in a manner that directs storm water captured therein to flow back into
5 the Facility such that it may only discharge from the Facility through one of the Facility's
6 designated storm water discharge and sampling locations;

7 (b) By October 1, 2011, Defendants shall install an impervious berm across any
8 ramp(s) providing access to storage areas in a manner that prevents fluids from being tracked
9 out of and/or discharged from the storage areas of the Facility;

10 (c) By October 1, 2011, Defendants shall install an impervious berm along the
11 western Facility border to direct storm water to storm water discharge Sampling Point No. 1 as
12 noted on the Facility site map attached hereto as **Exhibit A**;

13 (d) By October 1, 2011, Defendants shall either grade the Facility's entrance
14 driveway or install a BMP of TR-1¹ (Stabilized Entrance) type in a manner that prevents the
15 discharge of storm water from the Facility's entrance driveway;

16 (e) By October 1, 2011, Defendants shall move VTA inventory (*e.g.*, automotive
17 vehicles, vehicle parts, any other stored materials) away from the Facility fence by two (2) feet
18 or so in a manner that allows easy inspection and maintenance of the Facility perimeter and its
19 storm water run-off controls;

20 (f) By October 1, 2011, Defendants shall create, use and maintain a visual
21 inspection checklist for use during visual inspections of storm water and non-storm water
22 discharges from the Facility;

23 (g) By October 1, 2011, Defendants shall re-engineer the Facility's storm water
24 sampling points in a manner that allows for a sample to be easily collected (*e.g.*, small pour
25 over, pipe outfall, small basin, etc., so that a storm water sample collection container may be
26 filled even in low flow events);

27

28 ¹ <http://www.cabmphandbooks.com/Documents/Construction/TR-1.pdf>

1 (h) Defendants shall maintain the Facility's storm water drainage system, BMPs,
2 and drop inlets in a manner that feasibly ensures that metal waste and any other materials
3 unrelated to the control or treatment of storm water are kept out of the Facility's storm water
4 drainage system, BMPs and drop inlets;

5 (i) Defendants shall regularly monitor and maintain the Facility's storm water
6 drainage system, BMPs, and drop inlets, document such maintenance, and maintain records
7 thereof with the Facility's SWPPP in accordance with the terms of the General Permit.
8 Further, Defendants shall ensure that appropriate Facility personnel are properly trained in
9 storm water management and records of any such storm water management training shall be
10 maintained along with the Facility's SWPPP;

11 (j) By November 1, 2011, Defendants shall revise the Facility's SWPPP to: identify
12 potential Contaminants of Concern (COCs); require regular monitoring and maintenance of
13 discharge points, structural BMPs at the Facility, including documentation of same, with such
14 records maintained with the SWPPP; and, require appropriate storm water management
15 training for employees and documentation in the SWPPP;

16 (k) By November 1, 2011, Defendants shall revise the Facility's SWPPP site map to
17 clearly reflect current Facility conditions including: pervious and impervious areas; storm water
18 flow vectors and drainage within Facility; identification of all storm water discharge points;
19 and, identification of BMPs and their location(s) within the Facility.

20 **4. SWPPP Amendments/Additional BMPs.** By November 1, 2011, Defendants shall
21 amend the SWPPP for the Facility and the Facility SWPPP site map to incorporate all requirements of
22 the General Permit and this Consent Agreement.

23 **5. Sampling Frequency.** In the event that either (a) Defendants fail to cease their
24 industrial operations at the Facility by October 1, 2011, or (b) the Regional Board denies Defendants'
25 NOT or fails to approve Defendants' NOT by October 1, 2011, Defendants shall collect and analyze
26 samples from four (4) storm events, as qualified in the General Permit² for sampling purposes, in the
27

28 ² "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are

1 first Wet Season occurring during the term of this Consent Agreement (*i.e.*, the 2011-2012 Wet
2 Season). In the event that either (a) Defendants fail to cease their industrial operations at the Facility
3 by October 1, 2012, or (b) the Regional Board denies Defendants' NOT or fails to approve
4 Defendants' NOT by October 1, 2012, Defendants shall collect and analyze samples from four (4)
5 storm events, as qualified in the General Permit for sampling purposes, in the second Wet Season
6 occurring during the term of this Consent Agreement (*i.e.*, the 2012-2013 Wet Season). The storm
7 water sample results shall be compared with the values set forth in **Exhibit D**, attached hereto, and
8 incorporated herein by reference. If the results of any such samples exceed the parameter values set
9 forth in **Exhibit D**, Defendants shall comply with the "Action Memorandum" requirements set forth
10 below.

11 **6. Sampling Parameters.** All storm water samples shall be analyzed for each of the
12 constituents listed in **Exhibit D** by a laboratory accredited by the State of California. All storm water
13 discharge samples collected from the Facility shall be delivered to the laboratory as soon as possible to
14 ensure that sample "hold time" is not exceeded. Sampling results shall be provided to CSPA within
15 seven (7) business days of Defendants' receipt of the laboratory report from each sampling event
16 pursuant to the Notice provisions below (§ 29).

17 **7. "Action Memorandum" Trigger; CSPA Review Of "Action Memorandum"; Meet-**
18 **and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 5 above
19 exceeds the evaluation levels set forth in **Exhibit D**, or if Defendants fail to collect and analyze
20 samples from four (4) storm events, as qualified in the General Permit, Defendants shall prepare a
21 written statement discussing the exceedance(s) and /or failure to collect and analyze samples from four
22 (4) qualified storm events, the possible cause and/or source of the exceedance(s), and additional
23 measures that will be taken to reduce or eliminate future exceedances ("Action Memorandum"). The
24 Action Memorandum shall be provided to CSPA not later than July 15 following the conclusion of
25 each Wet Season pursuant to the Notice provisions below (§ 29). The Parties agree that preparation

26 _____
27 preceded by at least three (3) working days during which no storm water discharges from the Facility have
28 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being
sampled; and (iii) the samples are collected during daylight operating hours.

1 and implementation of an Action Memorandum by Defendants shall not give rise to any presumption
2 that Defendants have failed to comply with any obligations under the General Permit or the Clean
3 Water Act. Recognizing that a SWPPP is an ongoing iterative process meant to encourage innovative
4 BMPs, such additional measures may include, but are not limited to, further material improvements to
5 the storm water collection and discharge system, changing the frequency of Facility sweeping,
6 changing the type and extent of storm water filtration media or modifying other industrial activities or
7 management practices at the Facility. Within fifteen (15) days of receipt of an Action Memorandum,
8 CSPA may provide comment on an Action Memorandum and suggest any additional pollution
9 prevention measures it believes are appropriate; however, CSPA's failure to do so shall not be deemed
10 to constitute agreement with the proposals set forth in the Action Memorandum. Upon request by
11 CSPA, Defendants agree to meet and confer in good faith regarding the contents and sufficiency of the
12 Action Memorandum. Additional measures identified by Defendants in an Action Memorandum, or
13 identified as a result of the meet and confer process described above, will be implemented within sixty
14 (60) days after the due date of the Action Memorandum, or the conclusion of the meet and confer
15 process, unless a longer timeframe is identified by Defendants in an Action Memorandum as necessary
16 to implement the measure, or agreed to by the Parties during the meet and confer process. Within
17 thirty (30) days of implementation, the Facility SWPPP and/or site map shall be amended to include all
18 additional BMP measures.

19 **8. Inspections During The Term Of This Consent Agreement.** In the event that either
20 (a) Defendants fail to cease their industrial operations at the Facility by October 1, 2011, or (b) the
21 Regional Board denies Defendants' NOT or fails to approve Defendants' NOT by October 1, 2011,
22 Defendants shall permit representatives of CSPA to perform one (1) physical inspection of the Facility
23 during normal business hours during the term of this Consent Agreement. This inspection shall be
24 performed by CSPA's counsel and consultant(s) and may include sampling, photographing, and/or
25 videotaping, subject to any security or safety limitations unrelated to water quality requested by
26 Defendants, and CSPA shall provide Defendants with a copy of all sampling reports, photographs
27 and/or video. CSPA shall provide at least three (3) business days advance notice of such physical
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1 inspection, except that Defendants shall have the right to deny access if circumstances would make the
2 inspection unduly burdensome and pose significant interference with business operations of any
3 party/attorney, or the safety of individuals. In such case, Defendants shall specify at least three (3)
4 dates, if possible, within the two (2) weeks thereafter upon which a physical inspection by CSPA may
5 proceed. Defendants shall not make any alterations to Facility conditions during the period between
6 receiving CSPA's three (3) business days advance notice and the start of CSPA's inspection that
7 Defendants would not otherwise have made but for receiving notice of CSPA's request to conduct a
8 physical inspection of the Facility, excepting any actions taken in compliance with any applicable laws
9 or regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement
10 any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

11 **9. Defendants' Communications To/From Regional and State Boards.** During the
12 term of this Consent Agreement, Defendants shall provide CSPA with copies of all documents
13 submitted to or received from the Regional Board or the State Board concerning storm water
14 discharges from the Facility, including, but not limited to, all documents and reports submitted to the
15 Regional Board and/or State Board as required by the General Permit. Such documents and reports
16 shall be provided to CSPA pursuant to the Notice provisions herein (at ¶ 29) within fourteen (14)
17 calendar days of their production or receipt by Defendants.

18 **10. SWPPP Amendments.** Defendants shall provide CSPA with a copy of any
19 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen
20 (14) calendar days of such amendment.

21 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

22 **11. Mitigation Payment In Lieu Of Civil Penalties.**

23 (a) In the event that either (a) Defendants fail to cease their industrial operations at
24 the Facility by October 1, 2011, or (b) the Regional Board denies Defendants' NOT or fails to
25 approve Defendants' NOT by October 1, 2011, as mitigation of the alleged violations the Clean
26 Water Act and Proposition 65 set forth in CSPA's Complaint, Defendants agree to pay the sum
27 of \$13,500 no later than October 15, 2011, to the Rose Foundation for Communities and the
28

1 Environment (“Rose Foundation”). Of that sum, eight thousand dollars (\$8,000) is attributed
2 to resolving the Clean Water Act-based allegations set forth in CSPA’s Complaint and CWA
3 Notice Letter and five thousand five hundred dollars (\$5,500) is attributed to resolving the
4 Proposition 65-based allegations set forth in CSPA’s Complaint and Proposition 65 Notice
5 Letter. The portion of the mitigation funds attributed to resolving the Clean Water Act-based
6 allegations set forth in CSPA’s Complaint and CWA Notice Letter shall be used by the Rose
7 Foundation to fund grant awards to projects that benefit water quality in Churn Creek, the
8 Sacramento River and/or the Sacramento-San Joaquin River Delta. The portion of the
9 mitigation funds attributed to resolving the Proposition 65-based allegations set forth in
10 CSPA’s Complaint and Proposition 65 Notice Letter shall be used by the Rose Foundation for
11 grant funding to California non-profit groups to reduce the discharge of known toxins to
12 sources of drinking water, to reduce exposures to toxic chemicals, and to increase consumer,
13 worker and community awareness of the health hazards posed by toxic chemicals, consistent
14 with the purposes of Proposition 65. The Rose Foundation shall not retain any portion of the
15 funds, except for the normal cost necessary to cover its overhead, not to exceed 10% of the
16 total project fund. The Rose Foundation shall provide notice to the Parties within thirty (30)
17 days of when the funds are disbursed by the Rose Foundation, setting forth the recipient and
18 the purpose of the funds. Payment shall be provided to the Rose Foundation as follows: Rose
19 Foundation, Attn: Tim Little, 6008 College Avenue, Oakland, CA 94618.

20 (b) In the event that either (a) Defendants fail to cease their industrial operations at
21 the Facility by October 1, 2012, or (b) the Regional Board denies Defendants’ NOT or fails to
22 approve Defendants’ NOT by October 1, 2012, as mitigation of the alleged violations the Clean
23 Water Act and Proposition 65 set forth in CSPA’s Complaint, Defendants agree to pay the sum
24 of \$13,500 no later than October 15, 2012, to the Rose Foundation for Communities and the
25 Environment (“Rose Foundation”). Of that sum, eight thousand dollars (\$8,000) is attributed
26 to resolving the Clean Water Act-based allegations set forth in CSPA’s Complaint and CWA
27 Notice Letter and five thousand five hundred dollars (\$5,500) is attributed to resolving the
28

1 Proposition 65-based allegations set forth in CSPA’s Complaint and Proposition 65 Notice
2 Letter. The portion of the mitigation funds attributed to resolving the Clean Water Act-based
3 allegations set forth in CSPA’s Complaint and CWA Notice Letter shall be used by the Rose
4 Foundation to fund grant awards to projects that benefit water quality in Churn Creek, the
5 Sacramento River and/or the Sacramento-San Joaquin River Delta. The portion of the
6 mitigation funds attributed to resolving the Proposition 65-based allegations set forth in
7 CSPA’s Complaint and Proposition 65 Notice Letter shall be used by the Rose Foundation for
8 grant funding to California non-profit groups to reduce the discharge of known toxins to
9 sources of drinking water, to reduce exposures to toxic chemicals, and to increase consumer,
10 worker and community awareness of the health hazards posed by toxic chemicals, consistent
11 with the purposes of Proposition 65. The Rose Foundation shall not retain any portion of the
12 funds, except for the normal cost necessary to cover its overhead, not to exceed 10% of the
13 total project fund. The Rose Foundation shall provide notice to the Parties within thirty (30)
14 days of when the funds are disbursed by the Rose Foundation, setting forth the recipient and
15 the purpose of the funds. Payment shall be provided to the Rose Foundation as follows: Rose
16 Foundation, Attn: Tim Little, 6008 College Avenue, Oakland, CA 94618.

17 **12. Compliance Monitoring Funding.** Subject to the contingencies described below, to
18 defray CSPA’s reasonable investigative, expert, consultant and attorneys’ fees and costs associated
19 with monitoring Defendants’ compliance with this Consent Agreement, Defendants agree to contribute
20 \$3,500 for each of the two Wet Seasons (*i.e.*, 2011-2012 and 2012-2013) covered by this Consent
21 Agreement (\$7,000 total for the life of the Consent Agreement), to a compliance monitoring fund
22 maintained by counsel for CSPA as described below. Compliance monitoring activities may include,
23 but shall not be limited to, site inspections, review of water quality sampling reports, review of annual
24 reports, review, comment, and discussions with representatives of Defendants concerning the Action
25 Memoranda referenced above, and potential changes to Facility pollution prevention measures,
26 preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and
27 compliance-related activities.

28

1 (a) In the event that either (a) Defendants fail to cease their industrial operations at
2 the Facility by October 1, 2011, or (b) the Regional Board denies Defendants' NOT or fails to
3 approve Defendants' NOT by October 1, 2011, Defendants agree to make a payment of \$3,500
4 to the Law Offices of Andrew L. Packard Attorney-Client Trust Account and sent no later than
5 October 15, 2011 to the Law Offices of Andrew Packard, 100 Petaluma Boulevard North, Suite
6 301, Petaluma, CA 94952.

7 (b) In the event that either (a) Defendants fail to cease their industrial operations at
8 the Facility by October 1, 2012, or (b) the Regional Board denies Defendants' NOT or fails to
9 approve Defendants' NOT by October 1, 2012, Defendants agree to make a payment of \$3,500
10 to the Law Offices of Andrew L. Packard Attorney-Client Trust Account and sent no later than
11 October 15, 2012 to the Law Offices of Andrew Packard, 100 Petaluma Boulevard North, Suite
12 301, Petaluma, CA 94952.

13 **13. Attorneys' Fees And Costs.** Defendants agree to reimburse CSPA in the amount of
14 \$10,000 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs,
15 and all other costs incurred as a result of investigating the activities at the Facility, bringing the
16 Complaint and negotiating a resolution in the public interest. Such payment shall be made out to the
17 Law Offices of Andrew L. Packard Attorney-Client Trust Account and sent to the Law Offices of
18 Andrew Packard, 100 Petaluma Boulevard North, Suite 301, Petaluma, CA 94952 within fifteen (15)
19 calendar days after the Court Approval Date.

20 **14. Notice To California Attorney General's Office.** Consistent with California Health
21 & Safety Code § 25249.7(f)(1), CSPA shall electronically submit to the California Attorney General's
22 office, the reporting form satisfying the notice requirements of Proposition 65 related to settlements.

23 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

24 **15.** With the exception of the timelines set forth above for addressing exceedances of
25 values specified on **Exhibit D** and Action Memoranda, if a dispute under this Consent Agreement
26 arises, or either Party believes that a breach of this Consent Decree has occurred, the Parties shall meet
27 and confer within ten (10) calendar days of receiving written notification from the other Party of a
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1 request for a meeting to determine whether a violation has occurred and/or to develop a mutually
2 agreed upon plan, including dates for further discussion or activities, to resolve the dispute. If the
3 Parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven
4 (7) calendar days have passed after the meet-and-confer occurred or should have occurred, either Party
5 shall be entitled to all rights and remedies under the law, including filing a motion with the District
6 Court of California, Eastern District, which shall retain jurisdiction over the Action for the limited
7 purposes of enforcement of the terms of this Consent Agreement. The Parties shall be entitled to seek
8 fees and costs incurred in any such motion, and such fees and costs shall be awarded, pursuant to the
9 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case
10 law interpreting such provision.

11 **IV. MUTUAL RELEASE OF LIABILITY, COVENANT NOT TO SUE AND DISMISSAL**

12 **16. Waiver and Release.** As of the Court Approval Date, the Parties and their successors,
13 assigns, directors, officers, agents, attorneys, representatives, and employees, hereby release all
14 persons from any and all claims and demands of any kind, nature, or description, and from any and all
15 liabilities, relief, damages, fees (including fees of attorneys, experts, and others), injuries, actions, or
16 causes of action, either at law or in equity, whether known or unknown, arising from CSPA's
17 allegations regarding Defendants' compliance with the General Permit, Clean Water Act, and
18 Proposition 65, including all claims for fees, costs, expenses, or any other sum incurred or claimed or
19 which could have been claimed, up to and including the Court Approval Date, except as provided for
20 in Section II of this Consent Agreement.

21 **17.** The Parties acknowledge that they are familiar with section 1542 of the California Civil
22 Code, which provides:

23 A general release does not extend to claims which the creditor does not know or
24 suspect to exist in his or her favor at the time of executing the release, which if
25 known by him or her must have materially affected his or her settlement with the
debtor.

26 While CSPA asserts that California Civil Code section 1542 applies to general releases only, and that
27 the release in Paragraph 16 above is a limited release, the Parties nonetheless hereby waive and
28 relinquish any rights or benefits they may have under California Civil Code section 1542 with respect

1 to any other claims against each other arising from the allegations and claims as set forth in the CWA
2 Notice Letter, Proposition 65 Notice Letter, and/or the Complaint.

3 **18. Covenant Not to Sue.** From the Court Approval Date and ending on the termination
4 date, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor
5 any organization under the control of CSPA, its officers, executive staff, or members of its governing
6 board, will file any lawsuit against Defendants seeking relief for alleged violation of the Clean Water
7 Act, Proposition 65, or the General Permit or any revisions, amendments, or successors to the General
8 Permit, arising out of Defendants' operation of the Facility, nor will CSPA support such lawsuits
9 against the Defendants brought by other groups or individuals by providing financial assistance,
10 personnel time, or any other affirmative actions.

11 **19.** Upon expiration of the Agency Review Period, the Parties shall file with the District
12 Court a Stipulation and Order that shall provide that:

13 a. the Complaint and all claims therein shall be dismissed with prejudice pursuant
14 to Federal Rule of Civil Procedure 41(a)(2); and

15 b. the Court shall retain and have jurisdiction over the Parties with respect to
16 disputes arising under this Consent Agreement. Nothing in this Consent Agreement shall be
17 construed as a waiver of any Party's right to appeal from an order that arises from an action to
18 enforce the terms of this Consent Agreement.

19 **V. MISCELLANEOUS PROVISIONS**

20 **20. No Admission.** The Parties enter into this Consent Agreement for the purpose of
21 avoiding prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as,
22 and Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law, or
23 violation of law, nor shall compliance with this Consent Agreement constitute or be construed as an
24 admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law. However,
25 this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the
26 Parties under this Consent Agreement.

27 **21. Termination Date.** This Consent Agreement shall terminate on October 1, 2011 if
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1 industrial operations at the Facility cease and the Regional Board approves Defendants' NOT by that
2 time, or September 30, 2013, if industrial operations continue or the Regional Board denies
3 Defendant's NOT. If industrial operations at the Facility cease or the Regional Board approves
4 Defendant's NOT after October 1, 2011, but before September 30, 2013, this Consent Agreement will
5 terminate fifteen (15) days after the Regional Water Board approves Defendant's NOT.

6 **22. Counterparts.** The Consent Agreement may be executed in one or more counterparts
7 which, taken together, shall be deemed to constitute one and the same document. An executed copy of
8 this Consent Agreement shall be valid as an original.

9 **23. Severability.** In the event that any one of the provisions of this Consent Agreement is
10 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
11 affected.

12 **24. Construction.** The language in all parts of this Consent Agreement, unless otherwise
13 stated, shall be construed according to its plain and ordinary meaning.

14 **25. Choice of Law.** This Consent Agreement shall be governed by the laws of the United
15 States, and where applicable, the laws of the State of California.

16 **26. Authority.** The undersigned representatives of CSPA and Defendants are authorized to
17 execute this Consent Agreement on behalf of the Party or Parties whom he represents.

18 **27.** All agreements, covenants, representations and warranties, express or implied, oral or
19 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.
20 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other
21 person or entity shall have any rights or remedies under or by reason of this Consent Agreement unless
22 otherwise expressly provided for therein.

23 **28. Assignment.** Subject only to the express restrictions contained in this Consent
24 Agreement, all of the rights, duties, and obligations contained in this Agreement shall inure to the
25 benefit of and be binding upon the Parties.

26 **29. Notices.** Any notices or documents required or provided for by this Consent
27 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement
28

1 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the
2 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

3 Bill Jennings, Executive Director
4 California Sportfishing Protection Alliance
5 3536 Rainier Avenue
6 Stockton, CA 95204
7 E-mail: DeltaKeep@aol.com

8 With copies sent to:

9 Andrew L. Packard
10 Erik M. Roper
11 Law Offices of Andrew L. Packard
12 100 Petaluma Boulevard North, Suite 301
13 Petaluma, CA 94952
14 Tel: (707) 763-7227
15 E-mail: Andrew@packardlawoffices.com
16 Erik@packardlawoffices.com

17 And to:

18 Robert J. Tuerck, Esq.
19 Jackson & Tuerck
20 P.O. Box 148
21 429 W. Main Street, Suite C
22 Quincy, CA 95971
23 Tel: 530-283-0406
24 Fax: 530-283-0416
25 E-mail: Bob@JacksonTuerck.com

26 Any notices or documents required or provided for by this Consent Agreement or related thereto that
27 are to be provided to Defendants pursuant to this Consent Agreement shall be sent by U.S. Mail,
28 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail
transmission to the email addresses listed below:

29 Kenneth W. Hoffman
30 2336 Airstrip Road
31 Redding, CA 96003
32 Tel: 530-223-3481
33 Fax: 530-223-3281
34 E-mail: jodihoffman2010@gmail.com

35 With copies sent to:

36 Nicole E. Granquist
37 Downey Brand LLP
38 621 Capitol Mall, 18th Floor
39 Sacramento, CA 95814-4601
40 Tel: 916-444-1000

1 Fax.: 916-444-2100
E-mail: ngranquist@downeybrand.com

2 Each Party shall promptly notify the other of any change in the above-listed contact information.

3 **30. Electronic or Facsimile Signatures.** Telecopy, .pdf, and/or facsimile copies of
4 original signatures shall be deemed to be originally executed.

5 **31. Force Majeure.** No Party shall be considered to be in default in the performance of
6 any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is
7 any circumstances beyond the Party's control, including, without limitation, any act of God, war, fire,
8 earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not
9 include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm
10 event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of
11 establishing that it could not reasonably have been expected to avoid, and which by exercise of due
12 diligence has been unable to overcome, the Force Majeure.

13 **32. Court Approval.** If for any reason the Court should decline to approve this Consent
14 Agreement in the form presented, the Parties shall use their best efforts to work together to modify the
15 Consent Agreement within thirty (30) calendar days so that it is acceptable to the Court. If the Parties
16 are unable to modify this Consent Agreement in a mutually acceptable manner, this Consent
17 Agreement shall become null and void.

18 **33. Negotiated Agreement.** This Consent Agreement shall be deemed to have been
19 drafted equally by the Parties, and shall not be interpreted for or against any Party on the ground that
20 any such party drafted it.

21 **34. Full Settlement.** This Consent Agreement constitutes a full and final settlement of this
22 matter. The Parties expressly understand and agree that each Party has freely and voluntarily entered
23 into this Consent Agreement with and upon advice of counsel.

24 **35. Integration Clause.** This Consent Agreement and the attachments contain all of the
25 final terms and conditions agreed upon by the Parties relating to the matters covered by the Consent
26 Agreement, and supersede any and all prior and contemporaneous agreements, negotiations,
27 correspondence, understandings, and communications of the Parties, whether oral or written,
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1 respecting the matters covered by this Consent Agreement.

2 36. **Modification.** This Consent Agreement may be amended or modified only by a
3 writing signed by the Parties or their authorized representatives, and then by order of the Court.

4 37. **Cure.** Except in case of an emergency but subject to the regulatory authority of any
5 applicable governmental authority, any breach of or default under this Consent Agreement capable of
6 being cured shall be deemed cured if, within five (5) business days of first receiving notice of the
7 alleged breach or default, or within such other period approved in writing by the Party making such
8 allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default
9 has completed such cure or, if the breach or default can be cured but is not capable of being cured
10 within such five (5) business day period, has commenced and is diligently pursuing to completion such
11 cure.

12 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for
13 its approval and entry as an Order and Final Judgment.

14
15 Dated: 9 May 2011 California Sportfishing Protection Alliance
16
17 By: Bill Jennings
18 Bill Jennings, Executive Director

19 Dated: _____ Viking Truck & Auto, Inc. and Kenneth Hoffman
20
21 By: _____
22 Kenneth Hoffman

23 **APPROVED AS TO FORM:**
24 Law Offices of Andrew L. Packard
25
26 Dated: _____ By: _____
27 Erik M. Roper
28 Attorneys for Plaintiff

1 respecting the matters covered by this Consent Agreement.

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3 signed by the Parties or their authorized representatives, and then by order of the Court.

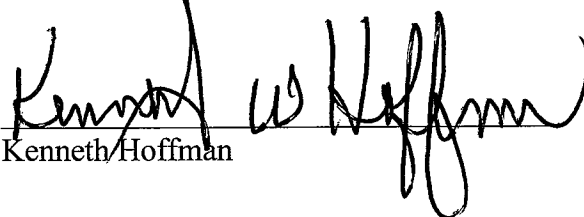
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11 cure.

12 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for
13 its approval and entry as an Order and Final Judgment.

14
15 Dated: _____ California Sportfishing Protection Alliance

16
17 By: _____
18 Bill Jennings, Executive Director

19 Dated: 5/10/11 Viking Truck & Auto, Inc. and Kenneth Hoffman

20
21 By: 
22 Kenneth Hoffman

23 **APPROVED AS TO FORM:**

24 Law Offices of Andrew L. Packard

25
26 Dated: _____ By: _____
27 Erik M. Roper
28 Attorneys for Plaintiff

1 respecting the matters covered by this Consent Agreement.

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7 alleged breach or default, or within such other period approved in writing by the Party making such
8 allegation, which approval shall not be unreasonably withheld, the party allegedly in breach or default
9 has completed such cure or, if the breach or default can be cured but is not capable of being cured
10 within such five (5) business day period, has commenced and is diligently pursuing to completion such
11 cure.

12 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for
13 its approval and entry as an Order and Final Judgment.


14
15 Dated: _____ California Sportfishing Protection Alliance

16
17 By: _____
18 Bill Jennings, Executive Director

19 Dated: _____ Viking Truck & Auto, Inc. and Kenneth Hoffman

20
21 By: _____
22 Kenneth Hoffman

23
24 **APPROVED AS TO FORM:** Law Offices of Andrew L. Packard

25 Dated: May 9, 2011 By: 
26 Erik M. Roper
27 Attorneys for Plaintiff

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Downey Brand LLP

Dated: May 6, 2011

By: Nicole E. Granquist
Nicole E. Granquist
Attorneys for Defendants

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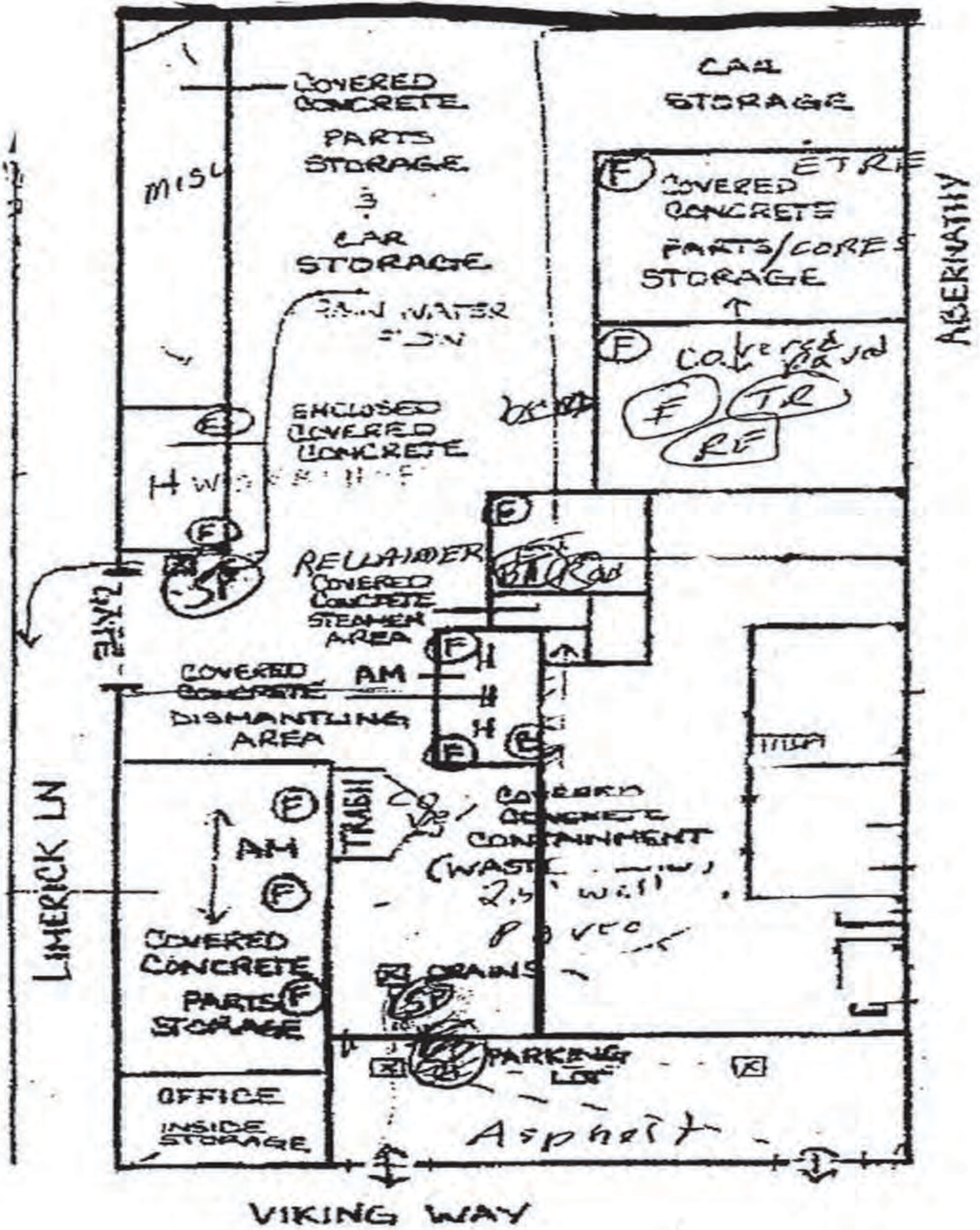
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EXHIBIT A – Facility Site Map

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EXHIBIT B – CWA Notice of Violation



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

September 3, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kenneth W. Hoffman, President
Viking Truck & Auto, Inc.
19980 Viking Way
Redding, CA 96003

Mr. Kenneth W. Hoffman, Agent For Service Of Process
Viking Truck & Auto, Inc.
2336 Airstrip Rd.
Redding, CA 96003

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

Dear Sir:

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 Viking Truck & Auto Dismantlers, Inc. ("VTA") vehicle dismantling and automotive parts recycling facility located at 19980 Viking Way in Redding, California ("the Facility"). The WDID identification number for the Facility is 5R45I017416. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Churn 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 VTA. For purposes of this Notice of Violations and Intent to File Suit, "VTA" shall also refer to Mr. Kenneth Hoffman.

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

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

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, VTA, and Mr. Kenneth Hoffman 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 VTA and Mr. Kenneth Hoffman 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.

VTA operates a vehicle dismantling and automotive parts recycling facility located in Redding, California. The Facility receives, dismantles, stores, reclaims, processes and recycles truck and automotive vehicles and automotive parts. The Facility also accepts vehicles for crushing and subsequent recycling, with weekly crushing and bi-weekly scrap metal removal.

On or about August 8, 2002, VTA submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as an auto dismantling facility under Standard Industrial Classification (“SIC”) Code 5015 (“Facilities Engaged in Dismantling or Wrecking Used Motor Vehicles for Parts Recycling or Resale”). The Facility collects and discharges storm water from its approximately 19-acre industrial site through at least four discharge points to Churn Creek, which in turn ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and Churn Creek 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 – 0.01mg/L; 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 VTA: 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 μ mhos/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

VTA 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 August 6, 2002, a representative of the United States Environmental Protection Agency and the Regional Water Quality Control Board, Region 5, conducted an inspection of the Facility. The inspector met with Mr. Kenneth Hoffman to tour the facility and review relevant paperwork. Four discharge points associated with industrial activity at the Facility were identified during the inspection. Subsequently, on September 19, 2002, Mary Randall of the Regional Board sent a letter to VTA noting the following: (1) Vehicle wash water was being discharged from the Facility and is not authorized under the Storm Water Permit; (2) The SWPPP for the Facility must be revised to include any new or modified Best Management Practices for vehicle washing; (3) The inspector noted VTA did not implement one of the BMPs described in its SWPPP, which states: “Store all vehicles and parts off the ground...”; and, (4) VTA must implement all of the BMPs listed in its SWPPP to be in compliance with the General Permit.

On August 27, 2009, the Regional Water Quality Control Board, Region 5, sent a Notice of Violation (“NOV”) to Mr. Kenneth Hoffman and VTA. The NOV cited an August 13, 2009 inspection by the Board and Shasta County Environmental Health, which revealed several violations of the General Permit. The NOV noted that VTA: (1)

failed to prevent prohibited discharges from the "Crusher Area to off-site areas" from occurring; (2) failed to implement and maintain appropriate BMPs, specifically noting:

The indoor dismantling bays, fluid draining area, waste oil area, new motor bay, engine core room, repair shop, „U-Pull-It“ vehicle storage area, and the crusher area all require additional BMPs to prevent further violations; the drainage ditches/swales leaving the facility require additional BMPs and necessary maintenance to achieve permit compliance; and interior roads lack adequate armoring to prevent sediment from discharging off-site.

Based on this inspection, the Board ordered VTA to immediately complete the following corrective actions:

- (1) Clean up accumulated waste fluids on the ground in the Dismantling Bays;
- (2) Use adequate storage bins for new, used and waste absorbent materials, and label appropriately. Discontinue the mixing of waste absorbent and trash;
- (3) Label all waste drums and containers in the Waste Area, and throughout the facility, with appropriate Hazardous Materials labels, and fill out label completely. Ensure all containers are adequately covered and contained;
- (4) Clean-up the accumulated waste fluid in the Waste Area, and dispose of properly;
- (5) Ensure that all steam cleaning wash water is contained in the treatment facility, and discontinue all discharges outside of the contained area;
- (6) Clean up all accumulated waste fluid and trash in the New Motor Bay. Provide secondary containment for the drain table, and label the drain table appropriately;
- (7) Clean up all accumulated waste fluid and trash in the Engine Core Room and provide adequate containment barrels for all waste fluids, trash, and absorbent materials, and label appropriately;
- (8) Provide additional containment barrels for waste fluids, trash and absorbent material in the Repair Shop, and label appropriately;
- (9) Eliminate additional waste fluid discharges to the ground in the U-Pull-It storage area, by performing thorough fluid draining of all vehicles entering the facility, and by implementing additional BMPs to eliminate and/or reduce future discharges;
- (10) Clean up accumulated trash, debris, and waste fluids on the ground in the Crusher Area, and implement additional BMPs to contain trash, debris and waste materials on-site, eliminating and/or reducing potential discharges off-site;
- (11) Provide better containment on 500-gallon diesel tank, and clean up accumulated diesel on the ground below the tank, in the Crusher Area;
- (12) Update and maintain all housekeeping logs, as specified in the SWPPP;
- (13) Clean all drop inlets, and/or drainage ditches, especially in the Crusher Area, of accumulated petroleum sediment and debris and trash and maintain as specified in the SWPPP; and,

(14) Add road base rock to the interior road network to reduce potential sediment discharges off-site.

The Board also ordered VTA to:

- (1) Monitor and maintain all BMPs as specified in the SWPPP, and submit copies of all housekeeping logs and monitoring reports to the Regional Water Board, monthly throughout 2009/2010. The reports must document both the problems and the corrective actions taken to address storm water issues observed at the site, and must include photographs. Reports must be submitted by the 10th day of the following month;
- (2) Evaluate the sources of your pollutants, review your current BMPs and identify and implement additional BMPs to reduce the pollutants that discharge from your site. Update the SWPPP to reflect new BMPs, including a site map illustrating the location of all BMPs, and submit a copy of the updated SWPPP to the Central Valley Water Board by 30 September, 2009;
- (3) Submit a written report demonstrating the methods you will institute to prevent future violations and potential discharges of pollutants to waters of the state;
- (4) Ensure that the person(s) responsible for inspections of the VTA facility have been trained in storm water management, in the effective use of storm water management BMPs, and good housekeeping practices for auto dismantling sites as it is clear from inspection observations that personnel have not been adequately trained, or that training has not been utilized to formulate and implement proper control at your site; and,
- (5) Develop and implement an Individual Monitoring Program – Sampling and Analysis Plan. Parameters to be sampled will include Total Suspended Solids (TSS), Iron (Fe), Lead (Pb), and Aluminum (Al) as outlined in Table D – Sector M. Automobile Salvage Yards – SIC Code 5015 – Facilities Engaged in Dismantling or Wrecking Used Motor – Vehicles for Parts Recycling or Resale and for Scrap. All sample results shall be included in the Annual Report for the facility which is due July 1 of each year. Submit a copy of the Individual Monitoring Program – Sampling and Analysis Plan to the Regional Water Board by 30 September, 2009.

VTA responded to these concerns with an email to the Regional Board from Don Reh of NEST Environmental on October 1, 2009, providing a new Monitoring Plan and asserting a new SWPPP and BMPs would follow. However, as of August 12, 2010, nearly one year later, there was no revised SWPPP nor any evidence of new BMPs having been implemented at the Facility in VTA's file at the Regional Board. Furthermore, VTA's file did not contain any of the monthly reports the Regional Board ordered, demonstrating the housekeeping log and monitoring reports. Based on its review of available public documents, CSPA is informed and believes that VTA

continues to discharge these very same pollutants in excess of benchmarks and that VTA has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. VTA's ongoing violations are discussed further below.

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

VTA has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), Copper (Cu), Iron (Fe), and Zinc (Zn) 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. VTA's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	TSS	188 mg/L	100 mg/L
10/13/2009	Point #2	TSS	300 mg/L	100 mg/L

2. Discharges of Storm Water Containing Aluminum (Al) at Levels in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	Proposed Benchmark Value
10/03/2008	Unidentified	Al	Failure to Test	0.75 mg/L
10/13/2009	Point #1	Al	4.4 mg/L	0.75 mg/L
10/13/2009	Point #2	Al	18 mg/L	0.75 mg/L
03/12/2010	Point #1	Al	1.7 mg/L	0.75 mg/L
03/12/2010	Point #2	Al	47 mg/L	0.75mg/L

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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Pb	.168 mg/L	.0816 mg/L
10/13/2009	Point #2	Pb	.21 mg/L	.0816 mg/L

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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Fe	Failure to Test	1 mg/L
10/13/2009	Point #1	Fe	6.4 mg/L	1 mg/L
10/13/2009	Point #2	Fe	2.4 mg/L	1 mg/L
03/26/2007	Point #1	Fe	2.9 mg/L	1 mg/L
10/12/2007	Point #2	Fe	78 mg/L	1 mg/L

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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Zn	.897 mg/L	0.117 mg/L
10/13/2009	Point #1	Zn	.21 mg/L	0.117 mg/L
10/13/2009	Point #2	Zn	.62 mg/L	0.117 mg/L
03/12/2010	Point #1	Zn	1.7 mg/L	0.117 mg/L
03/12/2010	Point #2	Zn	.59 mg/L	0.117 mg/L

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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
10/03/2008	Unidentified	Cu	.226 mg/L	0.0636 mg/L
10/13/2009	Point #2	Cu	.13 mg/L	0.0636 mg/L
03/12/2010	Point #2	Cu	.15 mg/L	0.0636 mg/L

CSPA's investigation, including its review of VTA's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values, indicates that VTA has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Aluminum (Al), Lead (Pb), Copper (Cu),

Zinc (Zn), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. VTA was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, VTA is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that VTA has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least September 3, 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 September 3, 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 VTA has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Aluminum (Al), Lead (Pb), Copper (Cu), Iron (Fe), Zinc (Zn) 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, VTA is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 3, 2005.

B. VTA 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 VTA, designated under SIC Code 5015 are also required to sample for Iron (Fe), Lead (Pb) and Aluminum (Al). 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 VTA has failed to implement an adequate Monitoring & Reporting Plan. CSPA's review of publicly available records reveals that: (1) there is no 2005-2006 Annual Report for VTA on file at the Regional Board office; (2) the Annual Reports VTA did file for the 2008-2009 and 2007-2008 periods further establish VTA's failure to sample two storm events as required by the General Permit (the Regional Board notes on the 2007-2008 Annual Report that no waiver from sampling was given, contrary to VTA assertions); (3) the 2008-2009 Annual Report shows VTA failed to test for Aluminum and Iron, as required by the General Permit; and (4) the Annual Reports VTA filed for the 2009-2010, 2008-2009 and 2006-2007 Wet Seasons also demonstrate VTA's chronic failure to collect samples of storm water discharges from each of the Facility's four designated discharge points.

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, VTA is subject to penalties for violations of the General Permit and the Act since September 3, 2005. These violations are set forth in greater detail below:

1. VTA Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In the Years It Has Been Designated As A Sampler Within The California Auto Dismantlers Group In Accordance With VTA's Responsibilities as a Group Member

Based on its review of publicly available documents, CSPA is informed and believes that VTA has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during at least two of the past five years as required. CSPA believes that although VTA is a part of a Group Monitoring Plan, VTA did not comply with the applicable requirements for sampling as stated in the General Permit.

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 VTA. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Clean Water Act.

2. VTA 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 VTA to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbon. The General Permit also requires facilities such as VTA which are designated as SIC Code 5015 to analyze its storm water discharge for Iron (Fe), Lead (Pb), and Aluminum (Al). Further, based on its investigation, CSPA is informed and

believes that VTA has failed to monitor for other pollutants “likely to be present in storm water discharges in significant quantities” (see, General Permit Section B.5.C(ii)), including, as acknowledged in VTA’s SWPPP, Copper (Cu) and Zinc (Zn). VTA failed to analyze storm water samples for Aluminum (Al) and Iron (Fe) in its 2008-2009 Annual Report. Other pollutants likely to be present in the Facility’s storm water discharges include: benzene, toluene, antimony, arsenic, boron, beryllium, cadmium, chromium, cobalt, manganese, mercury, molybdenum, nickel, selenium, silver, thallium and vanadium. VTA’s failure to monitor these pollutants extends back to at least September 3, 2005. VTA’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 General Permit and the Act.

3. VTA Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 3, 2005.

CSPA is informed and believes that available documents demonstrate VTA’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B 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, VTA is subject to penalties for these violations of the General Permit and the Act since September 3, 2005.

C. VTA Has Failed to Implement BAT and 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). CSPA’s investigation indicates that VTA has not implemented BAT and BCT at the Facility for its discharges of TSS, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), Benzene (C₆H₆), Toluene (CH₃), Antimony (Sb), Arsenic (As), Boron (B), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Manganese (Mn), Mercury (Hg), Molybdenum (Mo), Nickel (Ni), Selenium (Se), Silver (Ag), Thallium (Tl) and Vanadium (V) in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, VTA 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 VTA 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), follow all orders from the Regional Board in the August 27, 2009

NOV, or eliminate storm water discharge from the Facility altogether. VTA has failed to adequately implement such measures.

VTA was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, VTA 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 VTA fails to implement BAT and BCT. VTA is subject to penalties for violations of the Order and the Act occurring since September 3, 2005.

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

Section A(1) and Provision E(2) of the General 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 VTA has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. VTA has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary and as ordered by the Regional Board in 2009. Although an October 1, 2009 email communication from VTA's environmental consultant stated a SWPPP would be submitted "in a couple days" there is no revised SWPPP on file with the Regional Board. VTA 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 VTA fails to develop and implement an effective SWPPP. VTA is subject to penalties for violations of the Order and the Act occurring since September 3, 2005.

E. VTA 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, VTA is discharging elevated levels of TSS, Iron (Fe), Lead (Pb), Aluminum (Al), Copper (Cu), Zinc (Zn), and likely discharging elevated levels of Benzene (C₆H₆), Toluene (CH₃), Antimony (Sb), Arsenic (As), Boron (B), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Manganese (Mn), Mercury (Hg), Molybdenum (Mo), Nickel (Ni), Selenium (Se), Silver (Ag), Thallium (Tl) and Vanadium (V) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, VTA 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.

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). VTA 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 September 3, 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. VTA is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since September 3, 2005.

F. VTA 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 VTA has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, VTA failed to collect samples of storm water discharge from two qualifying storm events and from all designated discharge points as required by the General Permit. VTA failed to provide an explanation for the incomplete 2008-2009 Annual Report.

Based on its review of publicly available data on precipitation for the area, CSPA is informed and believes that there were at least two qualifying storm events during the 2008-2009 Wet Season. To wit, CSPA notes the following: (1) based on its own reporting as stated in its 2008-2009 Annual Report, VTA collected a sample of storm water discharged from the Facility's southeast drain on October 3, 2008; (2) publicly available precipitation data for the area reveals that 0.44 inches of precipitation was recorded as falling in the area on January 22, 2009, a weekday that followed three days of dry weather; and, (3) between October 1, 2008 and May 31, 2009 (the 2008-2009 Wet Season for purposes of General Permit compliance), there were no less than 20 days where at least 0.03 inches of rainfall were recorded for the area; further, see Attachment A below, which includes dates on which 0.10 inches or more of precipitation was recorded as having fallen in the area. Thus, VTA has failed to submit true and complete reports to the extent it has misrepresented to the Regional Board the frequency of qualifying storm events during which VTA could have collected a second sample of storm water discharge as required by the General Permit.

As indicated above, VTA has failed to comply with the General Permit and the Act consistently for at least the past five years; therefore, VTA 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. VTA's failure to submit true and complete reports constitutes continuous and ongoing violations of the General Permit and the Act. VTA is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since September 3, 2005.

G. VTA Has Discharged Unauthorized Non-Storm Water in Violation of the General Permit.

Based on its investigation, CSPA is informed and believes that VTA has discharged and continues to discharge unauthorized non-storm water from the Facility. On September 19, 2002, Mary Randall of the Regional Board sent a letter to VTA noting the following: (1) Vehicle wash water was being discharged from the Facility and is not authorized under the Storm Water Permit; (2) The SWPPP for the Facility must be revised to include any new or modified Best Management Practices for vehicle washing. CSPA notes that the Regional Board's August 27, 2009 Notice of Violation ordered VTA to "ensure that all steam cleaning wash water is contained in the treatment facility, and discontinue all discharges outside of the contained area." CSPA is informed and believes that VTA is discharging unauthorized non-storm water to the extent any water used to wash or rinse vehicles, structures, equipment, and the like on site discharges from the Facility. VTA has been in continuous violation of Discharge Prohibition A(1) of the General Permit every day since September 3, 2005, and will continue to be in violation every day VTA fails to eliminate its discharges of unauthorized non-storm water or obtains a separate NPDES permit to authorize such discharges of non-storm water. Accordingly, VTA is subject to penalties for violations of the General Permit and the Act occurring since September 3, 2005.

III. Persons Responsible for the Violations.

CSPA puts VTA and Mr. Kenneth Hoffman 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 VTA on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

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

V. Counsel.

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

Andrew L. Packard
Erik M. Roper
Hallie B. Albert
Law Offices of Andrew L. Packard
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
E-mail: Andrew@PackardLawOffices.com
Erik@PackardLawOffices.com
Hallie@PackardLawOffices.com

And to:

Robert J. Tuerck
Jackson & Tuerck
P.O. Box 148
429 W. Main Street, Suite C
Quincy, CA 95971
Tel: 530-283-0406
Fax: 530-283-0416
E-mail: Bob@JacksonTuerck.com

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 VTA and Mr. Kenneth Hoffman 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 VTA and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be

Notice of Violation and Intent To File Suit

September 3, 2010

Page 17 of 17

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

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive style with a large, prominent initial "B".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

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

Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A
Notice of Intent to File Suit, VTA (Redding, CA)
Significant Rain Events,* September 3, 2005 – September 3, 2010

Oct.	14	2005	Mar.	12	2006	Feb.	07	2007	Jan.	29	2008
Oct.	26	2005	Mar.	13	2006	Feb.	08	2007	Jan.	31	2008
Nov.	03	2005	Mar.	14	2006	Feb.	09	2007	Feb.	02	2008
Nov.	07	2005	Mar.	15	2006	Feb.	10	2007	Feb.	21	2008
Nov.	25	2005	Mar.	20	2006	Feb.	22	2007	Feb.	22	2008
Nov.	28	2005	Mar.	23	2006	Feb.	24	2007	Feb.	23	2008
Nov.	29	2005	Mar.	24	2006	Feb.	27	2007	Feb.	24	2008
Nov.	30	2005	Mar.	25	2006	Mar.	26	2007	Mar.	12	2008
Dec.	01	2005	Mar.	27	2006	April	11	2007	Mar.	28	2008
Dec.	17	2005	Mar.	28	2006	April	19	2007	April	22	2008
Dec.	18	2005	Mar.	29	2006	April	21	2007	May	24	2008
Dec.	19	2005	Mar.	31	2006	April	22	2007	Oct.	03	2008
Dec.	20	2005	April	01	2006	May	01	2007	Oct.	04	2008
Dec.	21	2005	April	02	2006	May	02	2007	Oct.	30	2008
Dec.	22	2005	April	03	2006	May	03	2007	Oct.	31	2008
Dec.	25	2005	April	05	2006	Oct.	09	2007	Nov.	01	2008
Dec.	26	2005	April	09	2006	Oct.	10	2007	Nov.	02	2008
Dec.	27	2005	April	10	2006	Oct.	12	2007	Nov.	03	2008
Dec.	28	2005	April	11	2006	Oct.	16	2007	Nov.	08	2008
Dec.	29	2005	April	12	2006	Oct.	19	2007	Dec.	14	2008
Dec.	30	2005	April	15	2006	Nov.	10	2007	Dec.	15	2008
Dec.	31	2005	April	16	2006	Nov.	19	2007	Dec.	18	2008
Jan.	01	2006	May	19	2006	Dec.	03	2007	Dec.	21	2008
Jan.	03	2006	May	21	2006	Dec.	04	2007	Dec.	24	2008
Jan.	04	2006	Oct.	04	2006	Dec.	06	2007	Dec.	28	2008
Jan.	10	2006	Nov.	02	2006	Dec.	18	2007	Jan.	02	2009
Jan.	11	2006	Nov.	03	2006	Dec.	19	2007	Jan.	22	2009
Jan.	13	2006	Nov.	11	2006	Dec.	20	2007	Jan.	24	2009
Jan.	14	2006	Nov.	12	2006	Dec.	27	2007	Feb.	06	2009
Jan.	17	2006	Nov.	13	2006	Dec.	28	2007	Feb.	08	2009
Jan.	18	2006	Nov.	16	2006	Dec.	29	2007	Feb.	10	2009
Jan.	20	2006	Nov.	22	2006	Jan.	03	2008	Feb.	11	2009
Jan.	28	2006	Nov.	26	2006	Jan.	04	2008	Feb.	13	2009
Jan.	30	2006	Dec.	08	2006	Jan.	05	2008	Feb.	14	2009
Feb.	01	2006	Dec.	09	2006	Jan.	06	2008	Feb.	15	2009
Feb.	02	2006	Dec.	10	2006	Jan.	08	2008	Feb.	16	2009
Feb.	04	2006	Dec.	11	2006	Jan.	09	2008	Feb.	17	2009
Feb.	26	2006	Dec.	12	2006	Jan.	10	2008	Feb.	18	2009
Feb.	27	2006	Dec.	13	2006	Jan.	12	2008	Feb.	22	2009
Mar.	02	2006	Dec.	14	2006	Jan.	21	2008	Feb.	25	2009
Mar.	03	2006	Dec.	21	2006	Jan.	24	2008	Mar.	01	2009
Mar.	05	2006	Dec.	26	2006	Jan.	25	2008	Mar.	03	2009
Mar.	06	2006	Dec.	27	2006	Jan.	26	2008	April	09	2009
Mar.	07	2006	Jan.	03	2007	Jan.	27	2008	April	24	2009

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

ATTACHMENT A
Notice of Intent to File Suit, VTA (Redding, CA)
Significant Rain Events,* September 3, 2005 – September 3, 2010

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

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

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EXHIBIT C – Proposition 65 Notice of Violation

LAW OFFICES OF
ANDREW L. PACKARD
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

September 8, 2010

(See attached Certificate of Service)

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies and Viking Truck & Auto Inc.:

This office represents the California Sportfishing Protection Alliance (“CSPA”), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of California’s waters, including Churn Creek, the San Joaquin River, the Sacramento River, and the Sacramento-San Joaquin Delta and their tributaries.

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as “Proposition 65”). This letter serves to provide you and the Violator with CSPA's notification of these violations. Pursuant to §25249.7(d) of the statute, CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies commence and diligently prosecute an action against these violations. A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is **VIKING TRUCK & AUTO, INC.** (hereinafter referred to as “the Violator”). These violations involve the discharge of lead and lead compounds, arsenic, cadmium, mercury and nickel to sources of drinking water. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from its facility located at the following address: 19980 Viking Way in Redding, California (“the Violator’s Facility”).

The Violator is discharging lead and lead compounds, arsenic, cadmium, mercury and nickel from the Violator’s Facility to designated sources of drinking water in violation of Proposition 65. The Violator is allowing storm water contaminated with lead and lead compounds, arsenic, cadmium, mercury and nickel to discharge from the Violators’ Facility into Churn Creek, thence to the Sacramento River.

Churn Creek and the Sacramento River are designated as sources of drinking water in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the “Basin Plan.”

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2005. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation. CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Andrew L. Packard
Erik M. Roper
Hallie Beth Albert
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Andrew@PackardLawOffices.com

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew L. Packard". The signature is fluid and cursive, with a large initial "A" and "P".

Andrew L. Packard
Attorneys for Plaintiff
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

EXHIBIT D

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Aluminum (total)	0.75 mg/L
Copper	0.0636 mg/L
Iron	1.0 mg/L
Lead (total)	0.0816 mg/L
Zinc (total)	0.117 mg/L

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