

California Sportfishing Protection Alliance

“An Advocate for Fisheries, Habitat and Water Quality”

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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

February 12, 2010

K&M Recycling / Waste Management Recycle America LLC
Derek Harrington, Site Manager and Plant Manager
3562 Ramona Ave.
Sacramento, CA 95826

Patrick DeRueda, President
Waste Management Recycle America LLC
1001 Fannin St., Ste. 4000
Houston, TX 77002

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

Dear Messrs. Harrington and DeRueda:

I am writing on behalf of the California Sportfishing Protection Alliance (CSPA) in regard to violations of the Clean Water Act (CWA) that CSPA believes are occurring at K&M Recycling / Waste Management Recycle America LLC located at 3562 Ramona Avenue in Sacramento, California (Facility). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Sacramento River, the Sacramento-San Joaquin River Delta (the Delta), and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of K&M Recycling / Waste Management Recycle America LLC (all recipients are hereinafter collectively referred to as K&M Recycling).

This letter addresses K&M Recycling's unlawful discharge of pollutants from the Facility into the City of Sacramento storm drain system, Morrison Creek, the Sacramento River, and the Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (NPDES) Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter General Permit). The WDID identification number for the Facility listed on documents submitted to the State Water Resources Control Board (State Board) and California Regional Water Quality Control Board, Central Valley Region (Regional Board) is 5S34I012128. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

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

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, K&M Recycling is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against K&M Recycling, Waste Management Recycle America LLC, and Derek Harrington under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below.

I. Background.

On January 5, 1996, Waste Management Collection and Recycling, Inc. filed its Notice of Intent To Comply With The Terms Of The General Permit To Discharge Storm Water Associated With Industrial Activity and on February 19, 1997, Waste Management Collection and Recycling, Inc. filed its Notice of Intent For Existing Facility Operators To Comply With The Terms Of The General Permit To Discharge Storm Water Associated With Industrial Activity (collectively "NOI"). On past Annual Reports for Storm Water Discharges Associated With Industrial Activities, the Facility has been identified as either Recycle Management Recycle America or Waste Management/Recycle America LLC. On those same Annual Reports, the Facility operator has been identified as K&M Recycling. The Facility's Storm Water Pollution Prevention Plan ("SWPPP") refers to the Facility as K&M Recycling / WM Recycle America LLC. CSPA will refer to the Facility as K&M Recycling for purposes of this letter.

K&M Recycling certifies that the Facility is classified under SIC code 5093 ("scrap and waste materials"). The Facility collects and discharges storm water from its 9.36 acre industrial site into at least one storm drain outfall located at the Facility. Based on the Facility's NOI, the storm water discharged by K&M Recycling to that drain is then discharged to the City of Sacramento storm drain system, the closest receiving water of which is Morrison Creek. Morrison Creek flows to the Sacramento River, and then flows to the Delta. The Regional Board has identified waters of the Sacramento River (from Knights Landing to the Delta) as failing to meet applicable water quality standards for mercury and unknown toxicity. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/303dlists2006/swrcb/r5_final303dlist.pdf.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the Sacramento River, the Delta and their tributaries, including Morrison Creek, in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region of The Sacramento River Basin and

The San Joaquin River Basin,ö generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of the Sacramento River, the Delta and their tributaries, including Morrison Creek, include among others water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as ö[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, . . ., camping, boating, . . ., hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.ö Basin Plan at II-1.00 ó II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs peopleø use of Morrison Creek, the Sacramento River and Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the Sacramento River, the Delta and their tributaries, including Morrison Creek. It includes a narrative toxicity standard which states that ö[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.ö *Id.* at III-8.01. For the Delta, the Basin Plan establishes trace element water quality objectives for several metals, including 0.3 mg/L for iron, 0.01 mg/L for copper, and 0.1 mg/L for zinc. *Id.* at Table III-1. The Basin Plan also prohibits the discharge of oil and grease, stating that ö[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.ö *Id.* at III-6.00. The Basin Plan provides that ö[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.ö *Id.* at III-7.00. The Basin Plan mandates that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* at III-6.00. The Basin Plan strictly limits increases in turbidity in Central Valley waters. *Id.* at III-9.00. The Basin Plan establishes a dissolved oxygen standard of 7.0 mg/L for the Sacramento River and Delta waters. *Id.* at III-5.00. The Basin Plan provides that electrical conductivity in the Sacramento River shall not exceed 240 micromhos/cm (50 percentile) or 340 micromhos/cm (90 percentile) at I Street Bridge. *Id.*

The U.S. Environmental Protection Agency (öEPAö) has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (öBATö) and best conventional pollutant control technology (öBCTö). The following benchmarks have been established for pollutants discharged by K&M Recycling: pH ó 6.0-9.0 units; total suspended solids (öTSSö) ó 100 mg/L, oil & grease (öO&Gö) ó 15 mg/L, total organic carbon (öTOCö) ó 120 mg/L, aluminum ó 0.75 mg/L, lead ó 0.0816 mg/L, chemical oxygen demand (öCODö) ó 120 mg/L, zinc ó 0.117 mg/L, copper ó 0.0636 mg/L, and iron ó 1.0 mg/L. The State Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

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

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

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

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

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

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
2/13/2009	Zinc	0.26 mg/L	0.1 mg/L	East Ramona
2/13/2009	Copper	0.026 mg/L	0.01 mg/L	East Ramona
11/3/2008	pH	6.37	6.5 ó 8.5	East Ramona
1/22/2008	Zinc	0.37 mg/L	0.1 mg/L	East Ramona
1/22/2008	Copper	0.067 mg/L	0.01 mg/L	East Ramona
10/12/2007	pH	6.43	6.5 ó 8.5	East Ramona
10/12/2007	Zinc	0.2 mg/L	0.1 mg/L	East Ramona
2/26/2007	Zinc	0.37 mg/L	0.1 mg/L	East Ramona
2/26/2007	Copper	0.04 mg/L	0.01 mg/L	East Ramona
11/15/2006	Zinc	0.442 mg/L	0.1 mg/L	East Ramona
11/15/2006	Copper	0.0428 mg/L	0.01 mg/L	East Ramona
2/27/2006	Zinc	0.39 mg/L	0.1 mg/L	East Ramona
2/27/2006	Copper	0.047 mg/L	0.01 mg/L	East Ramona
1/2/2006	Zinc	0.11 mg/L	0.1 mg/L	East Ramona

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

Date	Parameter	Observed Concentration	EPA Benchmark Value	Location (as identified by the Facility)
2/13/2009	Total Suspended Solids	210 mg/L	100 mg/L	East Ramona
2/13/2009	Specific Conductivity	950 µmho/cm	200 µmho/cm (proposed)	East Ramona
2/13/2009	Aluminum	2.7 mg/L	0.75 mg/L	East Ramona
2/13/2009	Chemical Oxygen Demand	410 mg/L	120 mg/L	East Ramona
2/13/2009	Zinc	0.26 mg/L	0.117 mg/L	East Ramona
11/3/2008	Specific Conductivity	420 µmho/cm	200 µmho/cm (proposed)	East Ramona
11/3/2008	Chemical Oxygen Demand	340 mg/L	120 mg/L	East Ramona
1/22/2008	Total Suspended Solids	420 mg/L	100 mg/L	East Ramona
1/22/2008	Specific Conductivity	570 µmho/cm	200 µmho/cm (proposed)	East Ramona
1/22/2008	Oil & Grease	19 mg/L	15 mg/L	East Ramona
1/22/2008	Total Organic Carbon	230 mg/L	110 mg/L	East Ramona
1/22/2008	Aluminum	11 mg/L	0.75 mg/L	East Ramona
1/22/2008	Chemical Oxygen	1100 mg/L	120 mg/L	East Ramona

	Demand			
1/22/2008	Zinc	0.37 mg/L	0.117 mg/L	East Ramona
1/22/2008	Copper	0.067 mg/L	0.0636 mg/L	East Ramona
10/12/2007	Total Suspended Solids	120 mg/L	100 mg/L	East Ramona
10/12/2007	Specific Conductivity	570 µmho/cm	200 µmho/cm (proposed)	East Ramona
10/12/2007	Aluminum	0.88 mg/L	0.75 mg/L	East Ramona
10/12/2007	Chemical Oxygen Demand	360 mg/L	120 mg/L	East Ramona
10/12/2007	Zinc	0.2 mg/L	0.117 mg/L	East Ramona
2/26/2007	Total Suspended Solids	170 mg/L	100 mg/L	East Ramona
2/26/2007	Specific Conductivity	700 µmho/cm	200 µmho/cm (proposed)	East Ramona
2/26/2007	Total Organic Carbon	160 mg/L	110 mg/L	East Ramona
2/26/2007	Aluminum	3.1 mg/L	0.75 mg/L	East Ramona
2/26/2007	Chemical Oxygen Demand	690 mg/L	120 mg/L	East Ramona
2/26/2007	Zinc	0.37 mg/L	0.117 mg/L	East Ramona
11/15/2006	Total Suspended Solids	400 mg/L	100 mg/L	East Ramona
11/15/2006	Specific Conductivity	400 µmho/cm	200 µmho/cm (proposed)	East Ramona
11/15/2006	Aluminum	10.7 mg/L	0.75 mg/L	East Ramona
11/15/2006	Chemical Oxygen Demand	400 mg/L	120 mg/L	East Ramona
11/15/2006	Zinc	0.442 mg/L	0.117 mg/L	East Ramona
2/27/2006	Total Suspended Solids	180 mg/L	100 mg/L	East Ramona
2/27/2006	Specific Conductivity	380 µmho/cm	200 µmho/cm (proposed)	East Ramona
2/27/2006	Total Organic Carbon	150 mg/L	110 mg/L	East Ramona
2/27/2006	Chemical Oxygen Demand	360 mg/L	120 mg/L	East Ramona
2/27/2006	Zinc	0.39 mg/L	0.117 mg/L	East Ramona

CSPA's investigation, including its review of K&M Recycling's analytical results documenting pollutants of applicable water quality standards, EPA's benchmark values and the State Board's proposed benchmark for electrical conductivity, indicates that K&M Recycling has not implemented BAT and BCT for its discharges of TSS, pH, specific conductivity, O&G, TOC, aluminum, COD, zinc, copper, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. K&M Recycling was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, K&M Recycling is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since February 12, 2005, and that will occur at K&M Recycling 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 K&M Recycling has discharged storm water containing impermissible levels of TSS, pH, specific conductivity, O&G, TOC, aluminum, COD, zinc, and copper in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of each of these pollutants in storm water 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, K&M Recycling is subject to penalties for violations of the General Permit and the Act since February 12, 2005.

B. Failure to Sample and Analyze for Mandatory Parameters

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

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). Facilities also must analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 5093, including K&M Recycling, must analyze each of its storm water samples for iron, lead, aluminum, copper, zinc, and COD. *Id.*, Table D (Sector N). CSPA's review of K&M Recycling's monitoring data indicates that you have failed to analyze for iron and lead in each sample taken at the Facility's outfall during the past five years. Specifically, there were four failures during each of the past four wet seasons, resulting in a total of sixteen failures.

Each of the above listed failures to analyze for specific required parameters is a violation of General Permit, Section B(5)(c)(ii) and Section B(5)(c)(iii). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, K&M Recycling is subject to penalties for violations of the General Permit and the Act since February 12, 2005.

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

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

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

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

CSPA's review of K&M Recycling's SWPPP (revised June 24, 2008), Storm Water Monitoring Plan, investigation of the conditions at K&M Recycling, and review of K&M Recycling's Annual Reports indicate that K&M Recycling has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. K&M Recycling has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, failed to include a proper facility map, failed to describe its discharge location and storm water sampling point, and failed to list the proper sampling parameters for its SIC code, among other deficiencies. K&M Recycling has been in continuous violation of Section A and Provision E(2) of the General Permit every day since February 12, 2005, and will continue to be

in violation every day that K&M Recycling fails to prepare, implement, review, and update an effective SWPPP. K&M Recycling is subject to penalties for violations of the Order and the Act occurring since February 12, 2005.

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

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

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by K&M Recycling is not representative of the quality of the Facility's various storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, K&M Recycling is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since February 12, 2005.

E. Failure to File True and Correct Annual Reports.

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

For at least the last five years, K&M Recycling and its agent, Derek Harrington, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, K&M Recycling has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time K&M Recycling or its agent failed to submit a complete or correct report and every time K&M Recycling or its agents falsely purported to comply with the Act. K&M Recycling is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

IV. Persons Responsible for the Violations.

CSPA puts K&M Recycling, Waste Management Recycle America LLC, and Derek Harrington 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 K&M Recycling, Waste Management Recycle America LLC, and Derek Harrington on notice that it intends to include those subsequently identified persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

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

VI. Counsel.

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

Michael R. Lozeau
Douglas J. Chermak
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VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects K&M Recycling to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit through January 12, 2009, and a maximum of \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the

Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

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

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

cc: CT Corporation, Agent of Service of Process for WM Recycle America, L.L.C.
(C0168406)

SERVICE LIST

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

Dorothy Rice, Executive Director
State Water Resources Control Board
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Eric Holder, U.S. Attorney General
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Jared Blumenfeld, Regional Administrator
U.S. EPA ó Region 9
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San Francisco, CA 94105

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

ATTACHMENT A
Rain Dates, K&M Recycling, Sacramento, CA

December 6, 2004	March 18, 2005	December 19, 2005
December 7, 2004	March 19, 2005	December 20, 2005
December 8, 2004	March 20, 2005	December 21, 2005
December 11, 2004	March 21, 2005	December 22, 2005
December 12, 2004	March 22, 2005	December 25, 2005
December 18, 2004	March 23, 2005	December 26, 2005
December 19, 2004	March 27, 2005	December 27, 2005
December 25, 2004	March 28, 2005	December 28, 2005
December 27, 2004	March 29, 2005	December 29, 2005
December 28, 2004	April 3, 2005	December 30, 2005
December 29, 2004	April 7, 2005	December 31, 2005
December 30, 2004	April 8, 2005	January 1, 2006
December 31, 2004	April 22, 2005	January 2, 2006
January 2, 2005	April 23, 2005	January 7, 2006
January 3, 2005	April 28, 2005	January 11, 2006
January 7, 2005	May 4, 2005	January 14, 2006
January 8, 2005	May 5, 2005	January 17, 2006
January 9, 2005	May 6, 2005	January 18, 2006
January 10, 2005	May 8, 2005	January 20, 2006
January 11, 2005	May 9, 2005	January 21, 2006
January 17, 2005	May 17, 2005	January 26, 2006
January 21, 2005	May 18, 2005	January 27, 2006
January 22, 2005	May 19, 2005	January 28, 2006
January 24, 2005	June 8, 2005	January 29, 2006
January 25, 2005	June 16, 2005	January 30, 2006
January 26, 2005	June 17, 2005	February 1, 2006
January 27, 2005	September 26, 2005	February 2, 2006
January 28, 2005	October 26, 2005	February 4, 2006
February 7, 2005	October 28, 2005	February 17, 2006
February 11, 2005	October 29, 2005	February 18, 2006
February 15, 2005	November 3, 2005	February 19, 2006
February 16, 2005	November 4, 2005	February 26, 2006
February 17, 2005	November 25, 2005	February 27, 2006
February 18, 2005	November 28, 2005	February 28, 2006
February 19, 2005	November 29, 2005	March 2, 2006
February 20, 2005	November 30, 2005	March 3, 2006
February 21, 2005	December 1, 2005	March 5, 2006
February 27, 2005	December 7, 2005	March 6, 2006
March 1, 2005	December 15, 2005	March 7, 2006
March 2, 2005	December 17, 2005	March 8, 2006
March 4, 2005	December 18, 2005	March 9, 2006

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Rain Dates, K&M Recycling, Sacramento, CA

March 10, 2006	November 18, 2006	May 4, 2007
March 12, 2006	November 20, 2006	September 22, 2007
March 13, 2006	November 22, 2006	September 23, 2007
March 14, 2006	November 23, 2006	September 28, 2007
March 15, 2006	November 26, 2006	October 1, 2007
March 16, 2006	November 27, 2006	October 10, 2007
March 17, 2006	December 8, 2006	October 12, 2007
March 18, 2006	December 9, 2006	October 16, 2007
March 19, 2006	December 10, 2006	October 19, 2007
March 20, 2006	December 11, 2006	October 29, 2007
March 21, 2006	December 12, 2006	November 10, 2007
March 22, 2006	December 13, 2006	November 11, 2007
March 23, 2006	December 15, 2006	November 12, 2007
March 24, 2006	December 21, 2006	November 13, 2007
March 25, 2006	December 26, 2006	November 30, 2007
March 27, 2006	December 27, 2006	December 1, 2007
March 28, 2006	January 3, 2007	December 4, 2007
March 29, 2006	January 4, 2007	December 5, 2007
March 30, 2006	February 7, 2007	December 6, 2007
March 31, 2006	February 8, 2007	December 7, 2007
April 1, 2006	February 9, 2007	December 8, 2007
April 2, 2006	February 10, 2007	December 16, 2007
April 3, 2006	February 11, 2007	December 17, 2007
April 4, 2006	February 12, 2007	December 18, 2007
April 5, 2006	February 13, 2007	December 19, 2007
April 7, 2006	February 22, 2007	December 20, 2007
April 9, 2006	February 24, 2007	December 28, 2007
April 10, 2006	February 25, 2007	December 29, 2007
April 11, 2006	February 26, 2007	December 30, 2007
April 12, 2006	February 27, 2007	January 3, 2008
April 16, 2006	March 8, 2007	January 4, 2008
April 25, 2006	March 20, 2007	January 5, 2008
May 1, 2006	March 21, 2007	January 6, 2008
May 8, 2006	March 26, 2007	January 7, 2008
May 9, 2006	April 11, 2007	January 8, 2008
October 10, 2006	April 14, 2007	January 10, 2008
November 2, 2006	April 21, 2007	January 11, 2008
November 4, 2006	April 22, 2007	January 15, 2008
November 8, 2006	April 23, 2007	January 21, 2008
November 11, 2006	April 27, 2007	January 22, 2008
November 13, 2006	May 2, 2007	January 23, 2008
November 16, 2006	May 3, 2007	January 24, 2008

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

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Rain Dates, K&M Recycling, Sacramento, CA

January 24, 2010
January 25, 2010
January 26, 2010
January 29, 2010
February 2, 2010
February 3, 2010
February 4, 2010
February 5, 2010
February 6, 2010
February 8, 2010
February 9, 2010