



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

February 3, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Collins, Facility Manager
Trilore Technologies, Inc.
4101 Arch Rd.
Stockton, CA 95215-8324

Pritam Dhaliwal, CFO
Trilore Technologies, Inc.
3000F Danville Blvd., #525
Alamo, CA 94507-1574

David L. Frey, Agent for Service of Process
Trilore Technologies, Inc.
3675 Mt. Diablo Blvd., Suite 250
Lafayette, CA 94549

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

Dear Mssrs. Collins, Dhaliwal and Frey:

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 Trilore Technologies, Inc. ("TTI") aluminum foundry facility located at 4101 Arch Road in Stockton, California ("the Facility"). The WDID identification number for the Facility is 5S39I019750. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Lone Tree Creek, the San Joaquin River, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, operator or agent for service of process for the operator of the Facility. Unless otherwise noted, TTI, John Collins and Pritam Dhaliwal shall hereinafter be collectively referred to as TTI.

This letter addresses TTI's unlawful discharges of pollutants from the Facility to Lone Tree Creek, which ultimately flows into the San Joaquin River and the Sacramento-San Joaquin Delta ("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, TTI, John Collins and Pritam Dhaliwal 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 TTI, John Collins and Pritam Dhaliwal under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

TTI owns and operates an aluminum foundry facility located in Stockton, California. The Facility is used to receive, store, handle, manufacture and transport various aluminum-based products. Other activities at the Facility include the handling, use, storage and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to and from the Facility.

The Facility is classified as a facility that receives, stores and/or manufactures products made from non-ferrous metals under Standard Industrial Classification (“SIC”) Code 3365 (“Nonferrous Foundries (Castings)”). The Facility collects and discharges storm water from its approximately 2-acre industrial site through at least two discharge points to Lone Tree Creek, which ultimately drains to the San Joaquin River and the Sacramento-San Joaquin Bay Delta (“the Delta”). Lone Tree Creek, the San Joaquin River, the Delta and the creeks that receive storm water discharge and unauthorized non-storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for

several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; 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 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 TTI: pH – 6.0-9.0; total suspended solids – 100 mg/L; aluminum – 0.75 mg/L; and, zinc – 0.117 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; magnesium – 0.0636 mg/L; mercury – 0.0024 mg/L; selenium – 0.2385 mg/L; and, silver – 0.0318 mg/L.

II. TTI is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States Without a NPDES Permit.

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The San Joaquin River and the Delta are waters of the United States. Accordingly, TTI’s discharges of storm water containing pollutants from the Facility to Lone Tree Creek and the San Joaquin River are discharges to waters of the United States.

Industrial facilities subject to regulation under the General Industrial Storm Water Permit are required to file a Notice of Intent to Comply with the terms of the General

Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). CSPA notes that TTI’s currently operative NOI was filed on or about August 23, 2005.

CSPA is informed and believes, and thereupon alleges, that TTI has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TTI is subject to penalties for violations of the Act since February 3, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

TTI 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.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General 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.

On October 14, 2010, the Regional Water Quality Control Board, Region 5, sent TTI’s John Collins a letter (“the October 2010 letter”) conveying its conclusion that,

among other things, TTI's 2009-2010 Annual Report contained evidence that the BMPs then in effect were "not sufficient to reduce pollutant concentrations below [EPA] benchmark levels." The October 2010 letter informed TTI that its 2009-2010 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered TTI to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility exceeded benchmark levels; (2) Identify sources of pollutants at the Facility which contribute to the exceedance; (3) Review current BMPs; and, (4) Modify the Facility's existing BMPs or implement new BMPs to reduce or eliminate the discharge of pollutants. The Board also requested that the Facility's Storm Water Pollution Prevention Plan ("SWPPP") and Monitoring Plan be updated to reflect these changes. Finally, the Board ordered TTI to provide a written response to the items raised in its October 2010 letter by no later than November 19, 2010:

In order to demonstrate that you are taking the appropriate actions, you need to submit a written response addressing the four items listed above. The response must also include a description of the corrective measures that will be implemented to address your facility's exceedances of the US EPA benchmark values and a schedule for completion. **Your response to this letter is due 19 November 2010.**

(emphasis added) Based on its review of available public documents at the Regional Board office in Rancho Cordova on December 17, 2010, CSPA is informed and believes that TTI failed to abide by the Board's order that TTI provide a written response to the Board's October 2010 letter by November 19, 2010. Further, based on its investigation and review of publicly available documents, CSPA is informed and believes that TTI continues to discharge these very same pollutants in excess of benchmarks and that TTI has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. TTI's ongoing violations are discussed further below.

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

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

The following discharges of pollutants from the 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 Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
10/13/2009	West Sample Point	Zn	0.340 mg/L	0.117 mg/L
10/13/2009	East Sample Point	Zn	0.140 mg/L	0.117 mg/L
12/24/2008	West Sample Point	Zn	0.210 mg/L	0.117 mg/L
12/06/2007	NW Catch Basin	Zn	0.17 mg/L	0.117 mg/L
12/21/2006	NW Catch Basin	Zn	0.250 mg/L	0.117 mg/L
12/21/2006	NE Catch Basin	Zn	0.170 mg/L	0.117 mg/L
03/20/2006	NE Drain Site 2	Zn	0.150 mg/L	0.117 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
10/13/2009	West Sample Point	Al	2.2 mg/L	0.75 mg/L
12/24/2008	West Sample Point	Al	1.9 mg/L	0.75 mg/L
12/06/2007	NW Catch Basin	Al	2.0 mg/L	0.75 mg/L
12/06/2007	NE Catch Basin	Al	1.1 mg/L	0.75 mg/L
12/21/2006	NW Catch Basin	Al	5.4 mg/L	0.75 mg/L
12/21/2006	NE Catch Basin	Al	2.7 mg/L	0.75 mg/L
03/20/2006	NW Drain Site 1	Al	1.7 mg/L	0.75 mg/L
03/20/2006	NE Drain Site 2	Al	1.6 mg/L	0.75 mg/L

3. Discharges of Storm Water Containing pH at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
10/13/2009	West Sample Point	pH	2.57 s.u.	6.0-9.0 s.u.

4. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
10/13/2009	West Sample Point	SC	1340µmhos/cm	200 µmhos/cm
12/21/2006	NW Catch Basin	SC	280 µmhos/cm	200 µmhos/cm

5. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
12/21/2006	NW Catch Basin	TSS	130 mg/L	100 mg/L

CSPA's investigation, including its review of TTI's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for specific conductivity, indicates that TTI has not implemented BAT and BCT at the Facility for its discharges of pH, Total Suspended Solids (TSS), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. TTI was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, TTI is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that TTI has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 3, 2006. 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 February 3, 2006, 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 TTI has discharged storm water containing impermissible levels of pH, Total Suspended Solids (TSS), Specific Conductivity (SC), Aluminum (Al), 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 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 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, TTI is subject to penalties for violations of the General Permit and the Act since February 3, 2006.

B. TTI 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 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. Section B(5)(c)(ii) of the General Permit further 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 TTI has failed to develop and implement an adequate Monitoring & Reporting Plan. For example, based on its review of publicly available documents, CSPA is informed and believes that TTI has failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past four Wet Seasons. Additionally, based on its review of publicly available documents, CSPA is informed and believes that TTI has failed to collect storm water samples from the first storm event of the Wet Season as required by General Permit Section B.5. during each of the past five years.

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, TTI is

subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 3, 2006. These violations are set forth in greater detail below:

1. TTI Has Failed to Collect Storm Water Samples from at least Two Qualifying Storm Events During Each of the Last Four Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that TTI has failed to collect storm water samples from all discharge points during qualifying rain events at the Facility during each of the past four years. Further, while item number E.1. in the Annual Reports filed by TTI for the last four Wet Seasons directs the reporting party to attach an explanation for the failure to collect and analyze samples from two qualifying storm events, TTI failed to provide any meaningful explanation for its failure to collect samples from two storm events in its previous two Annual Reports filed for the Facility.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the two discharge points currently designated by TTI. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. TTI Has Failed to Collect Storm Water Samples from the First Storm Event During Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that TTI has failed to collect storm water samples from the first qualifying storm event at the Facility during each of the past five years. For example, TTI reported in its 2009-2010 Annual Report that the "First Storm" of the Wet Season occurred on October 13, 2009. However, the storm that happened on October 13, 2009 was not a "qualifying storm event" within the meaning of the General Permit because publicly available rainfall data demonstrates that that date was not preceded by three dry days.

TTI's incorrect reporting on this issue is again evidenced in its 2008-2009 Annual Report. In its 2008-2009 Annual Report, TTI reported that the "First Storm" occurred on December 24, 2008. However, again, this date was not a qualifying storm event because it was not preceded by three dry days at the Facility without a storm water discharge.

In its 2007-2008 Annual Report, TTI reported that the "First Storm" occurred at the Facility on December 6, 2007. While that was a qualifying storm event, it was not the first qualifying storm event of that Wet Season. That honor belongs to the storm that fell on the Facility on Wednesday, October 10, 2007.

The best example of TTI's penchant for falsely reporting having collected samples from the first storm of the season is found in its 2006-2007 Annual Report. TTI reported therein that the first storm of the 2006-2007 Wet Season occurred at the Facility

on December 21, 2006. However, publicly available rainfall data reveals that not one drop of rain fell on the Facility on that date. Ergo, December 21, 2006 could not possibly have been a qualifying storm event.

These perennial failures to adequately monitor storm water discharges constitute separate and ongoing violations of the General Permit and the Act. TTI's failure to collect storm water discharge samples from the first qualifying storm event of each Wet Season extends back to at least February 3, 2006. TTI's failure to collect storm water discharge samples from the first qualifying storm event of each Wet Season has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

3. TTI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 3, 2006.

CSPA is informed and believes that available documents demonstrate TTI'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, TTI is subject to penalties for these violations of the General Permit and the Act since February 3, 2006.

C. TTI 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 TTI has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, Specific Conductivity, Aluminum, Zinc and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, TTI 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 TTI must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. TTI has failed to adequately implement such measures.

TTI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, TTI 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 TTI fails to implement BAT and BCT. TTI is subject to penalties for violations of the General Permit and the Act occurring since February 3, 2006.

D. TTI 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 Water Quality Order No. 97-03-DWQ 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 TTI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. TTI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, TTI has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. TTI is subject to penalties for violations of the Order and the Act occurring since February 3, 2006.

E. TTI 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, TTI is discharging storm water with elevated levels of pH, Total Suspended Solids (TSS), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, TTI was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, TTI was aware of high levels of these pollutants prior to February 3, 2006. Likewise, TTI has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). TTI has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since February 3, 2006, and will continue to be in violation every day TTI fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs.

TTI is subject to penalties for violations of the General Permit and the Act occurring since February 3, 2006.

F. TTI Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General 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 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 TTI has signed and submitted incomplete Annual Reports and falsely purported to comply with the General Permit despite significant noncompliance at the Facility. For example, on the Form 4 attached to its 2009-2010 Annual Report filed for the Facility, TTI reports that November 2009 and March, April and May of 2010 were all "dry". Presumably such a report was offered to explain away TTI's failure to collect storm water discharge samples from two qualifying storm events during the 2009-2010 Wet Season.

However, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that qualifying storm events occurred at the Facility on dates, including, but not limited to, the following: (1) Friday, November 20, 2009; (2) Friday, April 2, 2010; (3) Monday, April 19, 2010; (4) Monday, May 10, 2010; and, (5) Tuesday, May 25, 2010. Moreover, as discussed above, the date TTI claims was the first and only qualifying storm event of the 2009-2010 Wet Season (i.e., October 13, 2009), was not even a qualifying storm event given that it was not preceded by three days without storm water discharging from the Facility. To wit, publicly available rainfall data for the area indicates that on October 12, 2009, 0.4" of rain fell on the Facility. This compels the conclusion that storm water discharged from the Facility on October 12, 2009, thus rendering the storm that occurred on October 13, 2009, a non-qualifying storm event.

As indicated above, TTI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, TTI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time TTI submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. TTI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. TTI is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since February 3, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Trilore Technologies, Inc., John Collins and Pritam Dhaliwal 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 Trilore Technologies, Inc., John Collins and Pritam Dhaliwal on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

Andrew L. Packard
Erik M. Roper
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

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

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 Trilore Technologies, Inc., John Collins and Pritam Dhaliwal 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

Notice of Violation and Intent To File Suit

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(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 Trilore Technologies, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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".

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, Trilore Technologies, Inc. (Stockton, CA)
Significant Rain Events,* February 3, 2006-February 3, 2011

Feb. 18 2006	Feb. 25 2007	Feb. 08 2009	April 19 2010
Feb. 27 2006	Feb. 26 2007	Feb. 10 2009	April 20 2010
Feb. 28 2006	Feb. 27 2007	Feb. 11 2009	April 21 2010
Mar. 02 2006	Feb. 28 2007	Feb. 12 2009	April 28 2010
Mar. 03 2006	Mar. 21 2007	Feb. 13 2009	May 10 2010
Mar. 06 2006	Mar. 27 2007	Feb. 15 2009	May 25 2010
Mar. 07 2006	April 12 2007	Feb. 16 2009	Oct. 17 2010
Mar. 11 2006	April 22 2007	Feb. 17 2009	Oct. 23 2010
Mar. 12 2006	Oct. 10 2007	Feb. 21 2009	Oct. 24 2010
Mar. 13 2006	Oct. 12 2007	Feb. 25 2009	Nov. 07 2010
Mar. 14 2006	Nov. 11 2007	Mar. 01 2009	Nov. 19 2010
Mar. 18 2006	Jan. 04 2008	Mar. 02 2009	Nov. 20 2010
Mar. 21 2006	Jan. 05 2008	Mar. 03 2009	Nov. 23 2010
Mar. 25 2006	Jan. 06 2008	Mar. 22 2009	Nov. 27 2010
Mar. 28 2006	Jan. 07 2008	April 07 2009	Dec. 04 2010
Mar. 29 2006	Jan. 09 2008	April 09 2009	Dec. 05 2010
Mar. 31 2006	Jan. 10 2008	May 01 2009	Dec. 06 2010
April 01 2006	Jan. 11 2008	Oct. 12 2009	Dec. 08 2010
April 03 2006	Jan. 22 2008	Oct. 13 2009	Dec. 14 2010
April 04 2006	Jan. 23 2008	Nov. 20 2009	Dec. 17 2010
April 05 2006	Jan. 24 2008	Dec. 10 2009	Dec. 18 2010
April 11 2006	Jan. 25 2008	Dec. 11 2009	Dec. 19 2010
April 12 2006	Jan. 27 2008	Dec. 12 2009	Dec. 22 2010
April 13 2006	Jan. 28 2008	Dec. 26 2009	Dec. 25 2010
May 22 2006	Jan. 30 2008	Dec. 28 2009	Dec. 28 2010
Oct. 02 2006	Feb. 03 2008	Jan. 12 2010	Dec. 29 2010
Oct. 05 2006	Feb. 20 2008	Jan. 13 2010	Jan. 01 2011
Nov. 02 2006	Feb. 22 2008	Jan. 17 2010	Jan. 02 2011
Nov. 03 2006	Feb. 23 2008	Jan. 18 2010	Jan. 30 2011
Nov. 04 2006	Feb. 24 2008	Jan. 19 2010	
Nov. 11 2006	Feb. 25 2008	Jan. 20 2010	
Nov. 14 2006	Mar. 28 2008	Jan. 21 2010	
Nov. 27 2006	Oct. 04 2008	Jan. 22 2010	
Dec. 09 2006	Oct. 31 2008	Jan. 25 2010	
Dec. 10 2006	Nov. 01 2008	Jan. 26 2010	
Dec. 11 2006	Nov. 03 2008	Feb. 01 2010	
Dec. 12 2006	Nov. 26 2008	Feb. 04 2010	
Dec. 13 2006	Dec. 15 2008	Feb. 05 2010	
Dec. 15 2006	Dec. 17 2008	Feb. 08 2010	
Dec. 22 2006	Dec. 19 2008	Feb. 21 2010	
Dec. 27 2006	Dec. 22 2008	Feb. 23 2010	
Jan. 03 2007	Dec. 24 2008	Feb. 26 2010	
Jan. 27 2007	Dec. 25 2008	Mar. 02 2010	
Feb. 09 2007	Jan. 21 2009	Mar. 03 2010	
Feb. 10 2007	Jan. 22 2009	Mar. 09 2010	
Feb. 11 2007	Feb. 04 2009	Mar. 12 2010	
Feb. 13 2007	Feb. 05 2009	April 02 2010	
Feb. 22 2007	Feb. 06 2009	April 11 2010	

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