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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

Case No. 09-03667 EMC

14 CALIFORNIA SPORTFISHING
15 PROTECTION ALLIANCE, a non-profit
16 corporation,
17 Plaintiff,
18 vs.
19 TRI CITY ROCK, INC., a corporation,
20 Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

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

23 **I. JURISDICTION AND VENUE**

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

1 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
2 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of
3 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
4 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

5 2. On or about June 1, 2009, Plaintiff provided notice of Defendant’s violations
6 of the Act, and of its intention to file suit against Defendant, to the Administrator of the
7 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region
8 IX; the Executive Director of the State Water Resources Control Board (“State Board”); the
9 Executive Officer of the California Regional Water Quality Control Board, San Francisco
10 Bay Region (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. §
11 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and
12 is incorporated by reference.

13 3. More than sixty days have passed since notice was served on Defendant and
14 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
15 neither the EPA nor the State of California has commenced or is diligently prosecuting a
16 court action to redress the violations alleged in this complaint. This action’s claim for civil
17 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,
18 33 U.S.C. § 1319(g).

19 4. Venue is proper in the Northern District of California pursuant to Section
20 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
21 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in
22 Oakland, California, because the source of the violations is located within Alameda County.

23 **II. INTRODUCTION**

24 5. This complaint seeks relief for Defendant’s discharges of polluted storm water
25 and non-storm water pollutants from Defendant TRI CITY ROCK, INC.’s ready-mix
26 concrete, building materials, and landscaping materials facility located at 43157 Osgood
27 Road in Fremont, California (“the Facility”) in violation of the Act and National Pollutant
28 Discharge Elimination System (“NPDES”) Permit No. CAS000001, State Water Resources

1 Control Board Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order
2 No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ (hereinafter “the Order” or
3 “Permit” or “General Permit”). Defendant’s violations of the discharge, treatment
4 technology, monitoring requirements, and other procedural and substantive requirements of
5 the Permit and the Act are ongoing and continuous.

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

14 **III. PARTIES**

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

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

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

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

9 10. Defendant TRI CITY ROCK, INC. ("Tri City Rock") is a corporation
10 organized under the laws of California. Defendant Tri City Rock operates a ready-mix
11 concrete, building materials, and landscaping materials facility in Fremont, California.

12 **IV. STATUTORY BACKGROUND**

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

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

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

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

1 1991, modified the General Permit on or about September 17, 1992, and reissued the
2 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
3 Act, 33 U.S.C. § 1342(p).

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

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

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

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

1 Parameter Benchmark Values for the following parameters, among others: total suspended
2 solids – 100 mg/L; oil & grease – 15 mg/L; total organic carbon – 110 mg/L; pH – 6.0 – 9.0
3 s.u.; and iron – 1.0 mg/L. The State Board has proposed a Benchmark Value for electrical
4 conductance of 200 µmhos/cm.

5 19. Dischargers must develop and implement a Storm Water Pollution Prevention
6 Plan (“SWPPP”). The SWPPP must describe storm water control facilities and measures
7 that comply with the BAT and BCT standards. The General Permit requires that an initial
8 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
9 among other requirements, identify and evaluate sources of pollutants associated with
10 industrial activities that may affect the quality of storm and non-storm water discharges from
11 the facility and identify and implement site-specific best management practices (“BMPs”) to
12 reduce or prevent pollutants associated with industrial activities in storm water and
13 authorized non-storm water discharges (Section A(2)). The SWPPP’s BMPs must
14 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
15 individuals and their responsibilities for developing and implementing the SWPPP (Section
16 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
17 pattern and nearby water bodies, the location of the storm water collection, conveyance and
18 discharge system, structural control measures, impervious areas, areas of actual and potential
19 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
20 handled and stored at the site (Section A(5)); a description of potential pollutant sources
21 including industrial processes, material handling and storage areas, dust and particulate
22 generating activities, and a description of significant spills and leaks, a list of all non-storm
23 water discharges and their sources, and a description of locations where soil erosion may
24 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
25 at the Facility and a description of the BMPs to be implemented at the Facility that will
26 reduce or prevent pollutants in storm water discharges and authorized non-storm water
27 discharges, including structural BMPs where non-structural BMPs are not effective (Section
28 A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised

1 where necessary (Section A(9),(10)).

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

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

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

20 23. As part of their monitoring program, dischargers must identify all storm water
21 discharge locations that produce a significant storm water discharge, evaluate the
22 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
23 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
24 conduct visual observations of these discharge locations for at least one storm per month
25 during the wet season (October through May) and record their findings in their Annual
26 Report. Dischargers must also collect and analyze storm water samples from at least two
27 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall
28 collect storm water samples during the first hour of discharge from (1) the first storm event

1 of the wet season, and (2) at least one other storm event in the wet season. All storm water
2 discharge locations shall be sampled.” Section B(5)(c)(i) requires dischargers to sample and
3 analyze during the wet season for basic parameters, such as pH, total suspended solids,
4 electrical conductance, and total organic content or oil & grease, certain industry-specific
5 parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic chemicals and other
6 pollutants likely to be in the storm water discharged from the facility. Section B(5)(c)(iii)
7 requires discharges to sample for parameters dependent on a facility’s standard industrial
8 classification (“SIC”) code. Facilities that fall under SIC Code 3273 are required to analyze
9 their storm water discharge samples for iron. Dischargers must also conduct dry season
10 visual observations to identify sources of non-storm water pollution. Section B(7)(a)
11 indicates that the visual observations and samples must represent the “quality and quantity of
12 the facility’s storm water discharges from the storm event.” Section B(7)(c) requires that “if
13 visual observation and sample collection locations are difficult to observe or
14 sample...facility operators shall identify and collect samples from other locations that
15 represent the quality and quantity of the facility’s storm water discharges from the storm
16 event.”

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

23 25. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
24 enforcement actions against any “person,” including individuals, corporations, or
25 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
26 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
27 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up
28 \$32,500 per day per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§

1 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

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

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

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

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

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

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

17 **V. STATEMENT OF FACTS**

18 32. Defendant Tri City Rock operates a ready-mix concrete, building materials,
19 and landscaping materials facility located at 43157 Osgood Road in Fremont, California.
20 The Facility prepares ready-mix concrete and provides and distributes numerous materials
21 for building and landscaping, including ready-mix concrete, bricks, blocks, rocks, stones,
22 sand, gravel, soil and sod. The Facility falls within SIC Codes 3273 and 1411. The Facility
23 covers approximately 3.75 acres, the majority of which is paved and used for transporting
24 and storing materials throughout the Facility. On information and belief, Plaintiff alleges
25 that there is at least one large building located on the property. On information and belief,
26 Plaintiff alleges that the movement of materials occurs both inside and outside of this
27 building. Building and landscaping materials are transported in and out of this building for
28 storage in the paved and unpaved areas of the Facility.

1 33. Defendant channels and collects storm water falling on the Facility through a
2 series of storm water drains that lead to at least one storm water outfall. The Facility's
3 outfall(s) discharge to the City of Fremont's storm drain system, which empties into Coyote
4 Creek or Mowry Slough, and then flows to the Bay.

5 34. On information and belief, Plaintiff alleges that the industrial activities at the
6 Facility include the production and distribution of ready-mix concrete and the management
7 of the following materials: bricks, blocks, rocks, stones, sand, gravel, soil and sod. Industrial
8 activities also include the outdoor handling, processing, and storage of these materials as
9 well as other materials used in the production process.

10 35. Significant activities at the site take place outside and are exposed to rainfall.
11 These activities include the storage and movement of raw materials and finished products,
12 equipment used in the production processes; the storage and use of vehicles and equipment
13 for materials handling; and the storage, handling, and disposal of waste materials. Loading
14 and delivery of raw materials and finished products occurs outside. Trucks enter and exit the
15 Facility directly from and to public roads. Fork lifts and trucks are the primary means of
16 moving raw materials and finished products around the unpaved storage areas of the Facility.
17 Plaintiff is informed and believes, and thereupon alleges, that materials production and
18 distribution also occurs in exposed areas at the Facility. These areas are exposed to storm
19 water and storm flows due to the lack of overhead coverage, berms, and other storm water
20 controls.

21 36. Industrial machinery, heavy equipment and vehicles, including trucks and fork
22 lifts, are operated and stored at the Facility in areas exposed to storm water flows. Plaintiff
23 is informed and believes, and thereupon alleges, that such machinery and equipment leak
24 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
25 to storm water flows, and that such machinery and equipment track sediment and other
26 contaminants throughout the Facility.

27 37. Plaintiff is informed and believes, and thereupon alleges that the storm water
28 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,

1 and other pollutants as it flows toward the storm water drains. Storm water and any
2 pollutants contained in that storm water entering the drains flows directly to the Facility's
3 outfalls.

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

12 39. Since at least January 27, 2005, Defendant has taken samples or arranged for
13 samples to be taken of storm water discharges at the Facility. The sample results were
14 reported in the Facility's annual reports submitted to the Regional Board. Defendant Tri
15 City Rock certified each of those annual reports pursuant to Sections A and C of the General
16 Permit.

17 40. Since at least January 27, 2005, the Facility has detected total suspended
18 solids, iron, and electrical conductance in storm water discharged from the Facility. Since at
19 least March 25, 2005, the Facility has detected pH in storm water discharged by the Facility.
20 Levels of these pollutants detected in the Facility's storm water have been in excess of
21 EPA's numeric parameter benchmark values and the State Board's proposed value for
22 electrical conductance. Levels of these pollutants detected in the Facility's storm water have
23 been in excess of water quality standards established in the Basin Plan.

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

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Date	Parameter	Measured Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
10/12/2007	pH	9.33	6.5 – 8.5	Drop Inlet
3/27/2007	pH	9.55	6.5 – 8.5	Drop Inlet
2/13/2007	pH	9.08	6.5 – 8.5	Drop Inlet
4/12/2006	pH	8.51	6.5 – 8.5	[Unidentified]
1/30/2006	pH	8.64	6.5 – 8.5	[Unidentified]
3/25/2005	pH	9.57	6.5 – 8.5	Industrial Area

13 42. The levels of total suspended solids in storm water detected by the Facility
14 have exceeded the benchmark value for total suspended solids of 100 mg/L established by
15 EPA as well as the standard for suspended materials articulated in the Basin Plan. For
16 example, on October 12, 2007, the level of total suspended solids measured by Defendant in
17 the Facility’s discharged storm water was 540 mg/L. That level of total suspended solids is
18 over five times the benchmark value for total suspended solids established by EPA. The
19 Facility also has measured levels of total suspended solids in storm water discharged from
20 the Facility in excess of EPA’s benchmark value of 100 mg/L on March 27, 2007; February
21 13, 2007; April 12, 2006; and January 27, 2005.

22 43. The levels of iron in storm water detected by the Facility have exceeded the
23 benchmark value for iron of 1.0 mg/L established by EPA. For example, on October 12,
24 2007, the level of iron measured by Defendant in the Facility’s discharged storm water was 4
25 mg/L. That level of iron is four times the benchmark value for iron established by EPA.
26 The Facility also has measured levels of iron in storm water discharged from the Facility in
27 excess of EPA’s benchmark value of 1.0 mg/L on March 27, 2007; February 13, 2007; April
28 12, 2006; March 25, 2005; and January 27, 2005.

1 44. The levels of pH in storm water detected by the Facility have exceeded the
2 benchmark value for pH of 6.0 – 9.0 established by EPA. For example, on October 12,
3 2007, the level of pH measured by Defendant in the Facility’s discharged storm water was
4 9.33. The Facility also has measured levels of pH in storm water discharged from the
5 Facility in excess of EPA’s benchmark value of 6.0 – 9.0 on March 27, 2007; February 13,
6 2007; and March 25, 2005.

7 45. The electrical conductance levels detected by the Facility in its storm water
8 have been greater than the numeric water quality standards applicable to electrical
9 conductance in California. The electrical conductance levels detected by the Facility in its
10 storm water have been greater than the benchmark value of 200 $\mu\text{mho}/\text{cm}$ proposed by the
11 State Board. For example, on October 12, 2007, the electrical conductance level measured
12 by Defendant in the Facility’s discharged storm water was 480 $\mu\text{mho}/\text{cm}$. That electrical
13 conductance level is over twice the State Board’s proposed benchmark value. The Facility
14 also has measured levels of electrical conductance in storm water discharged from the
15 Facility in excess of the proposed benchmark value of 200 $\mu\text{mho}/\text{cm}$ on March 27, 2007;
16 February 13, 2007; April 12, 2006; January 30, 2006; and January 27, 2005.

17 46. On information and belief, Plaintiff alleges that since at least January 27, 2005,
18 Defendant has failed to implement BAT and BCT at the Facility for its discharges of total
19 suspended solids, iron, pH, electrical conductance, and other pollutants. Section B(3) of the
20 General Permit requires that Defendant implement BAT for toxic and nonconventional
21 pollutants and BCT for conventional pollutants by no later than October 1, 1992. As of the
22 date of this Complaint, Defendant has failed to implement BAT and BCT.

23 47. On information and belief, Plaintiff alleges that since at least August 11, 2004,
24 Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for
25 the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP
26 prepared for the Facility does not set forth site-specific best management practices for the
27 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and
28 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an

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

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

13 49. On information and belief, Plaintiff alleges that Defendant has failed to collect
14 the two required storm samples from each storm water discharge location during each wet
15 season since at least August 11, 2004. Plaintiff alleges that Defendant has failed to collect
16 samples from two of its discharge locations during the past five wet seasons.

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

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

28 52. Information available to Plaintiff indicates that Defendant has not fulfilled the

1 requirements set forth in the General Permit for discharges from the Facility due to the
2 continued discharge of contaminated storm water. Plaintiff is informed and believes, and
3 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and
4 continuing.

5 **VI. CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**

7 **Failure to Implement the Best Available and**
8 **Best Conventional Treatment Technologies**
9 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

10 53. Plaintiff realleges and incorporate Paragraphs 1-52, as if fully set forth herein.

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **Discharges of Contaminated Storm Water**
25 **in Violation of Permit Conditions and the Act**
26 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

27 57. Plaintiff re-alleges and incorporates Paragraphs 1-56, inclusive, as if fully set
28 forth herein.

58. Discharge Prohibition A(2) of the General Permit requires that storm water
discharges and authorized non-storm water discharges shall not cause or threaten to cause
pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the

1 General Permit require that storm water discharges and authorized non-storm water discharges
2 shall not adversely impact human health or the environment, and shall not cause or contribute
3 to a violation of any water quality standards contained in a Statewide Water Quality Control
4 Plan or the applicable Regional Board's Basin Plan.

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

9 60. During every rain event, storm water flows freely over exposed materials, waste
10 products, and other accumulated pollutants at the Facility, becoming contaminated with pH,
11 suspended solids, iron, electrical conductance and other unmonitored pollutants at levels above
12 applicable water quality standards. The storm water then flows untreated from the Facility into
13 City of Fremont storm drain system. This contaminated storm water then flows into Coyote
14 Creek or Mowry Slough, and then into the Bay.

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

19 62. Plaintiff is informed and believes, and thereupon alleges, that these discharges
20 of contaminated storm water are adversely affecting human health and the environment in
21 violation of Receiving Water Limitation C(1) of the General Permit.

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

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

64. Plaintiff realleges and incorporate Paragraphs 1-63, as if fully set forth herein.

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

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

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

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

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

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

70. Plaintiff re-alleges and incorporates Paragraphs 1-69, inclusive, as if fully set forth herein.

1 71. Section B of the General Permit requires dischargers of storm water associated
2 with industrial activity to have developed and be implementing a monitoring and reporting
3 program (including, *inter alia*, sampling and analysis of discharges) no later than October 1,
4 1992.

5 72. Defendant has failed to develop and implement an adequate monitoring and
6 reporting program for the Facility. Defendant's ongoing failure to develop and implement
7 an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to
8 collect samples from all storm water discharge locations.

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

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

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

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

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

26 **VII. RELIEF REQUESTED**

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

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

1 b. Enjoin Defendant from discharging polluted storm water from the Facility
2 unless authorized by the Permit;

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

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

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

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

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

17 h. Order Defendant to pay civil penalties of \$32,500 per day per violation for
18 each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§
19 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

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

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

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

Dated: August 11, 2009

Respectfully submitted,
LOZEAU DRURY LLP

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

California Sportfishing Protection Alliance

“An Advocate for Fisheries, Habitat and Water Quality”

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 26, 2009

John R. Dent, President
Tri City Rock, Inc.
43157 Osgood Road
Fremont, CA 94539

John R. Dent, Agent for Service of Process
Tri City Rock, Inc.
3310 W Las Positas Blvd.
Pleasanton, CA 94588

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

Dear Mr. Dent:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“Act”) that CSPA believes are occurring at Tri City Rock, Inc., located at 43157 Osgood Road in Fremont, California (“Facility”). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay (“Bay”) and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility (all recipients are hereinafter collectively referred to as “Tri City Rock”).

This letter addresses Tri City Rock’s unlawful discharge of pollutants from the Facility into channels that flow into the Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”) Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”). The WDID identification number for the Facility listed on documents submitted to the Regional Board is 201I013675. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

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

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Tri City Rock is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Tri City Rock and John R. Dent under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On December 10, 1997, Tri City Rock filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Tri City Rock certifies that the Facility is classified under SIC codes 3273 (“ready mixed concrete (retail)”) and 1411 (“dimensional stone”). The Facility collects and discharges storm water from its approximately 3.75-acre industrial site into at least one storm water discharge location at the Facility. The storm water discharged by Tri City Rock is discharged to City of Fremont storm drain system, which flows into either Mowry Slough or Coyote Creek, and then flows into San Francisco Bay.

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

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3.3.21. The Basin Plan provides that

“[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan provides that “[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at 3.3.9.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). 65 Fed.Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Tri City Rock: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; total organic carbon (“TOC”) – 110 mg/L; and iron – 1 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

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

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

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges

that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Tri City Rock has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, specific conductivity, iron, and other pollutants in violation of the General Permit. Tri City Rock'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)
10/12/2007	pH	9.33	6.5 – 8.5	Drop Inlet
3/27/2007	pH	9.55	6.5 – 8.5	Drop Inlet
2/13/2007	pH	9.08	6.5 – 8.5	Drop Inlet
4/12/2006	pH	8.51	6.5 – 8.5	[Location Unidentified]
1/30/2006	pH	8.64	6.5 – 8.5	[Location Unidentified]
3/25/2005	pH	9.57	6.5 – 8.5	Industrial Area

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

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
10/12/2007	pH	9.33	6.0 – 9.0	Drop Inlet
10/12/2007	Total Suspended Solids	540 mg/L	100 mg/L	Drop Inlet
10/12/2007	Specific Conductivity	480 µmho/cm	200 µmho/cm (proposed)	Drop Inlet
10/12/2007	Iron	4 mg/L	1.0 mg/L	Drop Inlet
3/27/2007	pH	9/55	6.0 – 9.0	Drop Inlet

3/27/2007	Total Suspended Solids	300 mg/L	100 mg/L	Drop Inlet
3/27/2007	Specific Conductivity	250 µmho/cm	200 µmho/cm (proposed)	Drop Inlet
3/27/2007	Iron	3.1 mg/L	1.0 mg/L	Drop Inlet
2/13/2007	pH	9.08	6.0 – 9.0	Drop Inlet
2/13/2007	Total Suspended Solids	680 mg/L	100 mg/L	Drop Inlet
2/13/2007	Specific Conductivity	640 µmho/cm	200 µmho/cm (proposed)	Drop Inlet
2/13/2007	Iron	5.4 mg/L	1.0 mg/L	Drop Inlet
4/12/2006	Total Suspended Solids	630 mg/L	100 mg/L	[Location Unidentified]
4/12/2006	Specific Conductivity	410 µmho/cm	200 µmho/cm (proposed)	[Location Unidentified]
4/12/2006	Iron	49 mg/L	1.0 mg/L	[Location Unidentified]
1/30/2006	Specific Conductivity	810 µmho/cm	200 µmho/cm (proposed)	[Location Unidentified]
3/25/2005	pH	9.57	6.0 – 9.0	Industrial Area
3/25/2005	Iron	7.8 mg/L	1.0 mg/L	Industrial Area
1/27/2005	Total Suspended Solids	120 mg/L	100 mg/L	Industrial Area
1/27/2005	Specific Conductivity	540 µmho/cm	200 µmho/cm (proposed)	Industrial Area
1/27/2005	Iron	9.8 mg/L	1.0 mg/L	Industrial Area

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

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

B. Failure to Sample, Analyze, and Inspect Storm Events

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.*

On information and belief, CSPA alleges that Tri City Rock has failed to collect the two required storm water samples from each storm water discharge location in each of the last five years despite discharging storm water from its facility. During the past five years, Tri City Rock has only sampled and analyzed storm water discharges from one location at the Facility. CSPA alleges that Tri City Rock discharges storm water from at least two other locations. The failure to collect two samples from two discharge locations for five rainy seasons results in twenty distinct violations of the General Permit. 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, Tri City Rock is subject to penalties for violations of the General Permit and the Act since May 26, 2004.

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

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

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must

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

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

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

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

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

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the

Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Tri City Rock 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, Tri City Rock is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since May 26, 2004.

E. Failure to File True and Correct Annual Reports.

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

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

IV. Persons Responsible for the Violations.

CSPA puts Tri City Rock and John R. Dent 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 Tri City Rock and John R. Dent on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

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

VI. Counsel.

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

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

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

VII. Penalties.

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

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Tri City Rock 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

John R. Dent
Tri City Rock
April 26, 2009
Page 10 of 10

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

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Rain Dates, Tri City Rock, Inc., Fremont, California

May 28, 2004	December 28, 2004	April 8, 2005
May 29, 2004	December 29, 2004	April 9, 2005
September 20, 2004	December 30, 2004	April 23, 2005
October 17, 2004	December 31, 2004	April 28, 2005
October 18, 2004	January 1, 2005	April 29, 2005
October 19, 2004	January 2, 2005	May 5, 2005
October 20, 2004	January 3, 2005	May 6, 2005
October 24, 2004	January 4, 2005	May 8, 2005
October 26, 2004	January 5, 2005	May 9, 2005
November 3, 2004	January 6, 2005	May 10, 2005
November 4, 2004	January 7, 2005	May 19, 2005
November 5, 2004	January 8, 2005	May 20, 2005
November 10, 2004	January 9, 2005	June 8, 2005
November 11, 2004	January 10, 2005	June 9, 2005
November 12, 2004	January 11, 2005	June 17, 2005
November 27, 2004	January 12, 2005	September 21, 2005
November 28, 2004	January 26, 2005	October 15, 2005
December 1, 2004	January 27, 2005	October 27, 2005
December 2, 2004	January 28, 2005	October 28, 2005
December 3, 2004	January 29, 2005	October 29, 2005
December 4, 2004	February 7, 2005	November 4, 2005
December 5, 2004	February 8, 2005	November 8, 2005
December 6, 2004	February 12, 2005	November 10, 2005
December 7, 2004	February 15, 2005	November 25, 2005
December 8, 2004	February 16, 2005	November 26, 2005
December 9, 2004	February 18, 2005	November 29, 2005
December 10, 2004	February 19, 2005	November 30, 2005
December 11, 2004	February 20, 2005	December 1, 2005
December 12, 2004	February 21, 2005	December 2, 2005
December 13, 2004	February 22, 2005	December 8, 2005
December 14, 2004	February 27, 2005	December 18, 2005
December 15, 2004	March 2, 2005	December 19, 2005
December 16, 2004	March 4, 2005	December 22, 2005
December 17, 2004	March 5, 2005	December 23, 2005
December 18, 2004	March 19, 2005	December 26, 2005
December 19, 2004	March 20, 2005	December 28, 2005
December 20, 2004	March 21, 2005	December 29, 2005
December 21, 2004	March 22, 2005	December 30, 2005
December 22, 2004	March 23, 2005	December 31, 2005
December 23, 2004	March 24, 2005	January 1, 2006
December 24, 2004	March 28, 2005	January 2, 2006
December 25, 2004	March 29, 2005	January 3, 2006
December 26, 2004	April 4, 2005	January 4, 2006
December 27, 2004	April 7, 2005	January 7, 2006

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Rain Dates, Tri City Rock, Inc., Fremont, California

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

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Rain Dates, Tri City Rock, Inc., Fremont, California

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

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Rain Dates, Tri City Rock, Inc., Fremont, California

April 11, 2009	April 26, 2009	May 11, 2009
April 12, 2009	April 27, 2009	May 12, 2009
April 13, 2009	April 28, 2009	May 13, 2009
April 14, 2009	April 29, 2009	May 14, 2009
April 15, 2009	April 30, 2009	May 15, 2009
April 16, 2009	May 1, 2009	May 16, 2009
April 17, 2009	May 2, 2009	May 17, 2009
April 18, 2009	May 4, 2009	May 18, 2009
April 19, 2009	May 5, 2009	May 19, 2009
April 20, 2009	May 6, 2009	May 23, 2009
April 21, 2009	May 7, 2009	May 24, 2009
April 23, 2009	May 8, 2009	May 25, 2009
April 24, 2009	May 9, 2009	
April 25, 2009	May 10, 2009	