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 20 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

21 **UNITED STATES DISTRICT COURT**  
 22 **EASTERN DISTRICT OF CALIFORNIA**

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

26 Plaintiff,

27 vs.

28 TRILORE TECHNOLOGIES, INC., a  
 California corporation, PRITAM  
 DHALIWAL, an individual, JOHN  
 COLLINS, an individual,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF AND CIVIL  
 PENALTIES

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

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
 through its counsel, hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the  
 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”

1 or “the Act”) against Trilore Technologies, Inc., Mr. Pritam Dhaliwal and Mr. John Collins  
2 (“Defendants”). This Court has subject matter jurisdiction over the parties and the subject  
3 matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A),  
4 and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief  
5 requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in  
6 case of actual controversy and further necessary relief based on such a declaration), 33  
7 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil  
8 penalties).

9 2. On or about February 3, 2011, Plaintiff provided notice of Defendants’  
10 violations of the Act, and of its intention to file suit against Defendants, to the Administrator  
11 of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA  
12 Region IX; the Executive Director of the State Water Resources Control Board (“State  
13 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
14 Region (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. §  
15 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as **Exhibit A**,  
16 and is incorporated by reference.

17 3. More than sixty days have passed since notice was served on Defendants and  
18 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
19 neither the EPA nor the State of California has commenced or is diligently prosecuting a  
20 court action to redress the violations alleged in this complaint. This action’s claim for civil  
21 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,  
22 33 U.S.C. § 1319(g).

23 4. Venue is proper in the Eastern District of California pursuant to Section  
24 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
25 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in  
26 Sacramento, California because the source of the violations is located within San Joaquin  
27 County.

1 **II. INTRODUCTION**

2 5. This complaint seeks relief for Defendants' discharges of pollutants from an  
3 approximately 2-acre aluminum foundry (the "Facility") owned and/or operated by  
4 Defendants. Defendants allow pollution contaminated storm water to discharge from the  
5 Facility indirectly to the San Joaquin River, and then to the Sacramento-San Joaquin Delta  
6 ("Delta"). Defendants' discharges of pollutants from the Facility are in violation of the Act  
7 and the State of California's General Industrial Permit for storm water discharges, State  
8 Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as  
9 amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-  
10 DWQ, National Pollutant Discharge Elimination System ("NPDES") General Permit No.  
11 CAS000001 ("General Permit" or "Permit"). Defendants' violations of the filing,  
12 monitoring, reporting, discharge and management practice requirements, and other  
13 procedural and substantive requirements of the General Permit and the Act are ongoing and  
14 continuous.

15 6. The failure on the part of industrial facility operators such as Defendants to  
16 comply with the General Permit is recognized as a significant cause of the continuing decline  
17 in water quality of these receiving waters. The general consensus among regulatory agencies  
18 and water quality specialists is that storm water pollution amounts to more than half the total  
19 pollution entering the marine environment each year. With every rainfall event, hundreds of  
20 thousands of gallons of polluted storm water originating from industrial facilities discharge  
21 to Lone Tree Creek, the San Joaquin River, and the Sacramento-San Joaquin Delta.

22 **III. PARTIES**

23 7. Plaintiff California Sportfishing Protection Alliance ("CSPA") is a non-profit  
24 public benefit corporation organized under the laws of the State of California with its main  
25 office in Stockton, California. CSPA has approximately 2,000 members who live, recreate  
26 and work in and around waters of the State of California, including Lone Tree Creek, the San  
27 Joaquin River, and the Sacramento-San Joaquin Delta. CSPA is dedicated to the  
28 preservation, protection, and defense of the environment, and the wildlife and the natural

1 resources of all waters of California. To further these goals, CSPA actively seeks federal  
2 and state agency implementation of the Act and other laws and, where necessary, directly  
3 initiates enforcement actions on behalf of itself and its members.

4 8. Members of CSPA reside in California and use and enjoy California's  
5 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the  
6 waters of Lone Tree Creek, the San Joaquin River, and the Sacramento-San Joaquin Delta,  
7 into which Defendants have caused, are causing, and will continue to cause, pollutants to be  
8 discharged. Members of CSPA use these areas to fish, sail, boat, kayak, swim, birdwatch,  
9 view wildlife and engage in scientific study, including monitoring activities, among other  
10 things. Defendants' discharges of pollutants threaten or impair each of those uses or  
11 contribute to such threats and impairments. Thus, the interests of CSPA's members have  
12 been, are being, and will continue to be adversely affected by Defendants' ongoing failure to  
13 comply with the Clean Water Act. The relief sought herein will redress the harms to Plaintiff  
14 caused by Defendants' activities.

15 9. Continuing commission of the acts and omissions alleged above will  
16 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have  
17 no plain, speedy or adequate remedy at law.

18 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
19 Trilore Technologies, Inc. ("TTI"), is a corporation organized under the laws of the State of  
20 California, and that TTI owns and/or operates the Facility.

21 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
22 Pritam Dhaliwal is the chief financial officer for TTI.

23 12. Plaintiff is informed and believes, and thereupon alleges, that Defendant John  
24 Collins is the manager of the Facility and that in this capacity he directs the operations and  
25 maintenance of the Facility, including TTI's management of storm water at the Facility.

26 13. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
27 own and/or operate the Facility.

28

1 **IV. STATUTORY BACKGROUND**

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

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

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

16 17. The State Board elected to issue a statewide general permit for industrial  
17 discharges. The State Board issued the General Permit on or about November 19, 1991,  
18 modified the General Permit on or about September 17, 1992, and reissued the General  
19 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33  
20 U.S.C. § 1342(p).

21 18. The General Permit contains certain absolute prohibitions. Discharge  
22 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
23 other than storm water ("non-storm water discharges"), which are not otherwise regulated by  
24 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
25 General Permit prohibits storm water discharges and authorized non-storm water discharges  
26 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water  
27 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
28 ground water that adversely impact human health or the environment. Receiving Water

1 Limitation C(2) of the General Permit prohibits storm water discharges that cause or  
2 contribute to an exceedance of any applicable water quality standards contained in a  
3 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

4 19. In addition to absolute prohibitions, the General Permit contains a variety of  
5 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
6 or having the potential to discharge, storm water associated with industrial activity that have  
7 not obtained an individual NPDES permit must apply for coverage under the State's General  
8 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing  
9 dischargers to file their NOIs before March 30, 1992.

10 20. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
11 or prevent pollutants in its storm water discharges through implementation of the Best  
12 Available Technology Economically Achievable ("BAT") for toxic and nonconventional  
13 pollutants and the Best Conventional Pollutant Control Technology ("BCT") for  
14 conventional pollutants. BAT and BCT include both nonstructural and structural measures.  
15 General Permit, Section A(8).

16 21. EPA has established Benchmark Levels as guidelines for determining  
17 whether a facility discharging industrial storm water has implemented the requisite BAT and  
18 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
19 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –  
20 100 mg/L; aluminum – 0.75 mg/L; and, zinc – 0.117 mg/L. The State Water Quality Control  
21 Board has proposed adding a benchmark level for specific conductance of 200 µmhos/cm.

22 22. Dischargers must develop and implement a Storm Water Pollution  
23 Prevention Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the  
24 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
25 (1) a narrative description and summary of all industrial activity, potential sources of  
26 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
27 water conveyance system, associated points of discharge, direction of flow, areas of  
28 industrial activities, and areas of actual and potential pollutant contact; (3) a description of

1 storm water management practices, best management practices (“BMPs”) and preventive  
2 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
3 the location where Significant Materials are being shipped, stored, received and handled, as  
4 well as the typical quantities of such materials and the frequency with which they are  
5 handled; (5) a description of potential pollutant sources including industrial processes,  
6 material handling and storage areas, dust and particulate generating activities; (6) a summary  
7 of storm water sampling points; (7) a description of individuals and their responsibilities for  
8 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of  
9 potential pollutant sources including industrial processes, material handling and storage  
10 areas, and dust and particulate generating activities; (9) a description of significant spills and  
11 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description  
12 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an  
13 assessment of potential pollutant sources at the Facility and a description of the BMPs to be  
14 implemented at the Facility that will reduce or prevent pollutants in storm water discharges  
15 and authorized non-storm water discharges, including structural BMPs where non-structural  
16 BMPs are not effective (Section A(7), (8)).

17 23. The SWPPP must be re-evaluated annually to ensure effectiveness and must  
18 be revised where necessary (Section A(9),(10)). Section C(3) of the General Permit requires  
19 a discharger to prepare and submit a report to the Regional Board describing changes it will  
20 make to its current BMPs in order to prevent or reduce any pollutant in its storm water  
21 discharges that is causing or contributing to an exceedance of water quality standards. Once  
22 approved by the Regional Board, the additional BMPs must be incorporated into the  
23 Facility’s SWPPP. The report must be submitted to the Regional Board no later than 60 days  
24 from the date the discharger first learns that its discharge is causing or contributing to an  
25 exceedance of an applicable water quality standard. Section C(4)(a). Section C(11)(d) of  
26 the General Permit’s Standard Provisions also requires dischargers to report any  
27 noncompliance. *See also* Section E(6). Lastly, Section A(9) of the General Permit requires  
28 an annual evaluation of storm water controls including the preparation of an evaluation



1 report and implementation of any additional measures in the SWPPP to respond to the  
2 monitoring results and other inspection activities.

3 24. The General Permit requires dischargers to eliminate all non-storm water  
4 discharges to storm water conveyance systems other than those specifically set forth in  
5 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth  
6 in Special Condition D(1)(b).

7 25. The General Permit requires dischargers commencing industrial activities  
8 before October 1, 1992 to develop and implement an adequate written Monitoring and  
9 Reporting Program no later than October 1, 1992. Existing facilities covered under the  
10 General Permit must implement all necessary revisions to their monitoring programs no later  
11 than August 1, 1997.

12 26. The General Permit also requires dischargers to submit "Annual Reports" to  
13 the Regional Board. As part of their monitoring program, dischargers must identify all storm  
14 water discharge locations that produce a significant storm water discharge, evaluate the  
15 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
16 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
17 then conduct visual observations of these discharge locations for at least one storm per  
18 month during the wet season (October through May) and record their findings in their  
19 Annual Report. Dischargers must also collect and analyze storm water samples from at least  
20 two storms per year. Section B requires dischargers to sample and analyze during the wet  
21 season for basic parameters such as pH, total suspended solids ("TSS"), specific  
22 conductance, and total organic content ("TOC") or oil and grease, certain industry-specific  
23 parameters, and toxic chemicals and other pollutants likely to be in the storm water  
24 discharged from the facility. Additionally, Section B(5) and Table D of the General Permit  
25 requires dischargers whose industrial activities fall within Standard Industrial Classification  
26 ("SIC") Code 3365 ("Nonferrous Foundries") to analyze their storm water discharge samples  
27 for copper ("Cu") and zinc ("Zn"). Dischargers must also conduct dry season visual  
28 observations to identify sources of non-storm water pollution. The monitoring and reporting



1 program requires dischargers to certify, based upon the annual site inspections, that the  
2 facility is in compliance with the General Permit and report any non-compliance, and  
3 contains additional requirements as well.

4 27. In order to discharge storm water lawfully in California, industrial  
5 dischargers must comply with the terms of the General Permit or have obtained and  
6 complied with an individual NPDES permit.

7 28. The term “discharge of pollutants” means “any addition of any pollutant to  
8 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
9 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
10 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

11 29. A point source is defined as “any discernable, confined and discrete  
12 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .  
13 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

14 30. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §  
15 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.  
16 Waters of the United States include man-made water bodies that are tributary to waters that  
17 are navigable in fact. Waters of the United States include ephemeral waters that are tributary  
18 to waters that are navigable in fact.

19 31. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
20 enforcement actions against any “person,” including individuals, corporations, or  
21 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of  
22 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under  
23 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an  
24 assessment of civil penalties of up to \$32,500 per day for violations that occurred between  
25 March 15, 2004 and January 12, 2009, and an assessment of civil penalties of up to \$37,500  
26 per day for violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of  
27 the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

28 32. The Regional Board has established water quality standards for the

1 Sacramento River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan  
2 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin  
3 Plan.

4 33. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
5 waters shall be maintained free of toxic substances in concentrations that produce  
6 detrimental physiological responses in human, plant, animal, or aquatic life.”

7 34. The Basin Plan establishes a standard for electrical conductivity in the Delta  
8 of 0.7  $\mu\text{mhos/cm}$  from April 1 through August 31 and 1.0  $\mu\text{mhos/cm}$  from September 1  
9 through March 31.

10 35. The Basin Plan provides that “[w]aters shall not contain chemical constituents  
11 in concentrations that adversely affect beneficial uses.”

12 36. The Basin Plan provides that “[a]t a minimum, water designated for use as  
13 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
14 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the San  
15 Joaquin River and the Delta have been designated by the State Board for use as municipal  
16 and domestic supply.

17 **V. STATEMENT OF FACTS**

18 37. Defendants operate the Facility, an approximately 2-acre aluminum foundry  
19 facility located at 4101 Arch Road in Stockton, California. The Facility discharges storm  
20 water to Lone Tree Creek, a tributary of the San Joaquin River. Thus, Defendants discharge  
21 storm water indirectly to the San Joaquin River, and the Sacramento-San Joaquin Delta.

22 38. The Facility is classified under SIC Code 3365 (“Nonferrous Foundries”).  
23 Industrial activities occur throughout the Facility. The Facility is primarily used as an  
24 aluminum foundry. Plaintiff is informed and believes that Defendants’ storm water controls,  
25 to the extent any exist, fail to achieve BAT and BCT standards.

26 39. The management practices at the Facility are wholly inadequate to prevent  
27 the sources of contamination described above from causing the discharge of pollutants to  
28 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential

1 structural controls such as grading, berming and roofing to prevent rainfall and storm water  
2 flows from coming into contact with these and other sources of contaminants, thereby  
3 allowing storm water to flow over and across these materials and become contaminated prior  
4 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the  
5 discharge of water once contaminated. The Facility also lacks an adequate filtration system  
6 to treat water once it is contaminated.

7 40. During rain events, storm water laden with pollutants flows from the Facility  
8 into Lone Tree Creek, the San Joaquin River, and the Sacramento-San Joaquin Delta.

9 41. Information available to Plaintiff indicates that as a result of these practices,  
10 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
11 being discharged from the Facility directly to these waters during significant rain events.

12 42. The San Joaquin River, and the Sacramento-San Joaquin Delta are waters of  
13 the United States.

14 43. Information available to Plaintiff indicates that Defendants have not fulfilled  
15 the requirements set forth in the General Permit for discharges from the Facility due to the  
16 continued discharge of contaminated storm water.

17 44. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
18 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

19 45. Information available to Plaintiff indicates the continued existence of  
20 unlawful storm water discharges at the Facility.

21 46. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
22 have failed to develop and implement adequate monitoring, reporting and sampling  
23 programs for the Facility. Plaintiff is informed and believes, and thereupon alleges, that  
24 Defendants have not sampled with adequate frequency, have not conducted visual  
25 monitoring, and have not analyzed the samples collected for the required pollutant  
26 parameters.

27 47. Plaintiff is informed and believes, and thereupon alleges, that all of the  
28 violations alleged in this Complaint are ongoing and continuing.

1 **VI. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

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

6 48. Plaintiff incorporates the allegations contained in the above paragraphs as  
7 though fully set forth herein.

8 49. Discharge Prohibition A(2) of the General Permit requires that storm water  
9 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
10 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
11 General Permit require that storm water discharges and authorized non-storm water discharges  
12 shall not adversely impact human health or the environment, and shall not cause or contribute  
13 to a violation of any water quality standards contained in a Statewide Water Quality Control  
14 Plan or the applicable Regional Board's Basin Plan.

15 50. Plaintiff is informed and believes, and thereupon alleges, that since at least  
16 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to  
17 Lone Tree Creek, the San Joaquin River, and the Sacramento-San Joaquin Delta in violation  
18 of the General Permit.

19 51. During every significant rain event, storm water flowing over and through  
20 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
21 Facility to Lone Tree Creek, the San Joaquin River, and the Sacramento-San Joaquin Delta.

22 52. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
23 of contaminated storm water are causing pollution and contamination of the waters of the  
24 United States in violation of Discharge Prohibition A(2) of the General Permit.

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

28 54. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
of contaminated storm water are contributing to the violation of the applicable water quality

1 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's  
2 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

3 55. Plaintiff is informed and believes, and thereupon alleges, that every day since  
4 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water  
5 from the Facility in violation of the General Permit. Every day Defendants have discharged  
6 and continue to discharge polluted storm water from the Facility in violation of the General  
7 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).  
8 These violations are ongoing and continuous.

9 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

10 **SECOND CAUSE OF ACTION**

11 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

12 56. Plaintiff incorporates the allegations contained in the above paragraphs as  
13 though fully set forth herein.

14 57. Section A and Provision E of the General Permit requires dischargers of  
15 storm water associated with industrial activity to develop and implement an adequate Storm  
16 Water Pollution Prevention Plan (“SWPPP”) no later than October 1, 1992.

17 58. Defendants have failed to develop and implement an adequate SWPPP for  
18 the Facility. Defendants’ ongoing failure to develop and implement an adequate SWPPP for  
19 the Facility is evidenced by, *inter alia*, the continued exposure of significant quantities of  
20 industrial material to storm water flows; the failure to either treat storm water prior to  
21 discharge or to implement effective containment practices; and the continued discharge of  
22 storm water pollutants from the Facility at levels in excess of EPA benchmark values and other  
23 applicable water quality standards.

24 59. Each day since October 1, 1992 that Defendants have failed to develop and  
25 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate  
26 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

27 60. Defendants have been in violation of the SWPPP requirement every day since  
28 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to

1 develop and fully implement an adequate SWPPP for the Facility.

2 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Develop and Implement the Best Available**  
5 **And Best Conventional Treatment Technologies**  
6 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 61. Plaintiff incorporates the allegations contained in the above paragraphs as  
8 though fully set forth herein.

9 62. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
10 require dischargers to reduce or prevent pollutants in their storm water discharges through  
11 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
12 pollutants.

13 63. Plaintiff is informed and believes, and thereupon alleges, that Defendants have  
14 failed to implement BAT and BCT at the Facility for their discharges of pH, total suspended  
15 solids, specific conductance, aluminum, zinc and other unmonitored pollutants in violation  
16 of Effluent Limitation B(3) of the General Permit.

17 64. Each day since February 3, 2006 that Defendants have failed to develop and  
18 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
19 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

20 65. Defendants have been in violation of the BAT and BCT requirements every day  
21 since at least February 3, 2006. Defendants continue to be in violation of the BAT and BCT  
22 requirements each day they fail to develop and fully implement BAT and BCT for the Facility.

23 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

24 **FOURTH CAUSE OF ACTION**

25 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**  
26 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

27 66. Plaintiff incorporates the allegations contained in the above paragraphs as  
28 though fully set forth herein.

67. Section B of the General Permit requires dischargers of storm water associated  
with industrial activity to develop and implement a monitoring and reporting program

1 (including, among other things, sampling and analysis of discharges) no later than October 1,  
2 1992.

3 68. Defendants have failed to develop and implement an adequate monitoring  
4 and reporting program for the Facility. Defendants' ongoing failures to develop and  
5 implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their  
6 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants  
7 likely to be present in the Facility's storm water discharges in significant quantities, and their  
8 failure to file required reports with the Regional Board addressing Defendants' non-  
9 compliance with the General Permit and how Defendants propose to achieve compliance with  
10 the General Permit at the Facility.

11 69. Each day since October 1, 1992 that Defendants have failed to develop and  
12 implement an adequate monitoring and reporting program for the Facility in violation of the  
13 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
14 1311(a). These violations are ongoing and continuous.

15 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

16 **FIFTH CAUSE OF ACTION**

17 **False Certification of Compliance in Annual Report**  
18 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 70. Plaintiff incorporates the allegations contained in the above paragraphs as  
20 though fully set forth herein.

21 71. Defendants have falsely certified compliance with the General Permit in each  
22 of the Annual Reports submitted to the Regional Board since February 3, 2006.

23 72. Each day since at least February 3, 2006, that Defendants have falsely  
24 certified compliance with the General Permit is a separate and distinct violation of the  
25 General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to  
26 be in violation of the General Permit's verification requirement each day that they maintain  
27 the false certification of their compliance with the General Permit.

28 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.



1 **VII. RELIEF REQUESTED**

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

- 3 a. Declare Defendants to have violated and to be in violation of the Act as  
4 alleged herein;
- 5 b. Enjoin Defendants from discharging pollutants from the Facility and to the  
6 surface waters surrounding and downstream from the Facility;
- 7 c. Enjoin Defendants from further violating the substantive and procedural  
8 requirements of the General Permit;
- 9 d. Order Defendants to immediately implement storm water pollution control  
10 and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
11 pollutants in the Facility's storm water from contributing to violations of any water quality  
12 standards;
- 13 e. Order Defendants to comply with the General Permit's monitoring and  
14 reporting requirements, including ordering supplemental monitoring to compensate for past  
15 monitoring violations;
- 16 f. Order Defendants to prepare a SWPPP consistent with the General Permit's  
17 requirements and implement procedures to regularly review and update the SWPPP;
- 18 g. Order Defendants to provide Plaintiff with reports documenting the quality  
19 and quantity of their discharges to waters of the United States and their efforts to comply with  
20 the Act, the General Permit and the Court's orders;
- 21 h. Order Defendants to pay civil penalties of \$32,500 per day per violation for  
22 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all  
23 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections  
24 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4  
25 (pp. 200-202) (Dec. 31, 1996);
- 26 i. Order Defendants to take appropriate actions to restore the quality of  
27 navigable waters impaired by their activities;
- 28 j. Award Plaintiff's costs (including reasonable attorney, witness, and

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consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,  
k. Award any such other and further relief as this Court may deem appropriate.

Dated: April 5, 2011

Respectfully Submitted,  
LAW OFFICES OF ANDREW L. PACKARD

By: /s/ Erik Roper  
Erik M. Roper  
Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

**EXHIBIT A**



**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

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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  $\mu$ mhos/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,

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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).

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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**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
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**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
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**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
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**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
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**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
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

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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  
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And to:

Robert J. Tuerck  
Jackson & Tuerck  
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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.

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.