



March 28, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brent Krieger, Facility Manager
Matheson Tri-Gas, Inc.
871 Eubanks Drive
Vacaville, CA 95688

James Murphree, Director of Environmental Compliance
Matheson Tri-Gas, Inc.
1525 Walnut Hill Lane, Suite 100
Irving, TX 75038

C T Corporation System, Agent for Service of Process
Matheson Tri-Gas, Inc.
818 West 7th Street
Los Angeles, CA 90017

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

Dear Mssrs. Krieger and Murphree:

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 Matheson Tri-Gas, Inc. (“M3G”) industrial gases facility located at 871 Eubanks Drive in Vacaville, California (“the Facility”). The WDID identification number for the Facility is 5S48I019291. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Gibson Canyon Creek, McCune Creek, Sweany Creek, Ulati Creek, Cache Slough, the Sacramento River, the Sacramento-San Joaquin River Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, M3G, Brent Krieger and James Murphree shall hereinafter be collectively referred to as M3G.

This letter addresses M3G's unlawful discharges of pollutants from the Facility to Gibson Canyon Creek. Gibson Canyon Creek then flows into the confluence of McCune Creek and Sweany Creek, both of which then join Ulati Creek. Ulati Creek then flows into Cache Slough, which ultimately flows into the Sacramento River and the Sacramento-San Joaquin River 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, M3G, Brent Krieger and James Murphree 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 M3G, Brent Krieger and James Murphree 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.

M3G owns and operates an industrial gases facility located in Vacaville, California. The Facility is used to receive, store, handle and transport industrial gases. Other activities at the Facility include the use and storage of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility.

M3G collects and discharges storm water from its approximately five-acre Facility through at least three (3) discharge points to Gibson Canyon Creek. Gibson Canyon Creek then flows into the confluence of McCune Creek and Sweany Creek, both of which then join Ulati Creek. Ulati Creek then flows into Cache Slough, which ultimately flows into the Sacramento River and the Sacramento-San Joaquin River Delta ("the Delta"). The Delta and its tributaries are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative

toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the

General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by M3G: total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; and, nitrate+nitrite – 0.68 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

II. M3G is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States

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 Delta and its tributaries are waters of the United States. Accordingly, M3G’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that M3G 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, M3G is subject to penalties for violations of the Act since March 28, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

M3G 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.

As recently as October 19, 2010, the Regional Water Quality Control Board, Region 5, sent M3G a letter (“the October 2010 letter”) conveying its conclusion that, among other things, M3G’s 2008-2009 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 M3G 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 M3G to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered M3G to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

Based on its review of available public documents, CSPA is informed and believes: (1) that M3G failed to provide the Board the ordered written response by November 19, 2010; (2) that M3G continues to discharge these very same pollutants in excess of benchmarks; and, (3) that M3G has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. M3G's ongoing violations are discussed further below.

A. M3G Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

M3G has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe) and Nitrates+Nitrites (N+N) 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. M3G's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/18/2010	S-1	TSS	135 mg/L	100 mg/L
01/18/2010	S-2	TSS	149 mg/L	100 mg/L
01/18/2010	S-3	TSS	109 mg/L	100 mg/L

02/05/2009	S-2	TSS	324 mg/L	100 mg/L
02/05/2009	S-3	TSS	211 mg/L	100 mg/L
11/01/2008	S-1	TSS	227 mg/L	100 mg/L
11/01/2008	S-1	TSS	216 mg/L	100 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
11/01/2008	S-3	SC	216 µmhos/cm	200 µmhos/cm
11/02/2006	S-1	SC	536 µmhos/cm	200 µmhos/cm
11/02/2006	S-3	SC	235 µmhos/cm	200 µmhos/cm

3. Discharges of Storm Water Containing Oil and Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/01/2008	S-1	O&G	22.1 mg/L	15 mg/L

4. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/18/2010	S-1	Fe	4.57 mg/L	1.0 mg/L
01/18/2010	S-2	Fe	4.73 mg/L	1.0 mg/L
01/18/2010	S-3	Fe	3.78 mg/L	1.0 mg/L
02/05/2009	S-1	Fe	1.72 mg/L	1.0 mg/L
02/05/2009	S-2	Fe	17.3 mg/L	1.0 mg/L
02/05/2009	S-3	Fe	2.33 mg/L	1.0 mg/L
11/01/2008	S-1	Fe	2.9 mg/L	1.0 mg/L
11/01/2008	S-2	Fe	5.1 mg/L	1.0 mg/L
11/01/2008	S-3	Fe	10.8 mg/L	1.0 mg/L
10/12/2007	S-2	Fe	1.5 mg/L	1.0 mg/L
11/02/2006	S-2	Fe	2.2 mg/L	1.0 mg/L

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
10/13/2010 ¹	S-2	Al	1.22 mg/L	0.75 mg/L
10/13/2010	S-3	Al	0.896 mg/L	0.75 mg/L
01/18/2010	S-1	Al	3.56 mg/L	0.75 mg/L
01/18/2010	S-2	Al	3.81 mg/L	0.75 mg/L
01/18/2010	S-3	Al	3.71 mg/L	0.75 mg/L
02/05/2009	S-1	Al	1.02 mg/L	0.75 mg/L
02/05/2009	S-2	Al	9.83 mg/L	0.75 mg/L
02/05/2009	S-3	Al	1.52 mg/L	0.75 mg/L
11/01/2008	S-1	Al	1.9 mg/L	0.75 mg/L
11/01/2008	S-2	Al	3.52 mg/L	0.75 mg/L
11/01/2008	S-3	Al	8.29 mg/L	0.75 mg/L
10/12/2007	S-2	Al	0.78 mg/L	0.75 mg/L
11/02/2006	S-2	Al	1.06 mg/L	0.75 mg/L
11/02/2006	S-3	Al	2.52 mg/L	0.75 mg/L

6. Discharges of Storm Water Containing Nitrate+Nitrite (N+N) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
02/05/2009	S-3	N+N	1.32 mg/L	0.68 mg/L
10/12/2007	S-2	N+N	0.69 mg/L	0.68 mg/L
11/02/2006	S-3	N+N	5.3 mg/L	0.68 mg/L

CSPA's investigation, including its review of M3G'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 M3G has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Nitrate+Nitrite (N+N) and other pollutants, in

¹ While M3G's Annual Report for the 2009-2010 Wet Season reports that it collected samples of storm water discharged from the Facility during a qualifying storm event on October 13, 2010, this is demonstrably false. To wit, M3G signed and belatedly filed this report on August 17, 2010. Thus, M3G could not have collected and analyzed storm water samples from a storm event that had yet to occur at the time of the report's filing.

violation of Effluent Limitation B(3) of the General Permit. M3G was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, M3G is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that M3G has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 28, 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 March 28, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that M3G has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Nitrate+Nitrite (N+N) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) 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, M3G is subject to penalties for violations of the General Permit and the Act since March 28, 2006.

B. M3G 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 M3G has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its

review of publicly available documents, CSPA is informed and believes that M3G 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 five years. Second, based on its review of publicly available documents, CSPA is informed and believes that M3G has failed to conduct the monthly visual monitoring of storm water discharges required under the General Permit 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, M3G is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 28, 2006. These violations are set forth in greater detail below:

1. M3G Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.

Based on its review of publicly available documents, CSPA is informed and believes that M3G has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that while the Annual Report filed by M3G for the Facility for the 2007-2008 Wet Season reported that M3G analyzed samples of storm water discharged during two qualifying storm events that season, upon closer scrutiny it turns out that neither of those storms were qualifying storm events within the meaning of the General Permit (discussed further below). Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the three sampling/discharge points currently designated by M3G. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. M3G Has Failed to Conduct The Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B.4.a. The annual reports filed by M3G at the Regional Board required M3G to document these required visual observations on Form 4 contained therein. As evidenced by the lack of entries on Form 4 contained in the annual reports M3G has filed for the Facility over the last five (5) Wet Seasons (i.e., 2005-2006 Wet Season; 2006-2007 Wet Season; 2007-2008 Wet Season; 2008-2009 Wet Season; and, 2009-2010 Wet Season), CSPA is informed and believes that M3G has failed to conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit. M3G’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least March 28, 2006. M3G’s failure to conduct this

required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. M3G Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since March 28, 2006.

CSPA is informed and believes that available documents demonstrate M3G's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2009-2010 Annual Report M3G reported having collected samples of storm water discharged during two qualifying storm events, neither of the two dates that M3G reported having collected samples of storm water were qualifying storm events. First, as discussed above, with respect to the reported storm that "occurred" on October 13, 2010, M3G could not have collected samples of storm water discharged from the Facility from a storm that had yet to occur. Second, with respect to the storm that occurred at the Facility on January 18, 2010, based on CSPA's review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on January 18, 2010 was not a qualifying storm event because enough rain fell on the Facility the day prior to likely result in a discharge of storm water from the Facility, thereby invalidating the January 18, 2010 storm as a qualifying storm event.

Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, M3G is subject to penalties for these violations of the General Permit and the Act since March 28, 2006.

C. M3G 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 M3G has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Nitrate+Nitrite (N+N) 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, M3G 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 M3G 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. M3G has failed to adequately implement such measures.

M3G was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, M3G 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 it fails to implement BAT and BCT. M3G is subject to penalties for violations of the General Permit and the Act occurring since March 28, 2006.

D. M3G 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 M3G has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. M3G has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, M3G 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. M3G is subject to penalties for violations of the Order and the Act occurring since March 28, 2006.

E. M3G 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, M3G is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Nitrate+Nitrite (N+N) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, M3G 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, M3G was aware of high levels of these pollutants prior to March 28, 2006. Likewise, M3G 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). M3G 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 March 28, 2006, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. M3G is subject to penalties for violations of the General Permit and the Act occurring since March 28, 2006.

F. M3G 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 M3G has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2008-2009 Annual Report filed by M3G for the Facility reports that (1) M3G collected samples of storm water discharged from the Facility from the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours and (2) that the first storm event of the Wet Season that produced a discharge during scheduled facility operating hours occurred on November 1, 2008. However, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that November 1, 2008 was the first storm event of the 2008-2009 Wet Season that produced a storm water discharge during scheduled facility operating hours. To wit, while publicly available rainfall data for the area indicates that on Saturday, November 1, 2008, 1.25" of rain fell on the Facility, that same data indicates that Friday, October 31, 2008, i.e., when 0.29" of rain was recorded as having fallen on the Facility, was actually the first qualifying storm event of that season. Further calling the validity of the November 1st storm into question as a qualifying storm event, let alone the first one of the season, is the fact that publicly available rainfall data demonstrates that storm water discharged from the Facility on October 31, 2008, i.e., less than three days prior to the November 1st storm. The General Permit defines a qualifying storm event as one where storm water discharges from the facility during its operating hours on a date preceded by at least three (3) working days without storm water discharge.

Here, assuming that 0.29" of rainfall is enough to generate a storm water discharge at the Facility then there would have been storm water discharging from the Facility less than three days before the date of the reported "First Storm Event" thereby rendering November 1, 2008 a non-qualifying storm event. Furthermore, assuming again that 0.29" of rain is enough to generate a storm water discharge at the Facility, November

1, 2008 was not the first qualifying storm event of the 2007-2008 Wet Season. That distinction belongs to either Friday, October 31, 2008 (when 0.29" of rain fell on the Facility following at least three days without rain), or Saturday, October 4, 2008 (when 0.21" of rain fell on the Facility following at least three days without rain).

Finally, perhaps the most egregious example of M3G's demonstrated tendency to file false reports is found in its 2007-2008 Annual Report. In its 2007-2008 Annual Report, M3G reported having collected samples of storm water discharged from the Facility during qualifying storm events that occurred at the Facility on October 12, 2007, and, on December 6, 2007. However, CSPA's review of publicly available rain data reveals that neither of these storms were qualifying storm events within the meaning of the General Permit.

With respect to the storm that occurred at the Facility on October 12, 2007, that was not a qualifying storm event because publicly available rainfall data demonstrate that storm water discharged from the Facility two days prior on October 10, 2007 when 0.8" of rain fell on the Facility. Thus, given that the October 12th storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the October 12th storm was not a qualifying storm event.

Similarly, the storm that occurred at the Facility on December 6, 2007 was not a qualifying storm event because publicly available rainfall data demonstrate that storm water discharged from the Facility two days prior on December 4, 2007 when 0.19" of rain fell on the Facility. Thus, given that the December 6th storm was not preceded by at least three (3) working days without storm water discharging from the Facility, the December 6th storm was not a qualifying storm event.

These are only a few examples of how M3G has failed to file completely true and accurate reports. As indicated above, M3G has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, M3G has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time M3G submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. M3G's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. M3G is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since March 28, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Matheson Tri-Gas, Inc., Brent Krieger and James Murphree 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 Matheson Tri-Gas, Inc., Brent Krieger and James Murphree 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
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100 Petaluma Boulevard, Suite 301
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And to:

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VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Matheson Tri-Gas, Inc., Brent Krieger and James Murphree to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

Notice of Violation and Intent To File Suit

March 28, 2011

Page 17 of 17

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 Matheson Tri-Gas, 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, M3G (Vacaville, CA)
Significant Rain Events,* March 22, 2006 – March 22, 2011

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

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