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10 Attorneys for Plaintiff
11 CALIFORNIA SPORTFISHING
12 PROTECTION ALLIANCE

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 CALIFORNIA SPORTFISHING
16 PROTECTION ALLIANCE, a non-profit
17 corporation,

18 Plaintiff,

19 vs.

20 TRILORE TECHNOLOGIES, INC., a
21 California corporation, PRITAM
22 DHALIWAL, an individual, and, JOHN
23 COLLINS, an individual,

24 Defendants.

Case No. 2:11-CV-00908-GEB-GGH

[PROPOSED] CONSENT AGREEMENT

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

23 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “CSPA”) is a
24 non-profit public benefit corporation dedicated to the preservation, protection, and defense of the
25 environment, wildlife, and natural resources of California’s waters;

26 **WHEREAS**, Defendant Trilore Technologies, Inc. (hereinafter “TTI”) leases an approximately
27 two-acre aluminum foundry facility located at 4101 Arch Road, in Stockton, California (the
28

1 “Facility”), Defendant Mr. Pritam Dhaliwal is the Chief Financial Officer of TTI, and Defendant Mr.
2 John Collins is the Facility Manager for TTI (collectively “Defendants”);

3 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the “Parties;”

4 **WHEREAS**, the Facility collects and discharges storm water to the storm water drainage
5 system for the City of Stockton, which discharges to Lone Tree Creek, which ultimately flows into the
6 San Joaquin River, and the Sacramento-San Joaquin Delta (a map of the Facility is attached hereto as
7 **Exhibit A** and incorporated herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant
9 to the National Pollutant Discharge Elimination System (“NPDES”), General Permit No. CAS000001
10 [State Water Resources Control Board], Water Quality Order No. 91-13-DWQ (as amended by Water
11 Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act,
12 33 U.S.C. § 1342 (hereinafter “General Permit”);

13 **WHEREAS**, on or about February 3, 2011, Plaintiff provided notice of Defendants’ alleged
14 violations of the Act, and of its intention to file suit against Defendants, to the Administrator of the
15 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
16 Executive Director of the State Water Resources Control Board (“State Board”); the Executive Officer
17 of the Regional Water Quality Control Board, Central Valley Region (“Regional Board”); and to
18 Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of CSPA’s 60-
19 day Notice Letter (“Notice Letter”) is attached as **Exhibit B** and incorporated herein by reference);

20 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notice Letter and
21 maintain that they have complied at all times with the provisions of the General Permit;

22 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States
23 District Court, Eastern District of California, on April 5, 2011;

24 **WHEREAS**, the Parties agreed that the Complaint would be deemed served on August 3, 2011
25 in order to facilitate settlement discussions;

26 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is proper
27 in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this
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1 Consent Agreement;

2 **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of
3 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall thereafter be
4 submitted for approval by the Court, the date of which approval shall be referred to herein as the
5 “Court Approval Date;”

6 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States
7 District Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall
8 stipulate and request that the Court retain jurisdiction for the enforcement of this Consent Agreement
9 as provided herein;

10 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter
11 without further litigation.

12 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
13 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

14 **I. COMMITMENT OF DEFENDANTS**

15 **1. Compliance With General Permit & Clean Water Act.** Throughout the term of this
16 Consent Agreement, Defendants shall implement all measures needed to operate the Facility in full
17 compliance with the requirements of the General Permit and the Clean Water Act, subject to any
18 defenses available under the law.

19 **2. Defendants’ Implementation of Specific Storm Water Best Management Practices**
20 **On Or Before October 1, 2011.** On or before October 1, 2011, Defendants shall complete the
21 implementation of the following storm water control measures/best management practices (“BMPs”):

22 (a) Defendants shall maintain a six-foot (6’) wide buffer zone (“Buffer Zone”)
23 between the end of the roll-off trash container located within the Facility’s sole building at its
24 northeast corner and the roll-up vehicle entry door at the northeast corner of the building.

25 Further, Defendants shall not store any materials within this Buffer Zone;

26 (b) Defendants shall employ a walk-behind powered vacuum sweeper to sweep the
27 Buffer Zone and the area surrounding the roll-off trash container on a daily basis (“Interior
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1 Sweeping Zone”). Further, Defendants shall also use this walk-behind powered vacuum
2 sweeper to sweep the Interior Sweeping Zone immediately after each replacement of the waste-
3 filled, full roll-off trash container with a waste-free, empty roll-off trash container by
4 Defendants’ waste service contractor;

5 (c) Defendants shall employ this walk-behind powered vacuum sweeper to sweep
6 all paved, impervious surfaces external to the Facility’s sole building from the edge of the
7 building up to the Facility’s border (as featured in **Exhibit A** attached hereto and incorporated
8 by reference) daily during the Wet Season, and weekly during the Dry Season, weather
9 permitting;

10 (d) Defendants shall install Nilex straw wattles (or a comparable product) along the
11 Facility’s northern border in a manner designed to prevent the run-on and subsequent discharge
12 of sediment laden storm water from the undeveloped property adjacent to the north of the
13 Facility into the storm water drop inlet. Further, consistent with the design specifications of
14 Nilex straw wattles, Defendants: (i) shall install these wattles in a two to three-inch (2”-3”)
15 deep trench, (ii) shall secure these wattles within the trench by driving eighteen to twenty-four
16 inch (18”-24”) wooden stakes through the wattles and into the ground every three to four feet
17 (3’-4’), leaving approximately two inches of each wooden stake projecting above the top of the
18 wattles, (iii) shall drive such a wooden stake into each wattle within two to six inches (2”-6”)
19 of the end of the wattle, (iv) shall, when joining two wattles, tightly abut both ends or overlap
20 the wattles approximately six inches (6”);

21 (e) Defendants shall install two rings of weighted Ultra-Filter Socks® (i.e., those
22 marketed and sold by UltraTech International, Inc.) one on top of the other around the
23 circumference of the storm water drop inlet. Further, Defendants shall construct a six to eight
24 inches (6”-8”) wide, by six inches (6”) deep, concrete trench around the storm water drop inlet
25 in a manner that allows for fixed placement of two rings of these Ultra-Filter Socks® aligned
26 vertically with respect to each other;

27 (f) Defendants shall routinely inspect and replace these Ultra-Filter Socks® as
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frequently as needed to ensure that they continue to function in a manner consistent with their design specifications;

(g) Defendants shall perform regular maintenance of the storm water drop inlet and sampling location to remove settled contaminants from that drop inlet;

(h) Defendants shall regularly monitor and maintain the storm water drainage system, BMPs, and storm water drop inlet; document such maintenance; and, maintain records thereof with the Facility's SWPPP, as required by the terms of the General Permit. Further, Defendants shall ensure that appropriate Facility personnel are properly trained in storm water management and records of any such storm water management training shall be maintained along with the Facility's SWPPP.

3. SWPPP Amendments/Additional BMPs. Within 30 days of the Court Approval Date of this Consent Agreement, Defendants shall formally amend the SWPPP for the Facility to incorporate all of the relevant requirements of this Consent Agreement, as well as the revised Facility map attached hereto as **Exhibit A**.

4. Sampling Frequency. Defendants shall collect and analyze samples from five (5) qualifying storm events, as qualified in the General Permit¹ for sampling purposes, in each of the two Wet Seasons occurring during the term of this Consent Agreement (2011-2012 and 2012-2013), to the extent there are five (5) qualifying storm events pursuant to the definition in footnote 1. The storm water sample results shall be compared with the values set forth in **Exhibit C**, attached hereto, and incorporated herein by reference. If the results of any such samples exceed the parameter values set forth in **Exhibit C**, Defendants shall comply with the "Action Memorandum" requirements set forth below.

5. Sampling Parameters. All samples shall be analyzed for each of the constituents listed in **Exhibit C** by a laboratory accredited by the State of California. All samples collected from

¹ "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are preceded by at least three (3) working days during which no storm water discharges from the Facility have occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being sampled; and (iii) the samples are collected during daylight operating hours.

1 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold time” is
2 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual
3 constituents at or below the values specified on **Exhibit C**. Sampling results shall be provided to
4 CSPA within fourteen (14) days of Defendants’ receipt of the final laboratory report from each
5 sampling event pursuant to the Notice provisions below.

6 **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”; Meet-**
7 **and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4 above
8 exceeds the evaluation levels set forth in **Exhibit C**, or if Defendants fail to collect and analyze
9 samples from five (5) qualifying storm events, as defined in Footnote 1, Defendants shall prepare a
10 written statement discussing the exceedance(s) and /or failure to collect and analyze samples from five
11 (5) qualifying storm events, as defined in Footnote 1, the possible cause and/or source of the
12 exceedance(s), and additional measures that will be taken to address and eliminate the problem and
13 future exceedances (“Action Memorandum”). The Action Memorandum shall be provided to CSPA
14 not later than July 30 following the conclusion of each Wet Season. Recognizing that a SWPPP is an
15 ongoing iterative process meant to encourage innovative BMPs, such additional measures may include,
16 but are not limited to, taking confirmation samples, further material improvements to the storm water
17 collection and discharge system, changing the frequency of Facility sweeping, changing the type and
18 extent of storm water filtration media or modifying other industrial activities or management practices
19 at the Facility. Such additional measures, to the extent feasible, shall be implemented immediately and
20 in no event later than 60 days after the due date of the Action Memorandum. Within fourteen (14)
21 days of implementation, the Facility SWPPP shall be amended to include all additional BMP measures
22 designated in the Action Memorandum. CSPA shall make good faith efforts to provide Defendants
23 any comments and suggestions within thirty (30) days of its receipt of the Action Memorandum;
24 however, CSPA’s failure to do so shall not be deemed to constitute agreement with the proposal(s) set
25 forth in the Action Memorandum. Upon request by CSPA, Defendants agree to meet and confer in
26 good faith (if requested by Plaintiff) regarding the contents and sufficiency of the Action
27 Memorandum. If, after meeting and conferring on the Action Memorandum, the Parties fail to reach
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1 agreement on additional measures, either of the Parties may bring a motion before the Magistrate
2 Judge consistent with the Agreement's dispute resolution procedures described below. If CSPA failed
3 to provide Defendants its objections or comments to the contents and sufficiency of the Action
4 Memorandum within thirty (30) days of its receipt thereof and CSPA subsequently brings a motion
5 before the Magistrate Judge challenging the sufficiency of Defendants' storm water management
6 measures implemented prior to CSPA's filing of such motion, the Court may consider CSPA's failure
7 to provide Defendants feedback on the Action Memorandum within thirty (30) days as one of many
8 factors in its analysis of the sufficiency of storm water management measures implemented by
9 Defendants prior to filing of the motion.

10 **7. Inspections During The Term Of This Agreement.** Defendants shall permit
11 representatives of CSPA to perform up to two (2) physical inspections of the Facility during the term
12 of this Consent Agreement. These inspections shall be performed by CSPA's counsel and consultants
13 and may include sampling from a qualifying storm event as described in footnote 1 of this Consent
14 Agreement, and photographing and/or videotaping outside the Facility. If CSPA collects a storm water
15 sample, CSPA agrees to provide Trilore with a split sample at the time of collection and CSPA agrees
16 to only collect a storm water sample from the Facility's designated sampling point pursuant to the
17 General Permit (Discharge Point #1). CSPA, CSPA's counsel, and/or any of its representatives are
18 authorized to only take photos and/or videos from outside of the Facility. CSPA shall provide
19 Defendants with a copy of all sampling reports and photographs and/or video from outside the Facility
20 within fourteen (14) days of its receipt of the final laboratory report. To the extent that CSPA's
21 consultant deems it necessary, and Defendants agree that the request is reasonable, Defendants will
22 take photos/videos during the inspection from inside the Facility. To the extent Defendants take
23 photos and/or videos inside the Facility, Defendants shall provide CSPA with the photographs and/or
24 video within fourteen (14) days after the inspection. CSPA agrees that the photos and/or videos taken
25 from inside the Facility shall only be viewed by individuals who have participated in the inspection
26 and have signed the confidentiality agreement.

27 **8.** CSPA shall provide at least forty-eight (48) hours advance notice of such physical
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1 inspection, except that Defendants shall have the right to deny access if circumstances would make the
2 inspection unduly burdensome and pose significant interference with business operations or any
3 party/attorney, or the safety of individuals. In such case, Defendants shall specify at least three (3)
4 dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed.
5 Defendants shall not make any alterations to Facility conditions during the period between receiving
6 CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that Defendants
7 would not otherwise have made but for receiving notice of CSPA's request to conduct a physical
8 inspection of the Facility, excepting any actions taken in compliance with any applicable laws or
9 regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement
10 any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.
11 Prior to conducting the inspection, CSPA agrees that all individuals who will participate in the
12 inspection will execute a waiver and release and confidentiality agreement. CSPA also agrees that all
13 individuals who will participate in the inspection will sign a sign-in sheet when they arrive at the
14 Facility.

15 **9. Defendants' Communications To/From Regional and State Boards.** After the Court
16 Approval Date, Defendants shall provide CSPA with copies of all documents submitted to, or received
17 from, the Regional Board or the State Board, concerning storm water discharges from the Facility,
18 including, but not limited to, all documents and reports submitted to the Regional Board and/or State
19 Board as required by the General Permit. Such documents and reports shall be provided to CSPA
20 pursuant to the Notice provisions herein (at ¶ 25) and contemporaneously with Defendants'
21 submission to such agencies.

22 **10. SWPPP Amendments.** Defendants shall provide CSPA with a copy of any
23 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen
24 (14) days of such amendment.

25 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

26 **11. Mitigation Payment In Lieu Of Civil Penalties.** As mitigation of the Clean Water
27 Act violations alleged in CSPA's Complaint, no later than February 15, 2012, Defendants agree to pay
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1 the sum of \$32,500 to the Rose Foundation for Communities and the Environment (“Rose
2 Foundation”) for projects to improve water quality in Lone Tree Creek, the San Joaquin River, the
3 Sacramento River and/or the Sacramento-San Joaquin River Delta. Payment shall be provided to the
4 Rose Foundation by mailing it to: Rose Foundation, Attn: Tim Little, 6008 College Avenue, Oakland,
5 CA 94618.

6 **12. Compliance Monitoring Funding.** To defray CSPA’s reasonable investigative,
7 expert, consultant and attorneys’ fees and costs associated with monitoring Defendants’ compliance
8 with this Consent Agreement, Defendants agree to contribute \$3,750 for each of the two years covered
9 by this Consent Agreement (\$7,500 total for the life of the Consent Agreement), to a compliance
10 monitoring fund maintained by counsel for CSPA as described below. Compliance monitoring
11 activities may include, but shall not be limited to, site inspections, review of water quality sampling
12 reports, review of annual reports, discussions with representatives of Defendants concerning the
13 Action Memoranda referenced above, and potential changes to compliance requirements herein,
14 preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and
15 compliance-related activities. No later than February 15, 2012, Defendants shall deliver a check in the
16 amount of \$7,500 to the Law Offices of Andrew L. Packard. This \$7,500 check shall be made payable
17 to the Law Offices of Andrew L. Packard Attorney-Client Trust Account.

18 **13. Fees & Costs.** Defendants agree to reimburse CSPA in the amount of \$30,000 to
19 defray CSPA’s reasonable investigative, expert, consultant and attorneys’ fees and costs, and all other
20 costs incurred as a result of investigating the activities at the Facility, bringing the Action and
21 negotiating a resolution in the public interest. Such payment shall be made to the Law Offices of
22 Andrew L. Packard Attorney-Client Trust Account no later than February 15, 2012.

23 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

24 **14.** With the exception of the timelines set forth above for addressing exceedances of
25 values specified on **Exhibit C** and Action Memoranda, if a dispute under this Consent Agreement
26 arises, or either Party believes that a breach of this Consent Agreement has occurred, the Parties shall
27 meet and confer within fourteen (14) days of receiving written notification from the other Party of a
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1 request for a meeting to determine whether a violation has occurred and to develop a mutually agreed
2 upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet and
3 confer, or the meet-and-confer does not resolve the issue, after at least fourteen (14) days have passed
4 after the meet-and-confer occurred or should have occurred, either Party shall be entitled to all rights
5 and remedies under the law, including filing a motion with the District Court of California, Eastern
6 District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the
7 terms of this Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in any
8 such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section
9 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such
10 provision.

11 **15. CSPA's Waiver and Release.** Upon Court approval and entry of this Consent
12 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,
13 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their
14 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their
15 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other
16 representatives (each a "Released Defendant Party") from, and waives all claims which arise from or
17 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,
18 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or
19 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged
20 failure of Defendants to comply with the Clean Water Act at the Facility, up to the Court Approval
21 Date of this Consent Agreement.

22 **16. Defendants' Waiver and Release.** Defendants, on their own behalf and on behalf of
23 those Released Defendant Parties under their control, release CSPA (and its officers, directors,
24 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and
25 its agents, attorneys, and other representative) from, and waive all claims which arise from or pertain
26 to the Action, including all claims for fees (including fees of attorneys, experts, and others), costs,
27 expenses or any other sum incurred or claimed or which could have been claimed for matters
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1 associated with or related to the Action.

2 **17.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and
3 Order that shall provide that:

4 a. the Complaint and all claims therein shall be dismissed with prejudice pursuant
5 to Federal Rule of Civil Procedure 41(a)(2); and

6 b. the Court shall retain and have jurisdiction over the Parties with respect to
7 disputes arising under this Agreement. Nothing in this Consent Agreement shall be construed
8 as a waiver of any party's right to appeal from an order that arises from an action to enforce the
9 terms of this Consent Agreement.

10 **IV. MISCELLANEOUS PROVISIONS**

11 **18.** The Parties enter into this Consent Agreement for the purpose of avoiding prolonged
12 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants
13 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,
14 nor shall compliance with this Consent Agreement constitute or be construed as an admission by
15 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph
16 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under
17 this Consent Agreement.

18 **19.** This Consent Agreement shall terminate on September 30, 2013.

19 **20.** This Consent Agreement may be executed in one or more counterparts which, taken
20 together, shall be deemed to constitute one and the same document. An executed copy of this Consent
21 Agreement shall be valid as an original.

22 **21.** In the event that any one of the provisions of this Consent Agreement is held by a court
23 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

24 **22.** The language in all parts of this Consent Agreement, unless otherwise stated, shall be
25 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed
26 pursuant to California law, without regarding to conflict of law principles.

27 **23.** The undersigned are authorized to execute this Consent Agreement on behalf of their
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1 respective parties and have read, understood and agreed to be bound by all of the terms and conditions
2 of this Consent Agreement.

3 **24.** All agreements, covenants, representations and warranties, express or implied, oral or
4 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.
5 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other
6 person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment,
7 unless otherwise expressly provided for therein.

8 **25. Notices.** Any notices or documents required or provided for by this Consent
9 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement
10 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the
11 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

12 Bill Jennings, Executive Director
13 California Sportfishing Protection Alliance
14 3536 Rainier Avenue
15 Stockton, CA 95204
16 E-mail: DeltaKeep@me.com

17 With copies sent to:

18 Andrew L. Packard
19 Erik M. Roper
20 Law Offices of Andrew L. Packard
21 100 Petaluma Boulevard North, Suite 301
22 Petaluma, CA 94952
23 Tel: (707) 763-7227
24 E-mail: Andrew@packardlawoffices.com
25 Erik@packardlawoffices.com

26 And to:

27 Robert J. Tuerck, Esq.
28 Jackson & Tuerck
29 P.O. Box 148
30 429 W. Main Street, Suite C
31 Quincy, CA 95971
32 Tel: (530) 283-0406
33 Fax: (530) 283-0416
34 E-mail: Bob@JacksonTuerck.com

35 Any notices or documents required or provided for by this Consent Agreement or related thereto that
36 are to be provided to Defendants pursuant to this Consent Agreement shall be sent by U.S. Mail,
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1 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail
2 transmission to the email addresses listed below:

3 Mr. John Collins
4 Trilore Technologies, Inc.
5 4101 Arch Road
6 Stockton, CA 95215
7 Telephone: 925-295-0734
8 Fax: 925-295-0736
9 collins@trilore.com

7 Mr. Pritam Dhaliwal
8 Trilore Technologies, Inc.
9 3000 F Danville Blvd., Suite 525
10 Alamo, CA 94507
11 Telephone: 925-295-0734
12 Fax: 925-295-0736
13 Dhaliwal@trilore.com

11 With copies sent to:

12 William W. Funderburk, Jr.
13 Anna L. Cole
14 Castellón & Funderburk LLP
15 811 Wilshire Blvd., Suite 1025
16 Los Angeles, CA 90017
17 Tel: (213) 623-7515
18 Fax.: (213) 532-3984
19 E-mail: wfunderburk@candffirm.com
20 acole@candffirm.com

17 Each Party shall promptly notify the other of any change in the above-listed contact information.

18 **26.** Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

19 **27.** No Party shall be considered to be in default in the performance of any of its obligations
20 when a failure to perform is due to a "Force Majeure." A Force Majeure event is any circumstances
21 beyond the Party's control, including, without limitation, any act of God, war, fire, earthquake, flood,
22 and restraint by court order or public authority. A Force Majeure event does not include normal
23 inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability
24 to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it
25 could not reasonably have been expected to avoid, and which by exercise of due diligence has been
26 unable to overcome, the Force Majeure.

27 **28.** If for any reason the Court should decline to approve this Consent Agreement in the
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1 form presented, the Parties shall use their best efforts to work together to modify the Consent
2 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to
3 modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall
4 become null and void.

5 **29.** This Consent Agreement shall be deemed to have been drafted equally by the Parties,
6 and shall not be interpreted for or against any Settling Party on the ground that any such party drafted
7 it.

8 **30.** This Consent Agreement and the attachments contain all of the terms and conditions
9 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede
10 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and
11 communications of the Parties, whether oral or written, respecting the matters covered by this Consent
12 Agreement. This Consent Agreement may be amended or modified only by a writing signed by the
13 Parties or their authorized representatives, and then by order of the Court.

14 **31.** Except in case of an emergency but subject to the regulatory authority of any applicable
15 governmental authority, any breach of or default under this Consent Agreement capable of being cured
16 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,
17 or within such other period approved in writing by the Party making such allegation, which approval
18 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or,
19 if the breach or default can be cured but is not capable of being cured within such five (5) day period,
20 has commenced and is diligently pursuing to completion such cure.

21 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for
22 its approval and entry as an Order and Final Judgment.

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Dated: 20 Sept 2011

California Sportfishing Protection Alliance

By: Bill Jennings
Bill Jennings, Executive Director

Dated: _____

Trilore Technologies, Inc.

By: _____
Pritam Dhaliwal, Chief Financial Officer

Dated: _____

Pritam Dhaliwal

By: _____
Pritam Dhaliwal

Dated: _____

John Collins

By: _____
John Collins

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Dated: _____

California Sportfishing Protection Alliance

By: _____
Bill Jennings, Executive Director

Dated: _____

Trilore Technologies, Inc.

By: _____
Pritam Dhaliwal, Chief Financial Officer

Dated: _____

Pritam Dhaliwal

By: _____
Pritam Dhaliwal

Dated: 9-21-11

John Collins

By: John P Collins
John Collins

1 Dated: _____

California Sportfishing Protection Alliance

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By: _____

Bill Jennings, Executive Director

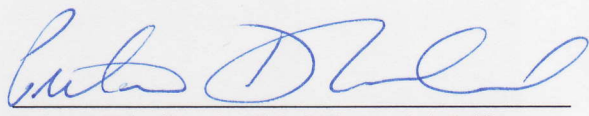
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5 Dated: 9/20/11

Trilore Technologies, Inc.

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By: 

Pritam Dhaliwal, Chief Financial Officer

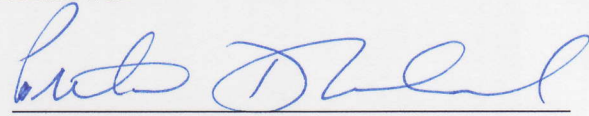
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9 Dated: 9/20/11

Pritam Dhaliwal

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By: 

Pritam Dhaliwal

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Dated: _____

John Collins

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By: _____

John Collins

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EXHIBIT A – Facility Site Map

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EXHIBIT B – Notice of Violation



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

3536 Rainier Avenue, Stockton, CA 95204

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

February 3, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

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

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

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

Dear Mssrs. Collins, Dhaliwal and Frey:

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

This letter addresses TTI's unlawful discharges of pollutants from the Facility to Lone Tree Creek, which ultimately flows into the San Joaquin River and the Sacramento-San Joaquin Delta ("Delta"). This letter addresses the ongoing violations of the

substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “General Industrial Storm Water Permit”).

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

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, TTI, John Collins and Pritam Dhaliwal are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against TTI, John Collins and Pritam Dhaliwal under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

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

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

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

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

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

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

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

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by TTI: pH – 6.0-9.0; total suspended solids – 100 mg/L; aluminum – 0.75 mg/L; and, zinc – 0.117 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; magnesium – 0.0636 mg/L; mercury – 0.0024 mg/L; selenium – 0.2385 mg/L; and, silver – 0.0318 mg/L.

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

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

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

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

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

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

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

III. Pollutant Discharges in Violation of the NPDES Permit.

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

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

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

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

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

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

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

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

TTI has discharged and continues to discharge stormwater with unacceptable levels of pH, Total Suspended Solids (TSS), Specific Conductivity (SC), Aluminum (Al) and Zinc (Zn) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. TTI's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

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

1. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value

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

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

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

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

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

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

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

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

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

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

CSPA is informed and believes that TTI has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 3, 2006. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since February 3, 2006, and that will occur at the Facility subsequent to the date

of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that TTI has discharged storm water containing impermissible levels of pH, Total Suspended Solids (TSS), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn) and other unmonitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TTI is subject to penalties for violations of the General Permit and the Act since February 3, 2006.

B. TTI Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

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

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TTI is

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

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

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

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

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

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

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

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

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

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

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

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

CSPA is informed and believes that available documents demonstrate TTI's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TTI is subject to penalties for these violations of the General Permit and the Act since February 3, 2006.

C. TTI Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that TTI has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, Specific Conductivity, Aluminum, Zinc and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, TTI must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum TTI must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. TTI has failed to adequately implement such measures.

TTI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, TTI has been in continuous violation of the BAT and BCT

requirements every day since October 1, 1992, and will continue to be in violation every day that TTI fails to implement BAT and BCT. TTI is subject to penalties for violations of the General Permit and the Act occurring since February 3, 2006.

D. TTI Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

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

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that TTI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. TTI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, TTI has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. TTI is subject to penalties for violations of the Order and the Act occurring since February 3, 2006.

E. TTI Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

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

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

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

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

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

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

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

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

IV. Persons Responsible for the Violations.

CSPA puts Trilore Technologies, Inc., John Collins and Pritam Dhaliwal on notice that they are the persons responsible for the violations described above. If

additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Trilore Technologies, Inc., John Collins and Pritam Dhaliwal on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

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

VI. Counsel.

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

Andrew L. Packard
Erik M. Roper
Law Offices of Andrew L. Packard
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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 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

(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", is positioned above the typed name.

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
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Eric Holder
U.S. Attorney General
U.S. Department of Justice
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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.

EXHIBIT C

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Aluminum	0.75 mg/L
Zinc	0.117 mg/L