

1 Michael R. Lozeau (State Bar No. 142893)
David A. Zizmor (State Bar No. 255863)
2 LOZEAU DRURY LLP
1516 Oak Street, Suite 216
3 Alameda, CA 94501
Tel: (510) 749-9102
4 Fax: (510) 749-9103 (fax)
E-mail: michael@lozeaudrury.com
5 david@lozeaudrury.com

6 Andrew L. Packard (State Bar No. 168690)
LAW OFFICES OF ANDREW L. PACKARD
7 319 Pleasant Street
Petaluma, CA 94952
8 Tel: (707) 763-7227
Fax: (415) 763-9227
9 E-mail: andrew@packardlawoffices.com

10 Attorneys for Plaintiff
11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
15 corporation,
16 Plaintiff,
17 vs.
18 TOMRA PACIFIC, INC., a corporation,
19 Defendant.

Case No. _____

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

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

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

23 **I. JURISDICTION AND VENUE**

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

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

5 2. On or about November 20, 2009, Plaintiff provided notice of Defendant’s
6 violations of the Act, and of its intention to file suit against Defendant, to the Administrator
7 of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA
8 Region IX; the Executive Director of the State Water Resources Control Board (“State
9 Board”); the Executive Officer of the California Regional Water Quality Control Board, San
10 Francisco Bay Region (“Regional Board”); and to Defendant, as required by the Act, 33
11 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as
12 Exhibit A, and is incorporated by reference.

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

19 4. Venue is proper in the Northern District of California pursuant to Section
20 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
21 within this judicial district.

22 5. Intradistrict assignment is proper in Oakland, California, pursuant to Local
23 Rule 3-2(c), because the source of the violations is located within Alameda County.

24 **II. INTRODUCTION**

25 6. This complaint seeks relief for Defendant’s discharges of polluted storm water
26 and non-storm water pollutants from Defendant TOMRA PACIFIC, INC.’s metal recycling
27 facility located at 40595 Albrae Street in Fremont, California (“the Facility”) in violation of
28 the Act and National Pollutant Discharge Elimination System (“NPDES”) Permit No.

1 CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ,
2 as amended by Water Quality Order No. 97-03-DWQ (hereinafter “the Order” or “Permit”
3 or “General Permit”). Defendant’s violations of the discharge, treatment technology,
4 monitoring, and other procedural and substantive requirements of the Permit and the Act are
5 ongoing and continuous.

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

14 **III. PARTIES**

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

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

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

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

9 11. Defendant TOMRA PACIFIC, INC. ("Tomra") is a corporation organized
10 under the laws of California. Tomra operates a recycling facility in Fremont, California.

11 **IV. STATUTORY BACKGROUND**

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

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

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

26 15. The State Board elected to issue a statewide general permit for industrial storm
27 water discharges. The State Board issued the General Permit on or about November 19,
28 1991; modified the General Permit on or about September 17, 1992; and reissued the

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

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

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

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

28 19. EPA has established Parameter Benchmark Values as guidelines for

1 determining whether a facility discharging industrial storm water has implemented the
2 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
3 Parameter Benchmark Values for the following parameters, among others: total suspended
4 solids – 100 mg/L; oil & grease – 15 mg/L; pH – 6.0-9.0 s.u.; iron – 1.0 mg/L; copper –
5 0.0636 mg/L, zinc – 0.117 mg/L; chemical oxygen demand – 120 mg/L; and aluminum –
6 0.75 mg/L. The State Board has also proposed a Benchmark Value for electrical
7 conductance of 200 µmhos/cm.

8 20. Dischargers must develop and implement a Storm Water Pollution Prevention
9 Plan (“SWPPP”). The SWPPP must describe storm water control facilities and measures
10 that comply with the BAT and BCT standards. The General Permit requires that an initial
11 SWPPP have been developed and implemented before October 1, 1992 (Section A and
12 Provision E(2)). The SWPPP must, among other requirements, identify and evaluate sources
13 of pollutants associated with industrial activities that may affect the quality of storm and
14 non-storm water discharges from the facility and identify and implement site-specific best
15 management practices (“BMPs”) to reduce or prevent pollutants associated with industrial
16 activities in storm water and authorized non-storm water discharges (Section A(2)). The
17 SWPPP’s BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include:
18 a description of individuals and their responsibilities for developing and implementing the
19 SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage
20 areas with flow pattern and nearby water bodies, the location of the storm water collection,
21 conveyance and discharge system, structural control measures, impervious areas, areas of
22 actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of
23 significant materials handled and stored at the site (Section A(5)); a description of potential
24 pollutant sources including industrial processes, material handling and storage areas, dust
25 and particulate generating activities, and a description of significant spills and leaks, a list of
26 all non-storm water discharges and their sources, and a description of locations where soil
27 erosion may occur (Section A(6)). The SWPPP must include an assessment of potential
28 pollutant sources at the Facility and a description of the BMPs to be implemented at the

1 Facility that will reduce or prevent pollutants in storm water discharges and authorized non-
2 storm water discharges, including structural BMPs where non-structural BMPs are not
3 effective (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and
4 must be revised where necessary (Section A(9),(10)).

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

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

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

23 24. As part of their monitoring program, dischargers must identify all storm water
24 discharge locations that produce a significant storm water discharge, evaluate the
25 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
26 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
27 conduct visual observations of these discharge locations for at least one storm per month
28 during the wet season (October through May) and record their findings in their Annual

1 Report (Section B(4)). Section B(4)(c) requires visual observation records to note, among
2 other things, the date of each monthly observation. Dischargers must also collect and
3 analyze storm water samples from at least two storms per year. Section B(5)(a) of the
4 General Permit requires that dischargers “shall collect storm water samples during the first
5 hour of discharge from (1) the first storm event of the wet season, and (2) at least one other
6 storm event in the wet season. All storm water discharge locations shall be sampled.”
7 Section B(5)(c)(i) requires dischargers to sample and analyze during the wet season for basic
8 parameters, such as pH, total suspended solids, electrical conductance, and total organic
9 content or oil & grease, as well as certain industry-specific parameters. Section B(5)(c)(ii)
10 requires dischargers to sample for toxic chemicals and other pollutants likely to be in the
11 storm water discharged from the facility. Section B(5)(c)(iii) requires discharges to sample
12 for parameters dependent on a facility’s standard industrial classification (“SIC”) code.
13 Facilities that fall under SIC Code 5093 (“processing, reclaiming, and wholesale distribution
14 of scrap and waste materials”) are required to analyze their storm water discharge samples
15 for total suspended solids, iron, lead, aluminum, copper, zinc, and chemical oxygen demand.
16 Dischargers must also conduct dry season visual observations to identify sources of non-
17 storm water pollution. Section B(7)(a) indicates that the visual observations and samples
18 must represent the “quality and quantity of the facility’s storm water discharges from the
19 storm event.” Section B(7)(c) requires that “if visual observation and sample collection
20 locations are difficult to observe or sample...facility operators shall identify and collect
21 samples from other locations that represent the quality and quantity of the facility’s storm
22 water discharges from the storm event.”

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

1 26. The General Permit does not provide for any mixing zones by dischargers.
2 The General Permit does not provide for any dilution credits to be applied by dischargers.

3 27. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
4 enforcement actions against any “person,” including individuals, corporations, or
5 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
6 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
7 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up
8 \$37,500 per day per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§
9 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

10 28. The Regional Board has established water quality standards for San Francisco
11 Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally referred to
12 as the Basin Plan.

13 29. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
14 waters shall be maintained free of toxic substances in concentrations that are lethal or that
15 produce other detrimental responses in aquatic organisms.” Basin Plan at 3.3.18.

16 30. The Basin Plan includes a narrative oil and grease standard which states that
17 “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that
18 result in a visible film or coating on the surface of the water or on objects in the water, that
19 cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at 3.3.7.

20 31. The Basin Plan provides that “[s]urface waters shall not contain concentrations
21 of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.*
22 at 3.3.21.

23 32. The Basin Plan provides that “[w]aters shall not contain suspended material in
24 concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14.

25 33. The Basin Plan provides that “[t]he suspended sediment load and suspended
26 sediment discharge rate of surface waters shall not be altered in such a manner as to cause
27 nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12.

28 34. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor

1 raised above 8.5.” *Id.* at 3.3.9.

2 35. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081
3 mg/L (4-day average) and 0.090 mg/L (1-hour average). *Id.* at Table 3-3. The EPA has
4 adopted saltwater numeric water quality standards for zinc of 0.090 mg/L (Criteria
5 Maximum Concentration – “CMC”) and 0.081 mg/L (Criteria Continuous Concentration –
6 “CCC”). 65 Fed. Reg. 31712 (May 18, 2000).

7 36. The Basin Plan establishes Marine Water Quality Objectives for copper of
8 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average). Basin Plan at Table 3-3.
9 The EPA has adopted saltwater numeric water quality standards for copper of 0.0031 mg/L
10 (CMC) and 0.0048 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

11 37. The Basin Plan establishes Marine Water Quality Objectives for lead of 0.0081
12 mg/L (4-day average) and 0.21 mg/L (1-hour average). Basin Plan at Table 3-3. The EPA
13 has adopted saltwater numeric water quality standards for lead of 0.210 mg/L (CMC) and
14 0.0081 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

15 **V. STATEMENT OF FACTS**

16 38. Defendant Tomra operates a recycling facility located at 40595 Albrae Street
17 in Fremont, California. The Facility receives, sorts, and processes a variety of products for
18 recycling. The Facility falls within SIC Code 5093. The Facility covers approximately
19 35,000 square feet, the majority of which is paved and used for transporting and storing
20 recyclable materials throughout the Facility. On information and belief, Plaintiff alleges that
21 there is at least one large building located on the property. On information and belief,
22 Plaintiff alleges that the receiving, sorting, and processing of recyclable materials occurs
23 both inside and outside of this building. Recyclable materials are transported in and out of
24 this building for storage in the paved areas of the Facility.

25 39. Defendant channels and collects storm water falling on the Facility through a
26 series of storm water drains that lead to at least six storm water outfalls. Each outfall
27 collects storm water runoff from a particular area of the Facility. The Facility’s outfalls
28 discharge either to a channel adjacent to the Facility, which flows to the Bay, or to the City

1 of Fremont's storm drain system, which then flows to the Bay.

2 40. On information and belief, Plaintiff alleges that the industrial activities at the
3 site include the receiving, sorting, and processing of recyclable materials. Industrial
4 activities also include the outdoor handling, processing, and storage of these materials as
5 well as other materials used to process and clean them.

6 41. Significant activities at the site take place outside and are exposed to rainfall.
7 These activities include the storage and movement of raw materials and finished products,
8 equipment used to clean and process the recyclable materials; the storage and use of vehicles
9 and equipment for handling the materials; and the storage, handling, and disposal of waste
10 materials. Loading and delivery of raw materials and finished products occurs outside.
11 Trucks enter and exit the Facility directly from and to public roads. These areas are exposed
12 to storm water and storm flows due to the lack of overhead coverage, berms, and other storm
13 water controls.

14 42. Industrial equipment and vehicles are operated and stored at the Facility in
15 areas exposed to storm water flows. Plaintiff is informed and believes, and thereupon
16 alleges, that such machinery and equipment leak contaminants such as oil, grease, diesel
17 fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows, and that such
18 equipment and vehicles track sediment and other contaminants throughout the Facility.

19 43. Plaintiff is informed and believes, and thereupon alleges that the storm water
20 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,
21 and other pollutants as it flows toward the storm water drains. Storm water and any
22 pollutants contained in that storm water entering the drains flows directly to the municipal
23 storm drain system.

24 44. The management practices at the Facility are wholly inadequate to prevent the
25 sources of contamination described above from causing the discharge of pollutants to waters
26 of the United States. The Facility lacks sufficient structural controls such as grading,
27 berming, roofing, containment, or drainage structures to prevent rainfall and storm water
28 flows from coming into contact with these and other exposed sources of contaminants. The

1 Facility lacks sufficient structural controls to prevent the discharge of water once
2 contaminated. The Facility lacks adequate storm water pollution treatment technologies to
3 treat storm water once contaminated.

4 45. Since at least November 20, 2004, Defendant has taken samples or arranged
5 for samples to be taken of storm water discharges at the Facility. The sample results were
6 reported in the Facility's annual reports submitted to the Regional Board. Defendant Tomra
7 certified each of those annual reports pursuant to Sections A and C of the General Permit.

8 46. Since at least November 20, 2004, the Facility has detected iron, copper, lead,
9 zinc, aluminum, total suspended solids, pH, oil and grease, chemical oxygen demand, and
10 electrical conductance in storm water discharged from the Facility. Levels of these
11 pollutants detected in the Facility's storm water have been in excess of EPA's numeric
12 parameter benchmark values and the State Board's proposed value for electrical
13 conductance. Levels of these pollutants detected in the Facility's storm water have been in
14 excess of water quality standards established in the Basin Plan.

15 47. Since at least November 20, 2004, the Facility has observed oil and grease,
16 turbidity and cloudiness, floating material, and discoloration in storm water discharged from
17 the Facility in excess of the narrative water quality standards established in the Basin Plan.

18 48. The following discharges on the following dates contained concentrations of
19 pollutants in excess of numeric or narrative water quality standards established in the Basin
20 Plan:

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
1/21/2009	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
1/21/2009	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12/20/2008	Oil & Grease Sheen Observed		Narrative	Drains #3, #5, and #6
12/20/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3, #5, and #6
11/25/2008	Oil & Grease Sheen Observed		Narrative	Drain #5
11/25/2008	Discoloration Observed		Narrative	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0048 mg/L (1-hour average) – Marine	Drain #5
11/25/2008	Lead	0.019 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.081 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #5
10/30/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
10/30/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
2/19/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
2/19/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
1/25/2008	Oil & Grease Sheen		Narrative	Drain #5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Observed			
1/25/2008	Turbidity/Cloudiness Observed		Narrative	Drain #5
1/25/2008	Floating Material Observed		Narrative	Drain #5
12/4/2007	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
5/2/2007	Turbidity/Cloudiness Observed		Narrative	Drain #2
4/14/2007	Oil & Grease Sheen Observed		Narrative	Drain #5
4/14/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/26/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/26/2007	Discoloration Observed		Narrative	Drain #5
3/26/2007	Copper	0.06 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Copper	0.06 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
3/26/2007	Lead	0.0091 mg/L	0.0081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11/14/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
11/14/2006	Discoloration Observed		Narrative	Drain #5
10/12/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
10/12/2006	Discoloration Observed		Narrative	Drain #5
3/17/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
3/17/2006	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/17/2006	Floating Material Observed		Narrative	Drain #5
3/17/2006	Discoloration Observed		Narrative	Drain #5
2/17/2006	pH	6.4	6.5 – 8.5	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
1/31/2006	Oil & Grease Sheen		Narrative	Drain #1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Observed			
1/31/2006	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/30/2005	Oil & Grease Sheen Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Turbidity/Cloudiness Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Floating Material Observed		Narrative	Drains #2, #3, and #5
2/16/2005	pH	6.1	6.5 – 8.5	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
2/14/2005	Oil & Grease Sheen Observed		Narrative	Drain #1
2/14/2005	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/27/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
12/27/2004	Turbidity/Cloudiness Observed		Narrative	Drain #5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12/27/2004	Copper	0.03 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Copper	0.03 mg/L	0.0048 mg/L (1-hour average) – Marine	Drain #5
12/27/2004	Lead	0.0086 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #5
11/10/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
11/10/2004	Turbidity/Cloudiness Observed		Narrative	Drain #5

49. The levels of total suspended solids in storm water detected by the Facility have exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA. The levels of total suspended solids in storm water detected by the Facility have exceeded the standard for suspended materials articulated in the Basin Plan. For example, on November 25, 2008, the level of total suspended solids measured by Defendant in the Facility’s discharged storm water was 304 mg/L. That level of total suspended solids is over three times the benchmark value for total suspended solids established by EPA. The Facility has also measured levels of total suspended solids in storm water discharged from the Facility in excess of EPA’s benchmark value of 100 mg/L on March 26, 2007; February 17, 2006; and December 27, 2004.

50. The levels of zinc in storm water detected by the Facility have exceeded the numeric standards for zinc established in the Basin Plan. For example, on March 26, 2007, the level of zinc measured by Defendant in the Facility’s discharged storm water was 1.4 mg/L. That level of zinc is nearly seventeen times the 4-day average numeric water quality

1 standard of .081 mg/L for zinc established by the Regional Board in the Basin Plan. That
2 level of zinc is nearly sixteen times the 1-hour average numeric water quality standard of
3 .081 mg/L for zinc established by the Regional Board in the Basin Plan. The Facility has
4 also measured levels of zinc in storm water discharged from the Facility in excess of the
5 numeric water quality standards for zinc established in the Basin Plan on November 25,
6 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December 27, 2004.

7 51. The levels of zinc in storm water detected by the Facility have exceeded the
8 benchmark value for zinc of 0.117 mg/L established by EPA. For example, on March 26,
9 2007, the level of zinc measured by Defendant in the Facility's discharged storm water was
10 1.4 mg/L. That level of zinc is nearly twelve times the benchmark value for zinc established
11 by EPA. The Facility has also measured levels of zinc in storm water discharged from the
12 Facility in excess of EPA's benchmark value of 0.117 mg/L on November 25, 2008;
13 February 17, 2006; February 16, 2005; and December 27, 2004.

14 52. The levels of copper in storm water detected by the Facility have exceeded the
15 numeric standards for copper established in the Basin Plan. For example, on February 16,
16 2005, the level of copper measured by Defendant in the Facility's discharged storm water
17 was 0.074 mg/L. That level of copper is nearly 24 times the 4-day average numeric water
18 quality standard of .0031 mg/L for copper established by the Regional Board in the Basin
19 Plan. That level of copper is greater than 15 times the 1-hour average numeric water quality
20 standard of .0048 mg/L for copper established by the Regional Board in the Basin Plan. The
21 Facility has also measured levels of copper in storm water discharged from the Facility in
22 excess of the numeric water quality standards for copper established in the Basin Plan on
23 November 25, 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December
24 27, 2004.

25 53. The levels of copper in storm water detected by the Facility have been outside
26 the benchmark value for copper of 0.0636 mg/L established by EPA. For example, on
27 February 16, 2005, the level of copper measured by Defendant in the Facility's discharged
28 storm water was 0.074 mg/L. The Facility also has measured levels of copper in storm water

1 discharged from the Facility outside of the EPA's benchmark value of 0.0636 mg/L on
2 November 25, 2008; March 26, 2007; February 17, 2006; February 16, 2005; and December
3 27, 2004.

4 54. The levels of lead in storm water detected by the Facility have exceeded the
5 numeric standards for lead established in the Basin Plan. For example, on February 16,
6 2005, the level of copper measured by Defendant in the Facility's discharged storm water
7 was 0.019 mg/L. That level of lead is more than double the 4-day average numeric water
8 quality standard of .0081 mg/L for lead established by the Regional Board in the Basin Plan.
9 The Facility has also measured levels of lead in storm water discharged from the Facility in
10 excess of the numeric water quality standards for lead established in the Basin Plan on
11 November 25, 2008; March 26, 2007; and December 27, 2004.

12 55. The levels of aluminum in storm water detected by the Facility have exceeded
13 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on
14 March 26, 2007, the level of aluminum measured by Defendant in the Facility's discharged
15 storm water was 8.5 mg/L. That level of aluminum is over eleven times the benchmark
16 value for aluminum established by EPA. The Facility has also measured levels of aluminum
17 in storm water discharged from the Facility in excess of EPA's benchmark value of 0.75
18 mg/L on November 25, 2008; February 17, 2006; and December 27, 2004.

19 56. The levels of iron in storm water detected by the Facility have exceeded the
20 benchmark value for iron of 1.0 mg/L established by EPA. For example, on November 25,
21 2008, the level of iron measured by Defendant in the Facility's discharged storm water was
22 9.9 mg/L. That level of iron is nearly ten times the benchmark value for iron established by
23 EPA. The Facility has also measured levels of iron in storm water discharged from the
24 Facility in excess of EPA's benchmark value of 1.0 mg/L on March 26, 2007; February 17,
25 2006; and December 27, 2004.

26 57. The electrical conductance levels detected by the Facility in its storm water
27 have been greater than the numeric water quality standards applicable to electrical
28 conductance in California. The electrical conductance levels detected by the Facility in its

1 storm water have been greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the
2 State Board. For example, on December 27, 2004, the electrical conductance level measured
3 by Defendant in the Facility's discharged storm water was 220 $\mu\text{mho/cm}$. The Facility also
4 has measured levels of electrical conductance in storm water discharged from the Facility in
5 excess of the proposed benchmark value of 200 $\mu\text{mho/cm}$ on March 26, 2007.

6 58. The levels of oil and grease in storm water detected by the Facility have
7 exceeded the benchmark value for oil and grease of 15 mg/L established by EPA. On
8 February 17, 2006, the level of oil and grease measured by Defendant in the Facility's
9 discharged storm water was 17 mg/L.

10 59. The levels of chemical oxygen demand in storm water detected by the Facility
11 have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established
12 by EPA. On December 27, 2004, the level of chemical oxygen demand measured by
13 Defendant in the Facility's discharged storm water was 640 mg/L. That level of chemical
14 oxygen demand is over five times the benchmark value for chemical oxygen demand
15 established by EPA.

16 60. On information and belief, Plaintiff alleges that since at least November 20,
17 2004, Defendant has failed to implement BAT and BCT at the Facility for its discharges of
18 zinc, copper, lead, total suspended solids, aluminum, iron, electrical conductance, oil and
19 grease, chemical oxygen demand, and other pollutants. Section B(3) of the General Permit
20 requires that Defendant implement BAT for toxic and nonconventional pollutants and BCT
21 for conventional pollutants by no later than October 1, 1992. As of the date of this
22 Complaint, Defendant has failed to implement BAT and BCT.

23 61. On information and belief, Plaintiff alleges that since at least November 20,
24 2004, Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan
25 for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP
26 prepared for the Facility does not set forth site-specific best management practices for the
27 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and
28 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an

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

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

13 63. On information and belief, Plaintiff alleges that Defendant has failed to collect
14 the two required storm samples from each and every storm water discharge location at the
15 Facility during each wet season since at least November 20, 2004. Plaintiff is informed and
16 believes, and thereupon alleges that Defendant failed to sample two storm events during
17 each of the 2005-2006, 2006-2007, and 2008-2009 wet seasons; and failed to sample any
18 storm events during the 2007-2008 wet season. On information and belief, Plaintiff further
19 alleges that during both the 2007-2008 and 2008-2009 wet seasons, Defendant sampled and
20 analyzed storm water discharges from just one of the Facility's six outfalls; and during each
21 of the 2004-2005, 2005-2006, and 2006-2007 wet seasons, Defendant sampled and analyzed
22 storm water discharges from just one of the Facility's four outfalls.

23 64. On information and belief, Plaintiff alleges that Defendant failed to make the
24 required monthly visual observations at the Facility in January 2005, March 2005, February
25 2006, and April 2006.

26 65. On information and belief, Plaintiff alleges that Defendant either failed to
27 record mandatory observations or recorded no rainfall, and therefore no observations, in
28 months during which rainfall occurred, at the Facility on sixteen separate occasions: in April,

1 May, October, and November of 2005; May and December of 2006; January, February,
2 October, and November of 2007; March and April of 2008; and February, March, April, and
3 May of 2009.

4 66. On information and belief, Plaintiff alleges that Defendant failed to note the
5 dates on its monthly visual observations in April, May, October, and November of 2005;
6 May 2006; May 2008; and February, March, April, and May of 2009.

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

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

18 69. Information available to Plaintiff indicates that Defendant has not fulfilled the
19 requirements set forth in the General Permit for discharges from the Facility due to the
20 continued discharge of contaminated storm water. Plaintiff is informed and believes, and
21 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and
22 continuing.

23 **VI. CLAIMS FOR RELIEF**

24 **FIRST CAUSE OF ACTION**

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

27 70. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully
28 set forth herein.

1 71. The General Permit’s SWPPP requirements and Effluent Limitation B(3)
2 require dischargers to reduce or prevent pollutants in their storm water discharges through
3 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
4 pollutants. Defendant has failed to implement BAT and BCT at the Facility for its
5 discharges of zinc, copper, lead, total suspended solids, aluminum, iron, pH, electrical
6 conductance, oil and grease, chemical oxygen demand, and other unmonitored pollutants in
7 violation of Effluent Limitation B(3) of the General Permit.

8 72. Each day since November 20, 2004, that Defendant has failed to develop and
9 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
10 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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

14 **SECOND CAUSE OF ACTION**
15 **Discharges of Contaminated Storm Water**
16 **in Violation of Permit Conditions and the Act**
17 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

18 74. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully
19 set forth herein.

20 75. Discharge Prohibition A(2) of the General Permit requires that storm water
21 discharges and authorized non-storm water discharges shall not cause or threaten to cause
22 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
23 General Permit require that storm water discharges and authorized non-storm water discharges
24 shall not adversely impact human health or the environment, and shall not cause or contribute
25 to a violation of any water quality standards contained in a Statewide Water Quality Control
26 Plan or the applicable Regional Board’s Basin Plan.

27 76. Plaintiff is informed and believes, and thereupon alleges, that since at least
28 November 20, 2004, Defendant has been discharging polluted storm water from the Facility in
excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of

1 the General Permit.

2 77. During every rain event, storm water flows freely over exposed materials, waste
3 products, and other accumulated pollutants at the Facility, becoming contaminated with
4 suspended solids, zinc, copper, lead, pH, oil and grease, and other unmonitored pollutants at
5 levels above applicable water quality standards. The storm water then flows untreated from
6 the Facility into either a channel adjacent to the Facility or into the City of Fremont storm drain
7 system and then flows into the Bay.

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

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

15 80. Every day since at least November 20, 2004, that Defendant has discharged and
16 continues to discharge polluted storm water from the Facility in violation of the General Permit
17 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
18 violations are ongoing and continuous.

19 **THIRD CAUSE OF ACTION**

20 **Failure to Prepare, Implement, Review, and Update**
21 **an Adequate Storm Water Pollution Prevention Plan**
22 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

23 81. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully
24 set forth herein.

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

28 83. Defendant has failed to develop and implement an adequate SWPPP for the
Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the

1 Facility is evidenced by, *inter alia*, Defendant's outdoor storage of various materials without
2 appropriate best management practices; the continued exposure of significant quantities of
3 various materials to storm water flows; the continued exposure and tracking of waste resulting
4 from the operation or maintenance of vehicles at the site, including trucks; the failure to either
5 treat storm water prior to discharge or to implement effective containment practices; and the
6 continued discharge of storm water pollutants from the Facility at levels in excess of EPA
7 benchmark values.

8 84. Defendant has failed to update the Facility's SWPPP in response to the
9 analytical results of the Facility's storm water monitoring.

10 85. Each day since November 20, 2004, that Defendant has failed to develop,
11 implement and update an adequate SWPPP for the Facility is a separate and distinct violation
12 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13 86. Defendant has been in violation of the SWPPP requirements every day since
14 November 20, 2004. Defendant continues to be in violation of the SWPPP requirements each
15 day that it fails to develop and fully implement an adequate SWPPP for the Facility.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program** 18 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 87. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully
20 set forth herein.

21 88. Section B of the General Permit requires dischargers of storm water associated
22 with industrial activity to have developed and be implementing a monitoring and reporting
23 program (including, *inter alia*, sampling and analysis of discharges) no later than October 1,
24 1992.

25 89. Defendant has failed to develop and implement an adequate monitoring and
26 reporting program for the Facility. Defendant's ongoing failure to develop and implement
27 an adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to
28 sample two storm events per wet season.

90. Each day since November 20, 2004, that Defendant has failed to develop and

1 implement an adequate monitoring and reporting program for the Facility in violation of the
2 General Permit is a separate and distinct violation of the General Permit and Section 301(a)
3 of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results
4 are ongoing and continuous violations of the Act.

5 **FIFTH CAUSE OF ACTION**

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

8 91. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully
9 set forth herein.

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

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

17 **VII. RELIEF REQUESTED**

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

- 19 a. Declare Defendant to have violated and to be in violation of the Act as
20 alleged herein;
- 21 b. Enjoin Defendant from discharging polluted storm water from the Facility
22 unless authorized by the Permit;
- 23 c. Enjoin Defendant from further violating the substantive and procedural
24 requirements of the Permit;
- 25 d. Order Defendant to immediately implement storm water pollution control
26 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
27 pollutants in the Facility's storm water from contributing to violations of any water quality
28 standards;
- e. Order Defendant to comply with the Permit's monitoring and reporting

1 requirements, including ordering supplemental monitoring to compensate for past monitoring
2 violations;

3 f. Order Defendant to prepare a SWPPP consistent with the Permit's
4 requirements and implement procedures to regularly review and update the SWPPP;

5 g. Order Defendant to provide Plaintiff with reports documenting the quality
6 and quantity of their discharges to waters of the United States and their efforts to comply with
7 the Act and the Court's orders;

8 h. Order Defendant to pay civil penalties of up to \$37,500 per day per violation
9 for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§
10 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

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

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


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

16 Dated: February 18, 2010

Respectfully submitted,

17 LOZEAU DRURY LLP

18
19 By:



20 Michael R. Lozeau
21 Attorneys for Plaintiff
22 CALIFORNIA SPORTFISHING PROTECTION
23 ALLIANCE
24
25
26
27
28

EXHIBIT A

California Sportfishing Protection Alliance

“An Advocate for Fisheries, Habitat and Water Quality”

3536 Rainier Avenue, Stockton, CA 95204

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

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

November 20, 2009

Randall Gusikoski, President
Francisco Minjavez
Tomra Pacific – Fremont Plant
40595 Albrae Street
Fremont, CA 94538

Mr. Scott Lamb, President
Tomra Pacific, Inc.
150 Klug Circle
Corona, CA 92880

Mr. Greg Knoll, CEO-President
Tomra of North America
480 Lordship Boulevard
Stratford, CT 06615

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

Dear Messrs. Gusikoski, Minjavez, Knoll and Lamb:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“Act”) that CSPA believes are occurring at Tomra Pacific, Inc., located at 40595 Albrae Street in Fremont, California (“Facility”). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay (“Bay”) and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility (all recipients are hereinafter collectively referred to as “Tomra Pacific”).

This letter addresses Tomra Pacific’s unlawful discharge of pollutants from the Facility into channels that flow into the Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”) Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”). The Waste Discharge Identification Number (“WDID”) for the Facility listed on documents submitted to the Regional Board is 201I013847. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental

Protection Agency (“EPA”), and the State in which the violations occur.

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

I. Background.

On March 19, 1998, Tomra Pacific filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Tomra Pacific certified that the Facility is classified under SIC code 5093 (“processing, reclaiming, and wholesale distribution of scrap and waste materials”). The Facility collects and discharges storm water from its approximately 35,000 square foot industrial site into at least six storm water discharge locations at the Facility. The storm water discharged by Tomra Pacific is discharged to the City of Fremont storm drain system which flows into San Francisco Bay.

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

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at

3.3.7. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3.3.21. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan provides that “[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at 3.3.9.

Both the Regional Board and EPA have established numeric water quality standards for pollutants discharged by Tomra Pacific that flow into San Francisco Bay. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); for copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and for lead of 0.0081 mg/L (4-day average) and 0.21 mg/L (1-hour average). *Id.* at Table 3-3. The EPA has adopted saltwater numeric water quality standards for zinc of 0.090 mg/L (Criteria Maximum Concentration – “CMC”) and 0.081 mg/L (Criteria Continuous Concentration – “CCC”); for copper of 0.0031 mg/L (CMC) and 0.0048 mg/L (CCC); and for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). 65 Fed. Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Tomra Pacific: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, iron – 1 mg/L, aluminum – 0.75 mg/L, copper – 0.0636 mg/L, zinc – 0.117 mg/L, and chemical oxygen demand (“COD”) – 120 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance of 200 µmho/cm.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

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

(“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility’s discharge monitoring locations.

Tomra Pacific has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, iron, zinc, aluminum, copper, lead, chemical oxygen demand (“COD”), and other pollutants in violation of the General Permit. Tomra Pacific’s sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of narrative and numeric water quality standards established in the Basin Plan or promulgated by EPA and thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit:

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
1/21/2009	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
1/21/2009	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
12/20/2008	Oil & Grease Sheen Observed		Narrative	Drains #3, #5, and #6
12/20/2008	Turbidity/Cloudiness		Narrative	Drains #3, #5,

	Observed			and #6
11/25/2008	Oil & Grease Sheen Observed		Narrative	Drain #5
11/25/2008	Discoloration Observed		Narrative	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0048 mg/L (1-hour average) – Marine	Drain #5
11/25/2008	Lead	0.019 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.081 mg/L (4- day average) – Marine	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.09 mg/L (1- hour average) – Marine	Drain #5
10/30/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
10/30/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
2/19/2008	Oil & Grease Sheen Observed		Narrative	Drains #3 and #5
2/19/2008	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
1/25/2008	Oil & Grease Sheen Observed		Narrative	Drain #5
1/25/2008	Turbidity/Cloudiness Observed		Narrative	Drain #5
1/25/2008	Floating Material Observed		Narrative	Drain #5
12/4/2007	Turbidity/Cloudiness Observed		Narrative	Drains #3 and #5
5/2/2007	Turbidity/Cloudiness Observed		Narrative	Drain #2
4/14/2007	Oil & Grease Sheen Observed		Narrative	Drain #5
4/14/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5

3/26/2007	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/26/2007	Discoloration Observed		Narrative	Drain #5
3/26/2007	Copper	0.06 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Copper	0.06 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
3/26/2007	Lead	0.0091 mg/L	0.0081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
11/14/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
11/14/2006	Discoloration Observed		Narrative	Drain #5
10/12/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
10/12/2006	Discoloration Observed		Narrative	Drain #5
3/17/2006	Oil & Grease Sheen Observed		Narrative	Drain #5
3/17/2006	Turbidity/Cloudiness Observed		Narrative	Drain #5
3/17/2006	Floating Material Observed		Narrative	Drain #5
3/17/2006	Discoloration Observed		Narrative	Drain #5
2/17/2006	pH	6.4	6.5 – 8.5	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Copper	0.021 mg/L	0.0048 mg/L (1-hour average) –	Not Identified

			Marine	
2/17/2006	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
1/31/2006	Oil & Grease Sheen Observed		Narrative	Drain #1
1/31/2006	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/30/2005	Oil & Grease Sheen Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Turbidity/Cloudiness Observed		Narrative	Drains #2, #3, and #5
12/30/2005	Floating Material Observed		Narrative	Drains #2, #3, and #5
2/16/2005	pH	6.1	6.5 – 8.5	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0031 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0048 mg/L (1-hour average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.081 mg/L (4-day average) – Marine	Not Identified
2/16/2005	Zinc	0.12 mg/L	0.09 mg/L (1-hour average) – Marine	Not Identified
2/14/2005	Oil & Grease Sheen Observed		Narrative	Drain #1
2/14/2005	Turbidity/Cloudiness Observed		Narrative	Drain #1
12/27/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
12/27/2004	Turbidity/Cloudiness Observed		Narrative	Drain #5
12/27/2004	Copper	0.03 mg/L	0.0031 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Copper	0.03 mg/L	0.0048 mg/L	Drain #5

			(1-hour average) – Marine	
12/27/2004	Lead	0.0086 mg/L	0.0081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.081 mg/L (4-day average) – Marine	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.09 mg/L (1-hour average) – Marine	Drain #5
11/10/2004	Oil & Grease Sheen Observed		Narrative	Drain #5
11/10/2004	Turbidity/Cloudiness Observed		Narrative	Drain #5

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

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
11/25/2008	TSS	304 mg/L	100 mg/L	Drain #5
11/25/2008	Iron	9.9 mg/L	1.0 mg/L	Drain #5
11/25/2008	Aluminum	6.4 mg/L	0.75 mg/L	Drain #5
11/25/2008	Copper	0.064 mg/L	0.0636 mg/L	Drain #5
11/25/2008	Zinc	0.68 mg/L	0.117 mg/L	Drain #5
3/26/2007	TSS	250 mg/L	100 mg/L	Not Identified
3/26/2007	Specific Conductivity	210	200 µmho/cm (proposed)	Not Identified
3/26/2007	Iron	9.7 mg/L	1.0 mg/L	Not Identified
3/26/2007	Aluminum	8.5 mg/L	0.75 mg/L	Not Identified
3/26/2007	Zinc	1.4 mg/L	0.117 mg/L	Not Identified
2/17/2006	TSS	190 mg/L	100 mg/L	Not Identified
2/17/2006	Oil & Grease	17 mg/L	15 mg/L	Not Identified
2/17/2006	Iron	2 mg/L	1.0 mg/L	Not Identified
2/17/2006	Aluminum	1.6 mg/L	0.75 mg/L	Not Identified
2/17/2006	Zinc	0.12 mg/L	0.117 mg/L	Not Identified
2/17/2006	COD	150 mg/L	120 mg/L	Not Identified
2/16/2005	Copper	0.074 mg/L	0.0636 mg/L	Not Identified

2/16/2005	Zinc	0.12 mg/L	0.117 mg/L	Not Identified
12/27/2004	TSS	140 mg/L	100 mg/L	Drain #5
12/27/2004	Specific Conductivity	220	200 µmho/cm (proposed)	Drain #5
12/27/2004	Iron	5.2 mg/L	1.0 mg/L	Drain #5
12/27/2004	Aluminum	4.2 mg/L	0.75 mg/L	Drain #5
12/27/2004	Zinc	0.36 mg/L	0.117 mg/L	Drain #5
12/27/2004	COD	640 mg/L	120 mg/L	Drain #5

CSPA’s investigation, including its review of Tomra Pacific’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of applicable water quality standards, EPA’s benchmark values, and the State Board’s proposed benchmark for electrical conductivity, indicates that Tomra Pacific has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, specific conductivity, iron, aluminum, lead, copper, zinc, COD, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Tomra Pacific was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Tomra Pacific is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA also alleges that such violations have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least November 20, 2004, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Tomra Pacific has discharged storm water containing impermissible levels of TSS, pH, specific conductivity, iron, aluminum, lead, copper, zinc, and COD in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

B. Failure to Sample and Analyze Storm Events and Mandatory Parameters

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). “Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season.” *Id.* “All storm water discharge locations shall be sampled.” *Id.* “Facility

operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.” *Id.* Tomra Pacific failed to sample a second storm event during each of the 2005-2006, 2006-2007, and 2008-2009 rainy seasons, and failed to sample *any* storm events during the 2007-2008 rainy season, for a total of five violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

Additionally, on information and belief, CSPA alleges that Tomra Pacific has failed to collect the two required storm water samples from each and every storm water discharge location in each of the last five years despite discharging storm water from its facility. During the past five years, Tomra Pacific has only sampled and analyzed storm water discharges from one location at the Facility. CSPA alleges that during both the 2007-2008 and 2008-2009 rainy seasons, Tomra Pacific discharged storm water from at least five other locations. CSPA further alleges that during each of the 2004-2005, 2005-2006, and 2006-2007 rainy seasons, Tomra Pacific discharged storm water from at least three other locations. The failure to collect five samples from two discharge locations for two rainy seasons and three samples from two discharge locations for three rainy seasons results in thirty-eight distinct violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

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

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

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm

water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

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

CSPA's investigation of the conditions at the Facility as well as Tomra Pacific's Annual Reports indicate that Tomra Pacific has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Tomra Pacific has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Tomra Pacific has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least November 20, 2004, and will continue to be in violation every day that Tomra Pacific fails to prepare, implement, review, and update an effective SWPPP. Tomra Pacific is subject to penalties for violations of the Order and the Act occurring since November 20, 2004.

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

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(4)(c) requires visual observation records to note, among other things, the date of each monthly observation. Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event." Tomra Pacific failed to make monthly visual observations as required under Section B(4) of the General Permit in January 2004, March 2004, February 2006, and April 2006, for a total of four violations of the General Permit. Also in violation of Section B(4), Tomra Pacific recorded no observations or no rainfall in months during which rainfall occurred (*see* Attachment A: Rain Dates) in April, May, October, and November of 2005; May and December of 2006; January, February, October, and November of 2007; March and April of

2008; and February, March, April, and May of 2009, for a total of sixteen General Permit violations. Tomra Pacific failed to note the dates on its monthly visual observations as required by Section B(4)(c) of the General Permit in April, May, October, and November of 2005; May 2006; May 2008; and February, March, April and May of 2009, for a total of ten General Permit violations. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Tomra Pacific is subject to penalties for violations of the General Permit and the Act since November 20, 2004.

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Tomra Pacific is not representative of the quality of the Facility's various storm water discharges, CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Tomra Pacific is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since November 20, 2004.

E. Failure to File True and Correct Annual Reports.

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

In addition, since 2004, Tomra Pacific and its agent, Francisco Minjavez, inaccurately certified in their Annual Reports that the Facility was in compliance with the General Permit. Consequently, Tomra Pacific has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Tomra Pacific failed to submit a complete or correct report and every time Tomra Pacific or its agent falsely purported to comply with the Act. Tomra Pacific is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since November 20, 2004.

IV. Persons Responsible for the Violations.

CSPA puts Tomra Pacific, Francisco Minjavez, and Randall Gusikoski 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

Tomra Pacific, Francisco Minjavez, and Randall Gusikoski on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address, and contact information is as follows:

Bill Jennings, Executive Director;
California Sportfishing Protection Alliance,
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067
Fax (209) 464-1028
E-Mail: deltakeep@aol.com

VI. Counsel.

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

Michael R. Lozeau
David A. Zizmor
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
michael@lozeaudrury.com
david@lozeaudrury.com

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

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4; 73 FR 75340) each separate violation of the Act subjects Tomra Pacific to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

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

Randall Gusikoski
Tomra Pacific, Inc.
November 20, 2009
Page 14 of 15

Pacific and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style with a large initial "B".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

CSC Lawyers Incorporating Service [Registered Agent]
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dorothy R. Rice, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Laura Yoshii, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A

Rain Dates, Tomra Pacific, Fremont, California

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

ATTACHMENT A

Rain Dates, Tomra Pacific, Inc., Fremont, California

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

ATTACHMENT A

Rain Dates, Tomra Pacific, Inc., Fremont, California

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