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9 Attorneys for Plaintiff  
10 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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

13 CALIFORNIA SPORTFISHING  
14 PROTECTION ALLIANCE, a non-profit  
corporation,

15 Plaintiff,

16 vs.

17 TOMRA PACIFIC, INC., a corporation.

18 Defendant.  
19

Case No. C10-00701-BZ

**[PROPOSED] CONSENT DECREE**

20 **WHEREAS**, Plaintiff California Sportfishing Protection (hereinafter “CSPA” or “Plaintiff”)  
21 is a non-profit corporation dedicated to the protection, enhancement and restoration of waters of the  
22 State of California, including waters adjacent to urbanized areas of San Francisco Bay;

23 **WHEREAS**, Defendant Tomra Pacific, Inc. (“Tomra”) is a corporation organized under the  
24 laws of the State of Delaware;

25 **WHEREAS**, Defendant operates a metal recycling facility located at 40595 Albrae Street in  
26 Fremont, California (the “Facility”), where Defendant engages in used beverage container (“UBC”)  
27 collection, storage, sorting, and processing of aluminum, glass and plastic, and related activities;  
28

1           **WHEREAS**, Defendant discharges storm water at the Facility pursuant to State Water  
2 Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge  
3 Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges  
4 of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter,  
5 the “General Permit”). The Facility is divided into two areas. Persons drop off materials to be  
6 recycled at the front of the Facility. For purposes of this Consent Decree, this front area of the  
7 Facility is referred to as the “Drop-Off Area.” The rear of the Facility includes storage, processing,  
8 and shipping of recyclable materials. For purposes of this Consent Decree, this rear area of the  
9 Facility is referred to as the “Processing Area.” A map of the Facility is attached hereto as Exhibit 1  
10 displaying the Processing Area and the Drop Off Area and their drainage features and is  
11 incorporated by reference;

12           **WHEREAS**, on or about November 20, 2009, CSPA served Defendant, the United States  
13 Attorney General, the national and Region IX offices of the United States Environmental Protection  
14 Agency, the State Water Resources Control Board (“State Board”) and the Regional Water Quality  
15 Control Board – San Francisco Bay Region (“Regional Board”) with a Notice of Violation and  
16 Intent to File Suit (“60-Day Notice”) under Sections 505(a)(1) and (f) of the Federal Water Pollution  
17 Control Act (the “Act” or “Clean Water Act”), 33 U.S.C. § 1365(a)(1) and (f);

18           **WHEREAS**, the 60-Day Notice alleged that Defendant has violated and continues to violate  
19 Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. § 1311(a) and 1342(p), due to  
20 discharges of polluted storm water from the Facility in violation of the General Permit;

21           **WHEREAS**, on February 18, 2010, CSPA filed a complaint against Defendant in the United  
22 States District Court for the Northern District of California, entitled *California Sportfishing*  
23 *Protection Alliance v. Tomra Pacific, Inc.*, (Case No. C10-00701-BZ) (hereinafter “Complaint” or  
24 “Action”). A true and correct copy of the Complaint as well as the 60-Day Notice is attached hereto  
25 as Exhibit 2;

26           **WHEREAS**, CSPA and Defendant (hereinafter, collectively referred to as the “Settling  
27 Parties”) have agreed that it is in the parties’ mutual interest to enter into a Consent Decree setting  
28



1 storm water control or treatment system that achieves equivalent or better storm water pollution  
2 reductions (including for example, no discharge) than the Stormwater Rx unit subject to CSPA's  
3 review and written concurrence, which shall not be unreasonably withheld. If Tomra intends to  
4 proceed with such an alternative treatment system, Tomra shall notify CSPA as soon as possible but  
5 not later than July 1, 2011. By that date, Tomra shall provide CSPA with all information gathered  
6 by Tomra to investigate the alternative storm water control or treatment system. CSPA shall have  
7 60-days to review any alternative storm water control or treatment system proposed by Tomra. If  
8 CSPA, in good faith, does not believe that an alternative system proposed by Tomra Pacific will  
9 achieve equivalent or better storm water pollution reductions at the facility, Tomra Pacific must  
10 install the Stormwater Rx unit.

11 5. The parties agree to meet and confer in good faith on any alternative proposal. If  
12 CSPA objects to any alternative storm water control or treatment system or component or  
13 implementation thereof proposed by Tomra, at the request of either Settling Party, the Settling  
14 Parties shall in good faith seek to mediate any dispute well in advance of the deadline.

15 6. As of October 1, 2011, Tomra Pacific agrees that any discharge of storm water from  
16 the rear of the facility shall strictly comply with EPA's Benchmark Values and all applicable water  
17 quality standards established by either the San Francisco Bay Regional Board or EPA.

18 7. Tomra Pacific shall conduct heightened sweeping in the Facility's Drop-Off Area  
19 including but not limited to manually sweeping the area on a daily basis; hand-vacuuming the area  
20 before each forecast rain event during the rainy season, and mechanical sweeping of the area using a  
21 regenerative sweeper at least once per week during the wet season (October through May) and every  
22 other week during the dry season (June through September).

23 8. Not later than November 15, 2010, Tomra shall install filters in each of the drop  
24 inlets located in the Drop-Off Area conforming to the specifications set forth in Exhibit 3. To the  
25 extent such filters do not reduce pollutants in the Facility's storm water to levels below the Levels of  
26 Concern set forth in Paragraph 17, Tomra shall implement additional filtering or other management  
27 measures consistent with Paragraphs 18 through 22 below.  
28



1 detect the individual constituents at or below the Levels of Concern set forth in Paragraph 17.

2 14. Results from Tomra's sampling and analysis shall be provided to CSPA within  
3 fourteen (14) days of receipt of the final written laboratory report from each sampling event.

4 15. Tomra shall maintain logs of all sweeping activities at the Drop Off Area Facility,  
5 including the date and location of any sweeping, as part of the Facility's annual report

6 16. Tomra shall maintain logs of maintenance and replacement activities pertaining to  
7 each of the storm water management measures installed or implemented at the Facility. Such logs  
8 shall be maintained for each of the drop inlet filters installed at the Facility and maintenance  
9 activities associated with the Stormwater Rx unit or, if applicable, alternative storm water treatment  
10 system required by Paragraphs 3 and 4 above. Such logs shall be included in the Facility's Annual  
11 Report.

### 12 **EXCEEDANCE OF LEVELS OF POTENTIAL CONCERN**

#### 13 **Storm Water Discharges from Processing Area**

14 17. Not later than October 1, 2011, Tomra shall not discharge storm water from the  
15 Processing Area in excess of the following Levels of Concern: pH – 6.0-9.0 units; total suspended  
16 solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”)  
17 – 120 mg/L; specific conductance – 200 µmho/cm; aluminum – 0.75 mg/L (EPA Benchmark); zinc  
18 – .117 mg/L (EPA Benchmark), 0.120 mg/L (Basin Plan Standard); copper – .0636 mg/L (EPA  
19 Benchmark), 0.013 mg/L (Basin Plan Standard), lead – 0.0816 (EPA Benchmark), 0.065 mg/L  
20 (Basin Plan Standard).

#### 21 **Storm Water Discharges from Drop-Off Area**

22 18. If analytical results of storm water samples taken by Tomra during the 2010-2011,  
23 2011-2012 and/or 2012-2103 wet season indicate that storm water discharges from the Facility's  
24 Drop-Off Area exceed the Levels of Concern set forth in Paragraph 17 above, Tomra agrees to take  
25 additional feasible measures aimed at reducing pollutants in the Facility's storm water discharged  
26 from the Drop-Off Area to levels at or below these levels.

27 19. In furtherance of that objective, when one or more analytical results of storm water  
28

1 samples taken by Tomra during the 2010-2011 and/or 2011-2012 wet season indicate that storm  
2 water discharges from the Facility's Drop-Off Area exceed the Levels of Concern, Tomra shall  
3 prepare a written statement ("Memorandum") discussing:

- 4 (1) Any exceedance or exceedances of any Level of Concern;
- 5 (2) An explanation of the possible cause(s) and/or source(s) of any exceedance; and
- 6 (3) Additional feasible best management practices ("BMPs") that will be taken to further  
7 reduce the possibility of future exceedance(s).

8 20. Such Memorandum shall be e-mailed and sent via first class mail to CSPA not later  
9 than July 30th following the conclusion of each wet season. Any additional measures set forth in the  
10 Memorandum shall be implemented as soon as practicable, but not later than sixty (60) days from  
11 the due date of the Memorandum, except where 1) structural changes require longer than sixty (60)  
12 days to complete; 2) weather-related conditions render immediate implementation infeasible; or 3)  
13 the Settling Parties agree in writing to defer implementation of specific measures in order to  
14 effectively meet and confer in accordance with Paragraph 21. Within thirty (30) days of  
15 implementation, Tomra's SWPPP shall be amended to include all additional BMP measures  
16 designated in the Memorandum.

17 21. Upon receipt of the Memorandum, CSPA may review and comment on any  
18 additional measures. If requested by CSPA within thirty (30) days of receipt of such Memorandum,  
19 CSPA and Tomra shall meet and confer and conduct a site inspection within ninety (90) days after  
20 the receipt of the Memorandum to discuss the contents of the Memorandum and the adequacy of  
21 proposed measures to improve the quality of the Facility's storm water discharged from the Drop-  
22 Off Area to levels at or below the Levels of Concern. If within thirty (30) days of the parties  
23 meeting and conferring, the parties do not agree on the adequacy of the additional measures set forth  
24 in the Memorandum, the Settling Parties may agree to seek a settlement conference before the  
25 Mediator assigned to this action by the District Court pursuant to Paragraphs 30 through 32 below.  
26 If the Settling Parties fail to reach agreement on additional measures, CSPA may bring a motion  
27 before the District Court Judge consistent with Paragraphs 29 through 30 below. If CSPA does not  
28

1 request a meet and confer regarding the Memorandum within the thirty (30) day comment period  
2 provided for in this paragraph, CSPA shall waive any right to object to such Memorandum pursuant  
3 to this Agreement.

4 22. Any concurrence or failure to object by CSPA with regard to the reasonableness of  
5 any additional measures required by this Agreement or implemented by Tomra shall not be deemed  
6 to be an admission of the adequacy of such measures should they fail to bring the Facility's storm  
7 water within the General Permit's best available technology requirements.

8 23. In addition to any site inspections conducted as part of meeting and conferring on  
9 additional measures set forth above, Tomra shall permit representatives of CSPA to perform up to  
10 (2) site visits per year at the Facility during normal daylight business hours during the term of this  
11 Agreement; provided that CSPA provides Tomra with at least one week prior notice via e-mail and  
12 telephone using the contact information listed in Paragraph 42 below.

13 24. Within thirty (30) days of the Effective Date of this Consent Decree, Tomra shall  
14 amend the Facility Storm Water Pollution Prevention Plan ("SWPPP") to incorporate all changes,  
15 improvements and best management practices set forth in this Consent Decree. A copy of the  
16 amended SWPPP shall be provided to CSPA within seven (7) business days of completion.

17 25. During the life of this AGREEMENT, Tomra shall provide CSPA with a copy of all  
18 documents submitted to the Regional Board or the State Board concerning the Facility's storm water  
19 discharges, including but not limited to all documents and reports submitted to the Regional Board  
20 and/or State Board as required by the General Permit. Such documents and reports shall be mailed  
21 to CSPA contemporaneously with submission to such agency. Tomra also shall provide CSPA a  
22 copy of all documents referenced in this agreement, including but not limited to logs or analyses,  
23 within fourteen (14) days of a written request (via e-mail or regular mail) by CSPA.  
24

#### 25 **MITIGATION FEES AND COSTS**

26 26. As mitigation of the violations alleged in CSPA's Notice and Complaint, Tomra shall  
27 pay the sum of Thirty-Five Thousand dollars (\$35,000.00) (the "Payment") to the Rose Foundation  
28 for Communities and the Environment ("Rose Foundation"). The Payment shall be conditioned on

1 the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted to  
2 CSPA or Tomra and (b) projects funded by the Payment shall be designed to benefit water quality in  
3 the San Francisco Bay or its tributaries. Within fifteen (15) days of the Effective Date of the  
4 Consent Decree, Tomra shall make the Payment to the Rose Foundation.

5 27. Tomra shall reimburse CSPA in the total amount of \$40,000.00 to defray CSPA's  
6 investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and all other costs  
7 incurred as a result of investigating the activities at the Facility, bringing these matters to Tomra's  
8 attention, and negotiating a resolution of this action in the public interest. Such payment shall be  
9 made within fifteen (15) days of the Effective Date of the Consent Decree. The payment shall be  
10 made out to "Lozeau Drury LLP Attorney-Client Trust Account."

11 28. Tomra shall reimburse CSPA up to five thousand dollars (\$5,000) per year for three  
12 years for reasonable costs and fees associated with monitoring Tomra's compliance with this  
13 Consent Decree and evaluating any alternative treatment method proposed by Tomra pursuant to  
14 Paragraph 4 above. Monitoring activities include site inspections, review of water quality sampling  
15 reports, review of annual reports, discussion with representatives of Tomra concerning potential  
16 changes to compliance requirements, preparation and participation in meet and confer sessions and  
17 mediation, water quality sampling, etc. Three (3) annual payments shall be made payable to the  
18 "Lozeau Drury LLP Attorney-Client Trust Account" within thirty (30) days of receipt of an invoice  
19 from CSPA which contains a daily and hourly description of fees and costs incurred by CSPA to  
20 monitor implementation of the Consent Decree during the previous twelve (12) months.  
21

#### 22 **DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

23 29. The Effective Date shall be the date this Consent Decree is approved and entered by  
24 the Court. The Consent Decree shall continue in effect until October 1, 2013. This Court shall  
25 retain jurisdiction in this matter from the Effective Date through the date of its termination, for the  
26 purposes of enforcing the terms of this Consent Decree. In addition, following the date of  
27 termination of this Decree, this Court shall retain jurisdiction for the purposes of enforcing this  
28 Decree for any disputes which arose prior to the termination of the Consent Decree.



1 Termination Date of this Consent Decree.

2 34. The Settling Parties acknowledge that they are familiar with section 1542 of the  
3 California Civil Code, which provides:

4 A general release does not extend to claims which the creditor does not know or suspect  
5 to exist in his or her favor at the time of executing the release, which if known by him or  
6 her must have materially affected his or her settlement with the debtor.

7 Except as otherwise provided by this Consent Decree, the Settling Parties hereby waive and  
8 relinquish any rights or benefits they may have under California Civil Code section 1542 with  
9 respect to any other claims against each other arising from, or related to, the allegations and claims  
10 as set forth in the 60-Day Notice Letter and Complaint up to and including the Termination Date of  
11 this Consent Decree.

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

19 36. CSPA shall submit this Consent Decree to the U.S. EPA and the U.S. Department of  
20 Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days  
21 after the Effective Date of this Consent Decree for review consistent with 40 C.F.R. § 135.5. The  
22 Agencies' review period expires forty-five (45) days after receipt of the Consent Decree by both  
23 Agencies, as evidenced by the return receipts, copies of which shall be provided to Tomra upon  
24 receipt by CSPA. In the event that the Agencies comment negatively on the provisions of this  
25 Consent Decree, CSPA and Tomra agree to meet and confer to attempt to resolve the issue(s) raised  
26 by the Agencies. If CSPA and Tomra are unable to resolve any issue(s) raised by the Agencies in  
27 their comments, CSPA and Tomra agree to expeditiously seek a settlement conference with the  
28

1 Court-appointed mediator to resolve the issue(s).

2 **MISCELLANEOUS PROVISIONS**

3 37. The Consent Decree may be executed in one or more counterparts which, taken  
4 together, shall be deemed to constitute one and the same document.

5 38. In the event that any of the provisions of this Consent Decree is held by a court to be  
6 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

7 39. The language in all parts of this Consent Decree, unless otherwise stated, shall be  
8 construed according to its plain and ordinary meaning.

9 40. The undersigned are authorized to execute this Consent Decree on behalf of their  
10 respective parties and have read, understood and agreed to all of the terms and conditions of this  
11 Consent Decree.

12 41. All agreements, covenants, representations and warranties, express or implied, oral or  
13 written, of the Settling Parties concerning the subject matter of this Consent Decree are contained  
14 herein.

15 42. Any notices or documents required or provided for by this Consent Decree or related  
16 thereto that are to be provided to CSPA pursuant to this Consent Decree shall be e-mailed and sent  
17 by U.S. Mail, postage prepaid, and addressed as follows:

18  
19 Bill Jennings, Executive Director  
20 California Sportfishing Protection Alliance  
21 3536 Rainier Road  
22 Stockton, CA 95204  
23 deltakeep@aol.com

24 With copies sent to:

25 Michael R. Lozeau  
26 Lozeau Drury LLP  
27 1516 Oak Street, Suite 216  
28 Alameda, CA 94501  
michael@lozeaudrury.com

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Tomra pursuant to this Consent Decree shall be sent by e-mail and U.S. Mail,

1 postage prepaid, and addressed as follows:

2 Tomra Pacific, Inc.  
3 P.O. Drawer 1034  
4 Monticello, NY 12701  
5 Attn: Secretary

6 With copies sent to:

7 Ralph Robinson  
8 Wilson Elser Moskowitz Edelman & Dicker LLP  
9 525 Market Street, 17th Floor  
10 San Francisco, California 94105  
11 Ralph.robinson@wilsonelser.com

12 and

13 Walt Garigliano  
14 P.O. Box 1034  
15 Monticello, NY 12701  
16 Gariglianow.law@tomrana.com

17 Each party shall notify the other parties of any change in their contact information within 14 days of  
18 any such change.

19 43. Signatures of the Parties transmitted by facsimile or by e-mail shall be deemed  
20 binding.

21 44. No Party shall be considered to be in default in the performance of any of its  
22 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any act  
23 of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force  
24 Majeure event does not include normal inclement weather, such as anything less than or equal to a  
25 100 year/24 hour storm event or inability to pay. Any Party seeking to rely upon this paragraph  
26 shall have the burden of establishing that it could not reasonably have been expected to avoid, and  
27 which by exercise of due diligence has been unable to overcome, the Force Majeure.

28 45. If for any reason the Court should decline to approve this Consent Decree in the form  
presented, the Parties shall agree to work together to modify the Consent Decree within 30 days so  
that it is acceptable to the Court.

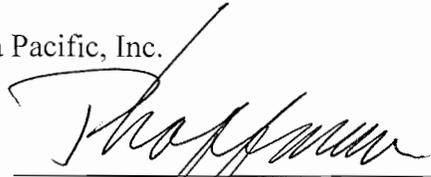
46. Nothing in this Consent Decree shall preclude Tomra from implementing protective measures for storm water drainage in excess of the protections set forth herein.

47. The Settling Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the Court for its approval and entry as a final judgment.

Dated: 12/9/2010

Tomra Pacific, Inc.

By:

  
Phil Hoffman, Acting President

Dated: \_\_\_\_\_

California Sportfishing Protection Alliance

By:

\_\_\_\_\_  
Bill Jennings, Executive Director

**APPROVED AND SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

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47. The Settling Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the Court for its approval and entry as a final judgment.

Dated: \_\_\_\_\_ Tomra Pacific, Inc.

By: \_\_\_\_\_

Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

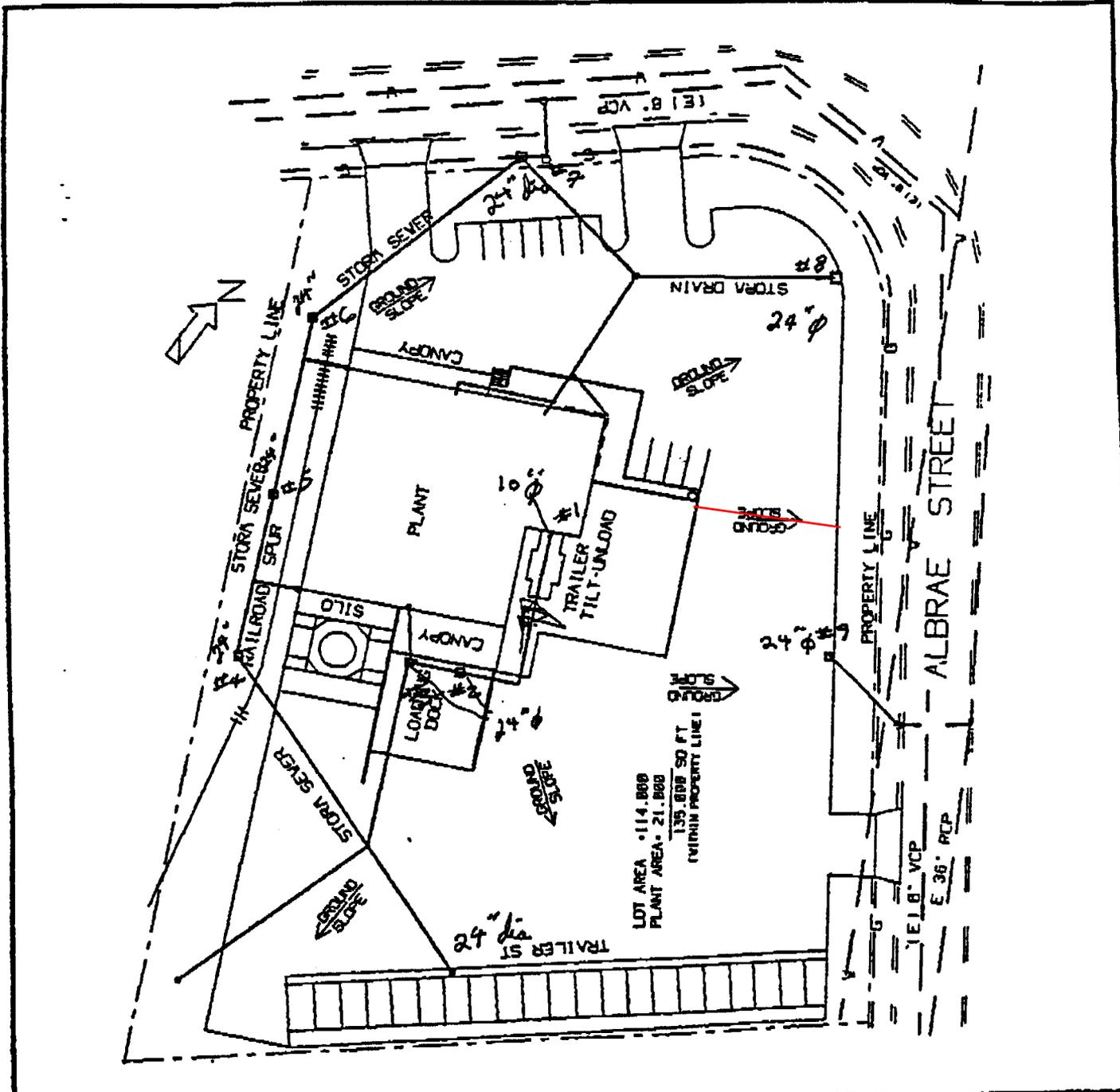
By: \_\_\_\_\_  
Bill Jennings, Executive Director

**APPROVED AND SO ORDERED.**

Date: \_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

# EXHIBIT 1

# NOTICE OF INTENT SITE MAP



<b>MAP INFORMATION</b> TYPE <u>UTILITY PLOT PLAN</u> NUMBER <u>Reynolds DWG #CC-98-401-959</u> SCALE <u>1" = 35'</u>		<b>STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD</b> FACILITY <u>Fremont Recycling Plant Reynolds Aluminum Recycling Co.</u> COUNTY <u>Div. of Reynolds Metals Company</u> <b>Alameda</b>	
DATE	DRAWN	CHECKED	
3/17/92	By: N.C.	N.C.	

# EXHIBIT 2

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

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

10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

12 UNITED STATES DISTRICT COURT E-filing  
13 NORTHERN DISTRICT OF CALIFORNIA

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

Case No. C10-00701  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES

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

BZ  
ADR

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:

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

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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

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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

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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

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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

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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 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,  
1992.

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

28 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](mailto: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](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:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
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  
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Andrew L. Packard  
Law Offices of Andrew L. Packard  
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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  
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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	

# EXHIBIT 3





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## TRITON Filter

### TRITON FILTER CATCH BASIN INSERT

[Print brochure](#)

REM has developed the TRITON Catch Basin Insert to help eliminate hydrocarbons and other contaminants such as antifreeze, metals, sand, silt and litter from storm water runoff.

The TRITON is designed to be inserted below the grate of storm drain inlets.



[\(click for larger view\)](#)

### Product Specification

Non-reactive High Density polyethylene plastic construction.

Round, Square, Rectangular and Custom models.

Filter Media Cartridges available for the removal of Hydrocarbons, Metals Antifreeze, Sand, Silt and Litter.

Media is non hazardous, per EPA and OSHA standards.

Easy servicing, removable Filter Media Cartridge allows for quick servicing.

Patented design with high nominal flow and high overflow capacities.

Easy to install in new and existing catch basins.

Maintenance contracts available.

Servicing of filters on a regular basis is a requirement to meet most local and state BMP's.

Meets Best Available Technology for use in Storm Water BMP (Best Management Practices).

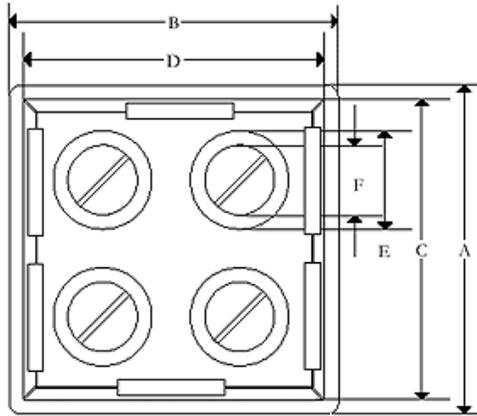
Media Cartridges can be interchanged with GEO-TRAP series as site conditions change.

### Related Links

[Product Brochure »](#)

[View MSDS of Filter Media »](#)

## Standard Dimensions



	A	B	C	D	E	F	G	Inserts
TR1212	13	13	11	11	6.75	3.5	5.5	1
TR1616	16.5	16.5	13.5	13.5	10.25	7.25	6.5	1
TR1818	19	19	13.5	13.5	10.5	7.25	6.5	1
TR1824	17.5	24	15	21	10.5	7.25	6.5	1
TR18RD	18		11		6.75	3.5	6.75	1
TR2024	19.5	23.5	17.5	21.5	10.5	7.25	6.5	1
TR24SR	23.75	26.5	21	21	14	11	11.5	1
TR2436	27	38	17	30	10.25	7.25	9	2
TR2448	23.25	52	21	46	14	11	11.5	2
TR24RD	24.5		21		14	11	11.5	1
TR3030	33	29	21	21	14	11	11.5	1
TR3636	40	40	34	34	10.25	7.25	9	4
TR4848	52	52	46	46	14	11	11.5	4

## Notes

1. All dimensions are in inches.
2. Dimension (G) is filter depth.
3. Units are constructed from High Density Polyethylene plastic with U.V. inhibitors.
4. Media Cartridges can be interchanged with GEO-TRAP series as site conditions change.
5. Low profile filters are also available for shallow catch basins.
6. **Custom sizes are available to fit most applications. Please call a distributor near you for details.**
7. Patent No. 6,217,757.

Made in  
the USA



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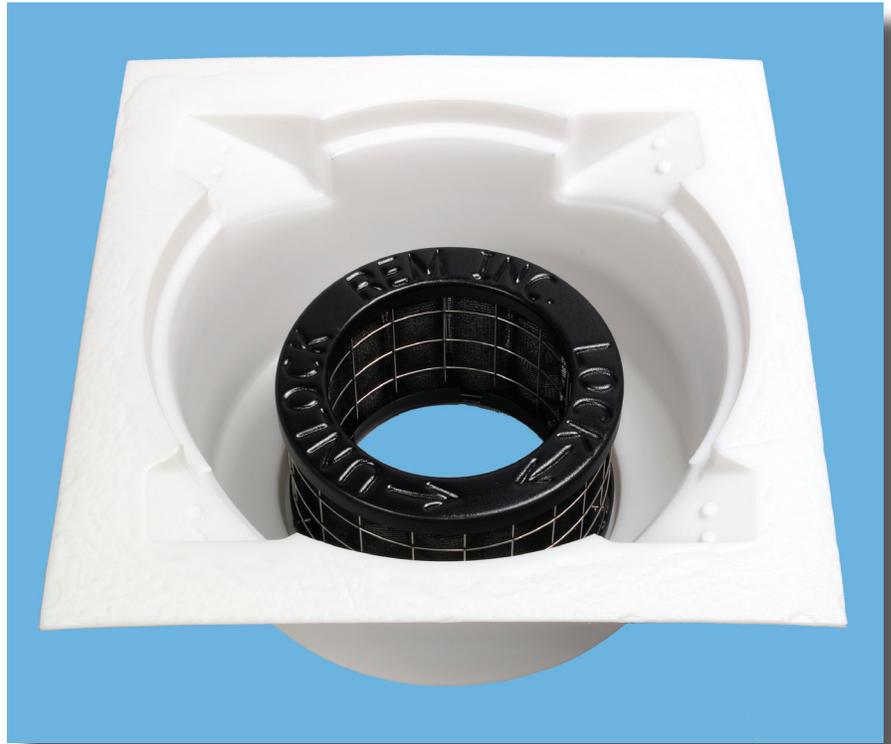
# TRITON FILTER™

## Product Specification

## CATCH BASIN FILTER INSERT

### THE TRITON FILTER

- Non-reactive High Density Polyethylene (HDPE) plastic construction, with U.V. inhibitors.
- Round, Square, Rectangular, Low Profile and Custom models.
- Dual Stage and Dual Capacity Filters are also available.
- Quick and easy servicing made available by replaceable Media-Paks.
- Filter Media-Pak available for the removal of hydrocarbons, metals, sand, silt, and litter.
- Disposable Filter Media-Pak is constructed from durable geotextile, polypropylene fabric.
- Media-Pak can be interchanged with Geo-Trap series as site conditions change.
- Media is nonhazardous, per EPA and OSHA standards.
- Patented design with high nominal flow and high overflow capacities.
- Easy to install in new and existing catch basins.
- Meets Best Available Technology (BAT) for use in Stormwater Best Management Practices (BMP).
- Maintenance contracts, including recycling of all spent absorbents are available.
- Servicing of filters on a regular basis is a requirement to meet most local and state BMP's.



MODEL TR24SR

### TRITON CATCH BASIN FILTER INSERT

REM has developed the TRITON Catch Basin Insert to help eliminate hydrocarbons and other contaminants such as metals, sand, silt and litter from stormwater runoff.

The TRITON is designed to be inserted below the grate of storm drain inlets.

**Patent No. 6,217,757**

### REM - HELPING KEEP YOUR WATERWAYS CLEAN

*The most recent National Water Quality Inventory reports that runoff from urban areas is the leading source of impairments to surveyed estuaries and the third largest source of water quality impairments to surveyed lakes. In addition, population and development trends indicate that by 2010 more than half of the Nation will live in coastal towns and cities. Runoff from these rapidly growing urban areas will continue to degrade coastal waters.<sup>1</sup>*

<sup>1</sup>Environmental Protection Agency's Office of Water EPA841-F-96-004G

Revel Environmental Manufacturing, Inc.

[www.remfilters.com](http://www.remfilters.com)

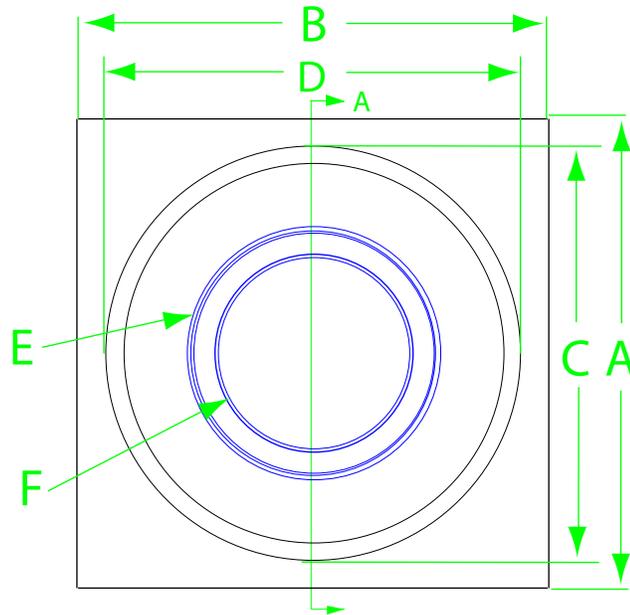
888-526-4736



# TRITON FILTER™ CATCH BASIN INSERT

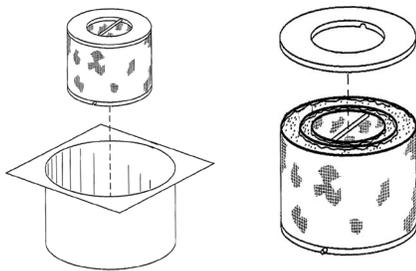


TRITON MEDIA CARTRIDGE



DIMENSIONAL SPECIFICATIONS

## STANDARD DIMENSIONS (IN INCHES)



### NOTES:

1. All dimensions are in inches.
2. Units are constructed from High Density Polyethylene Plastic with U.V. inhibitors.
3. Media Cartridges can be inter-changed with Geo-Trap series as site conditions change.
4. Low profile filters are also available for shallow catch basins.
5. Custom sizes are available to fit most applications. Please call a distributor near you for details.
6. Optional TDG series Trash & Debris Guard also available.
7. Dual stage and dual capacity filters also available.

	A*	B*	C	D	E	F	G*	CARTRIDGES
<b>TR1212</b>	13	13	11	11	6.75	3.75	5.5	1
<b>TR1212RD</b>	13 DIA.		11 DIA.		6.75	3.75	5.5	1
<b>TR1616</b>	18	18	14	14	6.75	3.75	10.5	1
<b>TR1818</b>	20	20	17	17	10.5	7.25	10.5	1
<b>TR18RD</b>	20 DIA.		16.5 DIA.		6.75	3.75	10.5	1
<b>TR1824</b>	19	25	17	17	10.5	7.25	10.5	1
<b>TR2024</b>	21	25	17	17	10.5	7.25	10.5	1
<b>TR24SR</b>	26	26	21	21	14	11	13	1
<b>TR24RD</b>	26 DIA.		21 DIA.		14	11	13	1
<b>TR2436</b>	26	38	17	30	10.5	7.25	10.5	2
<b>TR3030</b>	33	33	21	21	14	11	13	1
<b>TR36SR</b>	40	40	33	33	14	11	22	1 TALL
<b>TR36RD</b>	40 DIA.		30 DIA.		14	11	22	1 TALL
<b>TR2448</b>	26	52	21	42	14	11	13	2
<b>TR4848</b>	52	52	42	42	24	20	22	1 TALL

\* Note: Dimension "G" is filter depth.  
Dimensions "A" and "B" can be adjusted to suit varying sizes of catch basins.



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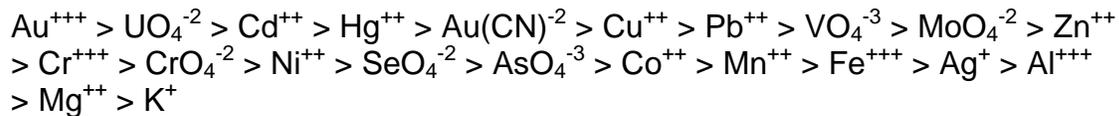
## MetalZorb™

Treated Sponge Product for the Removal of Heavy Metal Contaminants

### General Properties

Treated Sponge Products Type M and M-TU have selective affinity for heavy metals in cationic and anionic states in aqueous solution. MetalZorb functions by forming coordination complexes preferentially with ions of the transition group Heavy Metals, namely metals classified in groups IB through VIII B of the Periodic Table of Elements; and generally characterized as having incomplete inner rings of electrons or otherwise capable of existing in more than one valence state.

By comparison, metals such as calcium, magnesium and aluminum, having complete inner rings of electrons and single valence states, show poor affinity for the treated sponge. MetalZorb provides ligand sites that surround the metal and form a coordination complex. The order of its affinity for metals is influenced by solution parameters such as pH, temperature and total ionic content. However, the following affinity sequence of some representative ions can generally be expected to be:



When employed as a stationary bed in a tank or column through which an aqueous stream flows, absorption bands are produced generally in accordance with the affinity sequence. In certain situations, strongly absorbed species will displace less strongly absorbed species. This characteristic may be employed to separate ions. When utilized in an upward flow fluidized bed or in rotating drums, simultaneous absorption of a number of ionic species will occur in amounts relative to the initial concentration and affinity sequence.

At saturation, the MetalZorb will contain between 6% and 15% (dry weight) of absorbed ions, depending on the affinity of the sponge product for the ion and its molecular weight. This represents an absorption capacity of about 1.0 – 2.0 molar equivalent of absorbed ion/dry gram of sponge product. The presence of commonly abundant innocuous ions such as  $\text{Na}^+$ ,  $\text{K}^+$ ,  $\text{Ca}^{++}$ ,  $\text{Mg}^{++}$ ,  $\text{Al}^{+++}$ ,  $\text{Cl}^-$ ,  $\text{SO}_4^{-2}$  will not adversely affect the sponge's absorption capacity.

## **Applications**

These treated sponge absorbents are highly effective for removing toxic species in low ppm and ppb concentrations from industrial wastewater, groundwater, stormwater, landfill leachate, municipal process streams and drainage waters. They are particularly useful in remediating waters that contain less than 20 ppm of targeted species, especially where treated effluent concentrations below 1 ppb are sought. Absorbent sponge is typically employed as a polishing operation following an upstream treatment such as a precipitation process. MetalZorb is uniquely capable of absorbing metals such as mercury, lead, nickel and cadmium, which are chelated by EDTA or other synthetic or naturally occurring chelating agents.

For applications where the solutions are high temperature or exposed to extreme pH ranges, please contact CleanWay for technical support.

## **Statement of Non-Warranty**

All data, statements and recommendations in this publication are based on the best information available and believed to be reliable. CleanWay assumes no obligation or liability, and makes no express or implied warranty with regard to the data, statements and recommendation given or applications covered or results obtained. All information is given and accepted at the user's risk. Although no adverse physiological effects have been observed in the handling of the treated sponge product, users assume all risk of use and handling. No statement shall be taken as a recommendation of action or use without independent investigation. Users are reminded to practice such safety precautions as may be indicated in the particular circumstances to protect health and property.

**Patents issued and pending.**