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11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

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

14 CALIFORNIA SPORTFISHING  
15 PROTECTION ALLIANCE, a non-profit  
16 corporation,  
17 Plaintiff,  
18 vs.  
19 COOK CONCRETE PRODUCTS, INC., a  
20 California corporation, and L. EDWARD  
21 SHAW, an individual,  
22 Defendants,

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

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND CIVIL  
PENALTIES

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

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

24 **I. JURISDICTION AND VENUE**

25 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
26 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
27 or “the Act”) against Cook Concrete Products, Inc. and Mr. L. Edward Shaw (hereafter  
28 “Defendants”). This Court has subject matter jurisdiction over the parties and the subject

1 matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A),  
2 and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief  
3 requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in  
4 case of actual controversy and further necessary relief based on such a declaration), 33  
5 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d), 1365(a) (civil  
6 penalties).

7 2. On or about March 2, 2010, Plaintiff provided notice of Defendants' violations  
8 of the Act, and of its intention to file suit against Defendants, to the Administrator of the  
9 United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region  
10 IX; the Executive Director of the State Water Resources Control Board ("State Board"); the  
11 Executive Officer of the Regional Water Quality Control Board, Central Valley Region  
12 ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).  
13 A true and correct copy of CSPA's notice letter is attached as Exhibit A, and is incorporated  
14 by reference.

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

21 4. Venue is proper in the Eastern District of California pursuant to Section  
22 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
23 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in  
24 Sacramento, California because the source of the violations is located within Shasta County.

## 25 **II. INTRODUCTION**

26 5. This complaint seeks relief for Defendants' discharges of pollutants from an  
27 approximately five-acre concrete manufacturing facility ("the Facility") owned and/or  
28 operated by Defendants Cook Concrete Products, Inc., and L. Edward Shaw. The Facility

1 discharges surface water to the storm water conveyance system for the City of Redding. The  
2 storm water conveyance system for the City of Redding ultimately discharges into the  
3 Sacramento River, and the Sacramento-San Joaquin Delta. Defendants' discharges of  
4 pollutants from the Facility are in violation of the Act and the State of California's General  
5 Industrial Permit for storm water discharges, State Water Resources Control Board ("State  
6 Board") Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-  
7 12-DWQ and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge  
8 Elimination System ("NPDES") General Permit No. CAS000001 (hereinafter "General  
9 Permit" or "Permit"). Defendants' violations of the filing, monitoring, reporting, discharge  
10 and management practice requirements, and other procedural and substantive requirements  
11 of the General Permit and the Act are ongoing and continuous.

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

19 **III. PARTIES**

20 7. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
21 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
22 California with its main office in Stockton, California. CSPA has approximately 2,000  
23 members who live, recreate and work in and around waters of the State of California,  
24 including the Sacramento River, and the Sacramento-San Joaquin Delta. CSPA is dedicated  
25 to the preservation, protection, and defense of the environment, and the wildlife and the  
26 natural resources of all waters of California. To further these goals, CSPA actively seeks  
27 federal and state agency implementation of the Act and other laws and, where necessary,  
28 directly initiates enforcement actions on behalf of itself and its members.

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

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

15 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
16 Cook Concrete Products, Inc. is a corporation organized under the laws of the State of  
17 California, and that Defendant L. Edward Shaw is the President of Cook Concrete Products,  
18 Inc., and that he is the Operator of the Facility. Accordingly, Defendants own and/or operate  
19 the Facility.

20 **IV. STATUTORY BACKGROUND**

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

26 12. Section 402(p) of the Act establishes a framework for regulating municipal  
27 and industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p).  
28 States with approved NPDES permit programs are authorized by Section 402(p) to regulate

1 industrial storm water discharges through individual permits issued to dischargers and/or  
2 through the issuance of a single, statewide general permit applicable to all industrial storm  
3 water dischargers. 33 U.S.C. § 1342.

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

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

12 15. The General Permit contains certain absolute prohibitions. Discharge  
13 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
14 other than storm water ("non-storm water discharges"), which are not otherwise regulated by  
15 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
16 General Permit prohibits storm water discharges and authorized non-storm water discharges  
17 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water  
18 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
19 ground water that adversely impact human health or the environment. Receiving Water  
20 Limitation C(2) of the General Permit prohibits storm water discharges that cause or  
21 contribute to an exceedance of any applicable water quality standards contained in a  
22 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

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

1 17. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
2 or prevent pollutants in its storm water discharges through implementation of the Best  
3 Available Technology Economically Achievable (“BAT”) for toxic and nonconventional  
4 pollutants and the Best Conventional Pollutant Control Technology (“BCT”) for  
5 conventional pollutants. BAT and BCT include both nonstructural and structural measures.  
6 General Permit, Section A(8).

7 18. EPA has established Benchmark Levels as guidelines for determining  
8 whether a facility discharging industrial storm water has implemented the requisite BAT and  
9 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
10 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –  
11 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –  
12 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L.  
13 The State Water Quality Control Board has proposed adding a benchmark level for specific  
14 conductance of 200 µmhos/cm.

15 19. Dischargers must develop and implement a Storm Water Pollution  
16 Prevention Plan (“SWPPP”) before October 1, 1992. The SWPPP must comply with the  
17 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
18 (1) a narrative description and summary of all industrial activity, potential sources of  
19 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
20 water conveyance system, associated points of discharge, direction of flow, areas of  
21 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
22 storm water management practices, best management practices (“BMPs”) and preventive  
23 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
24 the location where Significant Materials are being shipped, stored, received and handled, as  
25 well as the typical quantities of such materials and the frequency with which they are  
26 handled; (5) a description of potential pollutant sources including industrial processes,  
27 material handling and storage areas, dust and particulate generating activities; (6) a summary  
28 of storm water sampling points; (7) a description of individuals and their responsibilities for

1 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of  
2 potential pollutant sources including industrial processes, material handling and storage  
3 areas, and dust and particulate generating activities; (9) a description of significant spills and  
4 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description  
5 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an  
6 assessment of potential pollutant sources at the Facility and a description of the BMPs to be  
7 implemented at the Facility that will reduce or prevent pollutants in storm water discharges  
8 and authorized non-storm water discharges, including structural BMPs where non-structural  
9 BMPs are not effective (Section A(7), (8)).

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

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

28 22. The General Permit requires dischargers commencing industrial activities

1 before October 1, 1992 to develop and implement an adequate written Monitoring and  
2 Reporting Program no later than October 1, 1992. Existing facilities covered under the  
3 General Permit must implement all necessary revisions to their monitoring programs no later  
4 than August 1, 1997.

5 23. The General Permit also requires dischargers to submit yearly “Annual  
6 Reports” to the Regional Board. As part of their monitoring program, dischargers must  
7 identify all storm water discharge locations that produce a significant storm water discharge,  
8 evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether  
9 pollution control measures set out in the SWPPP are adequate and properly implemented.  
10 Dischargers must then conduct visual observations of these discharge locations for at least  
11 one storm per month during the wet season (October through May) and record their findings  
12 in their Annual Report. Dischargers must also collect and analyze storm water samples from  
13 at least two storms per year. Section B requires dischargers to sample and analyze during the  
14 wet season for basic parameters such as pH, total suspended solids (“TSS”), specific  
15 conductance, and total organic content (“TOC”) or oil and grease, certain industry-specific  
16 parameters, and toxic chemicals and other pollutants likely to be in the storm water  
17 discharged from the facility. Section B(5) and Table D of the General Permit requires  
18 dischargers whose industrial activities fall within SIC Code 3272 to analyze their storm  
19 water discharge samples for iron. Dischargers must also conduct dry season visual  
20 observations to identify sources of non-storm water pollution. The monitoring and reporting  
21 program requires dischargers to certify, based upon the annual site inspections, that the  
22 facility is in compliance with the General Permit and report any non-compliance, and  
23 contains additional requirements as well.

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

27 25. The term “discharge of pollutants” means “any addition of any pollutant to  
28 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to

1 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
2 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

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

6 27. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §  
7 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.  
8 Waters of the United States include man-made water bodies that are tributary to waters that  
9 are navigable in fact. Waters of the United States include ephemeral waters that are tributary  
10 to waters that are navigable in fact.

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

20 29. The Regional Board has established water quality standards for the  
21 Sacramento River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan  
22 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin  
23 Plan.

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

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

1 through March 31.

2 32. The Basin Plan provides that “[w]aters shall not contain chemical constituents  
3 in concentrations that adversely affect beneficial uses.”

4 33. The Basin Plan provides that “[a]t a minimum, water designated for use as  
5 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
6 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the  
7 Sacramento River and the Delta have been designated by the State Board for use as  
8 municipal and domestic supply.

9 **V. STATEMENT OF FACTS**

10 34. Defendants operate an approximately five-acre concrete manufacturing  
11 facility located at 5461 Eastside Road, in Redding, California (the "Facility"). The Facility  
12 discharges surface water to the storm water conveyance system for the City of Redding. The  
13 storm water conveyance system for the City of Redding ultimately discharges into the  
14 Sacramento River, and the Sacramento-San Joaquin Delta.

15 35. The Facility is classified under Standard Industrial Classification (“SIC”)  
16 Code 3272 (“Precast Concrete Manufacturing”). The main industrial activities occurring at  
17 the Facility involve the receiving, storing and handling of aggregate materials for the  
18 manufacture of concrete. Other activities at the Facility include the use, storage, and  
19 maintenance of motorized vehicles, including trucks used to haul materials to and from the  
20 Facility. Many of these activities occur outside in areas that are exposed to storm water and  
21 storm flows due to the lack of overhead coverage, functional berms and other storm water  
22 controls. Plaintiff is informed and believes that Defendants’ storm water controls, to the  
23 extent any exist, fail to achieve BAT and BCT standards.

24 36. The management practices at the Facility are wholly inadequate to prevent  
25 the sources of contamination described above from causing the discharge of pollutants to  
26 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential  
27 structural controls such as grading, berming and roofing to prevent rainfall and storm water  
28 flows from coming into contact with these and other sources of contaminants, thereby

1 allowing storm water to flow over and across these materials and become contaminated prior  
2 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the  
3 discharge of water once contaminated. The Facility also lacks an adequate filtration system  
4 to treat water once it is contaminated.

5 37. Vehicle traffic at the Facility tracks dust and particulate matter, increasing  
6 the discharges of polluted water and mud into waters of the United States.

7 38. During rain events storm water laden with pollutants flows from the Facility  
8 into the storm water conveyance system for the City of Redding, which ultimately discharges  
9 to the Sacramento River, and the Sacramento-San Joaquin Delta.

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

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

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

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

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

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

28 45. Plaintiff is informed and believes, and thereupon alleges, that all of the

1 violations alleged in this Complaint are ongoing and continuing.

2 **VI. CLAIMS FOR RELIEF**

3 **FIRST CAUSE OF ACTION**

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

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

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

16 48. Plaintiff is informed and believes, and thereupon alleges, that since at least  
17 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to  
18 the storm water conveyance system for the City of Redding, the Sacramento River, and the  
19 Sacramento-San Joaquin Delta in violation of the General Permit.

20 49. During every significant rain event, storm water flowing over and through  
21 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
22 Facility to the storm water conveyance system for the City of Redding, the Sacramento  
23 River, and the Sacramento-San Joaquin Delta.

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

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

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

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

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

12 **SECOND CAUSE OF ACTION**

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

15 54. Plaintiff incorporates the allegations contained in the above paragraphs as  
16 though fully set forth herein.

17 55. Section A and Provision E of the General Permit requires dischargers of  
18 storm water associated with industrial activity to develop and implement an adequate Storm  
19 Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992.

20 56. Defendants have failed to develop and implement an adequate SWPPP for  
21 the Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for  
22 the Facility is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,  
23 including waste materials, without appropriate best management practices; the continued  
24 exposure of significant quantities of industrial material to storm water flows; the failure to  
25 either treat storm water prior to discharge or to implement effective containment practices;  
26 and the continued discharge of storm water pollutants from the Facility at levels in excess of  
27 EPA benchmark values and other applicable water quality standards.

28 57. Defendants have further failed to update the Facility's SWPPP in response to  
the analytical results of the Facility's storm water monitoring as required by the General

1 Permit.

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

5 59. Defendants have been in violation of the SWPPP requirement every day since  
6 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to  
7 develop and fully implement an adequate SWPPP for the Facility.

8 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

9 **THIRD CAUSE OF ACTION**

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

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

14 61. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
15 require dischargers to reduce or prevent pollutants in their storm water discharges through  
16 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
17 pollutants.

18 62. Defendants have failed to implement BAT and BCT at the Facility for its  
19 discharges of total suspended solids, iron, pH, specific conductance, and unmonitored  
20 pollutants in violation of Effluent Limitation B(3) of the General Permit.

21 63. Each day since March 2, 2005 that Defendants have failed to develop and  
22 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
23 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

24 64. Defendants have been in violation of the BAT and BCT requirements every day  
25 since at least March 2, 2005. Defendants continue to be in violation of the BAT and BCT  
26 requirements each day that they fail to develop and fully implement an adequate BAT and  
27 BCT for the Facility.

**FOURTH CAUSE OF ACTION**

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

65. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

66. Section B of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement a monitoring and reporting program (including, among other things, sampling and analysis of discharges) no later than October 1, 1992.

67. Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendants' ongoing failures to develop and implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their continuing failure to collect and analyze storm water samples from all discharge locations, their continuing failure to analyze storm water samples for all toxic chemicals and other pollutants likely to be present in the Facility's storm water discharges in significant quantities, and/or their failure to file required Annual Reports with the Regional Board which provide required information concerning the Facility's visual observations and storm water sampling and analysis.

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

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

**VII. RELIEF REQUESTED**

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

- a. Declare Defendants to have violated and to be in violation of the Act as alleged herein;
- b. Enjoin Defendants from discharging pollutants from the Facility and to the surface waters surrounding and downstream from the Facility;

1 c. Enjoin Defendants from further violating the substantive and procedural  
2 requirements of the General Permit;

3 d. Order Defendants to pay civil penalties of \$32,500 per day per violation for  
4 all violations occurring after March 15, 2004, and \$37,500 per day per violation for all  
5 violations occurring after January 12, 2009, for each violation of the Act pursuant to Sections  
6 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4  
7 (pp. 200-202) (Dec. 31, 1996);

8 e. Order Defendants to take appropriate actions to restore the quality of  
9 navigable waters impaired by their activities;

10 f. Award Plaintiffs' costs (including reasonable attorney, witness, and  
11 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

12 g. Award any such other and further relief as this Court may deem appropriate.  
13  
14

15 Dated: May 3, 2010

Respectfully Submitted,

LAW OFFICES OF ANDREW L. PACKARD

18 By: /s/ Erik Roper

19 Erik M. Roper  
20 Attorneys for Plaintiff  
21 CALIFORNIA SPORTFISHING  
22 PROTECTION ALLIANCE  
23  
24  
25  
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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

March 2, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. L. Edward Shaw, President  
Cook Concrete Products, Inc.  
5461 Eastside Road  
Redding, CA 96001

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

Dear Mr. Shaw:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Cook Concrete Products, Inc. ("Cook Concrete") concrete manufacturing facility located at 5461 Eastside Road in Redding, California ("the Facility"). The WDID identification number for the Facility is 5R45I009117. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of Cook Concrete Products, Inc.

This letter addresses Cook Concrete's unlawful discharges of pollutants from the Facility to the storm water conveyance system for the City of Redding, which ultimately flows into the Sacramento River and the Sacramento - San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

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

March 2, 2010

Page 2 of 13

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Cook Concrete is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Cook Concrete 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 Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

Cook Concrete is a concrete manufacturing facility located in Redding, California. The facility is used to receive, store, handle and transport aggregate materials for the manufacture of concrete. Other activities at the facility include the use, storage, and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to and from the facility.

On or about September 18, 1992, Cook Concrete submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as a concrete manufacturing facility under Standard Industrial Classification code 3272 (“Precast Concrete Manufacturing”). The Facility collects and discharges storm water from its approximately five-acre industrial site through at least one discharge point to the local storm water conveyance system, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

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

March 2, 2010

Page 3 of 13

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

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

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

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Cook Concrete: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmho/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are discharged from

March 2, 2010

Page 4 of 13

the Facility, including but not limited to, copper – 0.0636 mg/L; lead – 0.0816 mg/L; and zinc – 0.117 mg/L.

## **II. Pollutant Discharges in Violation of the NPDES Permit.**

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

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 Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On May 18, and 23, 2007, the Regional Water Quality Control Board, Region 5, sent Cook Concrete letters (collectively, “the May 2007 letters”) conveying its conclusion that Cook Concrete’s 2005-2006 Annual Report contained evidence that the BMPs then in effect were “not sufficient to reduce pollutant concentrations below [EPA] benchmark levels.” The May 2007 letters informed Cook Concrete that its 2005-2006 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered Cook Concrete to: (1) Identify sources of pollutants at the Facility that contributed to the exceedance(s); (2) Review current BMPs; and (3) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants. The Board also requested that the Facility’s SWPPP and Monitoring Plan be updated to reflect these changes.

Cook Concrete responded to these concerns with a June 29, 2007 letter concurrently submitted with its 2006-2007 Annual Report. Specifically, in its June 29, 2007 letter, Cook Concrete explained how it would modify existing BMPs or implement additional BMPs to reduce or eliminate its discharge of pollutants which contribute to its reported exceedances of benchmarks for Specific Conductance (EC), Iron (Fe), Total Suspended Solids (TSS), and pH. Based on its review of available public documents, CSPA is informed and believes that Cook Concrete continues to discharge these very

March 2, 2010

Page 5 of 13

same pollutants in excess of benchmarks and that Cook Concrete has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. Cook Concrete’s ongoing violations are discussed further below.

**A. Cook Concrete Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

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

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

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of Applicable EPA Benchmarks**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
11/03/2005	Yard Drain	TSS	191 mg/L	100 mg/L
05/19/2006	Yard Drain	TSS	109 mg/L	100 mg/L
10/04/2006	Yard Drain	TSS	114 mg/L	100 mg/L
10/12/2007	Yard Drain	TSS	142 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Proposed EPA Benchmark**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
05/04/2005	Yard Drain	Spec. Con.	7330 µmho/cm	200 µmhos/cm
11/03/2005	Yard Drain	Spec. Con.	209 µmho/cm	200 µmhos/cm
05/19/2006	Yard Drain	Spec. Con.	2770 µmho/cm	200 µmhos/cm
10/04/2006	Yard Drain	Spec. Con.	527 µmho/cm	200 µmhos/cm
03/26/2007	Yard Drain	Spec. Con.	600 µmho/cm	200 µmhos/cm
10/12/2007	Yard Drain	Spec. Con.	225 µmho/cm	200 µmhos/cm
04/22/2008	Yard Drain	Spec. Con.	1540 µmho/cm	200 µmhos/cm

**3. Discharges of Storm Water with a pH in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
05/04/2005	Yard Drain	pH	9.79	6.0 – 9.0
11/03/2005	Yard Drain	pH	9.08	6.0 – 9.0
05/19/2006	Yard Drain	pH	9.56	6.0 – 9.0
10/04/2006	Yard Drain	pH	9.73	6.0 – 9.0
10/12/2007	Yard Drain	pH	9.19	6.0 – 9.0
04/22/2008	Yard Drain	pH	9.28	6.0 – 9.0

**4. Discharges of Storm Water with Iron (Fe) in Excess of Applicable EPA Benchmark**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
05/04/2005	Yard Drain	Fe	1.25	1 mg/L
11/03/2005	Yard Drain	Fe	7.05	1 mg/L
10/04/2006	Yard Drain	Fe	2.21	1 mg/L
03/26/2007	Yard Drain	Fe	7.04	1 mg/L
10/12/2007	Yard Drain	Fe	4.88	1 mg/L
04/22/2008	Yard Drain	Fe	1.57	1 mg/L

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

CSPA is informed and believes that Cook Concrete has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least March 2, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since March 2, 2005, 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 Cook Concrete has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (EC), Iron (Fe), and pH, and other unmonitored pollutants in violation of

March 2, 2010

Page 7 of 13

Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General 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, Cook Concrete is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 2, 2005.

**B. Cook Concrete Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as Cook Concrete, designated under SIC 3272 are also required to sample for Iron (Fe). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that Cook Concrete has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Cook Concrete has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, Cook Concrete has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Cook Concrete is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since March 2, 2005. These violations are set forth in greater detail below:

March 2, 2010

Page 8 of 13

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

Based on its review of publicly available documents, CSPA is informed and believes that Cook Concrete has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one discharge point currently designated by Cook Concrete. This failure to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

**2. Cook Concrete Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water Permit.**

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires Cook Concrete to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit also requires facilities such as Cook Concrete which are designated as SIC 3272 to analyze their storm water discharge for Iron (Fe). Further, based on its investigation, CSPA is informed and believes that Cook Concrete has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. Cook Concrete's failure to monitor these pollutants extends back to at least March 2, 2005. Cook Concrete's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. Cook Concrete Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since March 2, 2005.**

CSPA is informed and believes that available documents demonstrate Cook Concrete's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Cook Concrete is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since March 2, 2005.

March 2, 2010

Page 9 of 13

**C. Cook Concrete Has Failed to Implement BAT and BCT.**

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

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

Cook Concrete was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Cook Concrete has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that Cook Concrete fails to implement BAT and BCT. Cook Concrete is subject to penalties for violations of the Order and the Act occurring since March 2, 2005.

**D. Cook Concrete Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) 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 Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT

March 2, 2010

Page 10 of 13

(Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

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

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Cook Concrete has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Cook Concrete has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Based on its investigation CSPA is informed and believes that the revised SWPPP filed by Cook Concrete on June 29, 2007, fails to include any of the required maps, including, but not limited to, a Facility map. Cook Concrete has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that Cook Concrete fails to develop and implement an effective SWPPP. Cook Concrete is subject to penalties for violations of the Order and the Act occurring since March 2, 2005.

**E. Cook Concrete Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by

March 2, 2010

Page 11 of 13

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

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

Based on CSPA's review of available documents, Cook Concrete was aware of high levels of these pollutants prior to March 2, 2005. Likewise, Cook Concrete has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Cook Concrete has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since March 2, 2005, and will continue to be in violation every day that Cook Concrete fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Cook Concrete is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since March 2, 2005.

**F. Cook Concrete Has Failed to File Timely, True and Correct 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) and (10) and B(14).

CSPA's investigation indicates that Cook Concrete has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, Cook Concrete has failed to comply with the Permit and the Act consistently for at least

March 2, 2010

Page 12 of 13

the past five years; therefore, Cook Concrete has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Cook Concrete submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Cook Concrete's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Cook Concrete is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since March 2, 2005.

### **III. Persons Responsible for the Violations.**

CSPA puts Cook Concrete, including Mr. L. Edward Shaw, 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 Cook Concrete on notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Party.**

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

### **V. Counsel.**

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

Andrew L. Packard  
Erik M. Roper  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
E-mail: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

March 2, 2010

Page 13 of 13

## **VI. Penalties.**

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

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Cook Concrete and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

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

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

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

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

## ATTACHMENT A

**Notice of Intent to File Suit, Cook Concrete (Redding, CA)  
Significant Rain Events,\* March 2, 2005-March 2, 2010**

March 18 2005	Jan. 13 2006	Nov. 22 2006	Jan. 08 2008
March 19 2005	Jan. 14 2006	Nov. 26 2006	Jan. 09 2008
March 20 2005	Jan. 17 2006	Dec. 08 2006	Jan. 10 2008
March 21 2005	Jan. 18 2006	Dec. 09 2006	Jan. 12 2008
March 22 2005	Jan. 20 2006	Dec. 10 2006	Jan. 21 2008
March 23 2005	Jan. 28 2006	Dec. 11 2006	Jan. 24 2008
March 24 2005	Jan. 30 2006	Dec. 12 2006	Jan. 25 2008
March 27 2005	Feb. 01 2006	Dec. 13 2006	Jan. 26 2008
April 03 2005	Feb. 02 2006	Dec. 14 2006	Jan. 27 2008
April 07 2005	Feb. 04 2006	Dec. 21 2006	Jan. 29 2008
April 08 2005	Feb. 26 2006	Dec. 26 2006	Jan. 31 2008
April 23 2005	Feb. 27 2006	Dec. 27 2006	Feb. 02 2008
April 24 2005	Mar. 02 2006	Jan. 03 2007	Feb. 21 2008
April 30 2005	Mar. 03 2006	Feb. 07 2007	Feb. 22 2008
May 04 2005	Mar. 05 2006	Feb. 08 2007	Feb. 23 2008
May 05 2005	Mar. 06 2006	Feb. 09 2007	Feb. 24 2008
May 08 2005	Mar. 07 2006	Feb. 10 2007	Mar. 12 2008
May 09 2005	Mar. 12 2006	Feb. 22 2007	Mar. 28 2008
May 15 2005	Mar. 13 2006	Feb. 24 2007	April 22 2008
May 17 2005	Mar. 14 2006	Feb. 27 2007	May 24 2008
May 18 2005	Mar. 15 2006	Mar. 26 2007	Oct. 03 2008
Oct. 14 2005	Mar. 20 2006	April 11 2007	Oct. 04 2008
Oct. 26 2005	Mar. 23 2006	April 19 2007	Oct. 30 2008
Nov. 03 2005	Mar. 24 2006	April 21 2007	Oct. 31 2008
Nov. 07 2005	Mar. 25 2006	April 22 2007	Nov. 01 2008
Nov. 25 2005	Mar. 27 2006	May 01 2007	Nov. 02 2008
Nov. 28 2005	Mar. 28 2006	May 02 2007	Nov. 03 2008
Nov. 29 2005	Mar. 29 2006	May 03 2007	Nov. 08 2008
Nov. 30 2005	Mar. 31 2006	Oct. 09 2007	Dec. 14 2008
Dec. 01 2005	April 01 2006	Oct. 10 2007	Dec. 15 2008
Dec. 17 2005	April 02 2006	Oct. 12 2007	Dec. 18 2008
Dec. 18 2005	April 03 2006	Oct. 16 2007	Dec. 21 2008
Dec. 19 2005	April 05 2006	Oct. 19 2007	Dec. 24 2008
Dec. 20 2005	April 09 2006	Nov. 10 2007	Dec. 28 2008
Dec. 21 2005	April 10 2006	Nov. 19 2007	Jan. 02 2009
Dec. 22 2005	April 11 2006	Dec. 03 2007	Jan. 22 2009
Dec. 25 2005	April 12 2006	Dec. 04 2007	Jan. 24 2009
Dec. 26 2005	April 15 2006	Dec. 06 2007	Feb. 06 2009
Dec. 27 2005	April 16 2006	Dec. 18 2007	Feb. 08 2009
Dec. 28 2005	May 19 2006	Dec. 19 2007	Feb. 10 2009
Dec. 29 2005	May 21 2006	Dec. 20 2007	Feb. 11 2009
Dec. 30 2005	Oct. 04 2006	Dec. 27 2007	Feb. 13 2009
Dec. 31 2005	Nov. 02 2006	Dec. 28 2007	Feb. 14 2009
Jan. 01 2006	Nov. 03 2006	Dec. 29 2007	Feb. 15 2009
Jan. 03 2006	Nov. 11 2006	Jan. 03 2008	Feb. 16 2009
Jan. 04 2006	Nov. 12 2006	Jan. 04 2008	Feb. 17 2009
Jan. 10 2006	Nov. 13 2006	Jan. 05 2008	Feb. 18 2009
Jan. 11 2006	Nov. 16 2006	Jan. 06 2008	Feb. 22 2009

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

ATTACHMENT A

**Notice of Intent to File Suit, Cook Concrete (Redding, CA)  
Significant Rain Events,\* March 2, 2005-March 2, 2010**

Feb.	25	2009
Mar.	01	2009
Mar.	03	2009
April	09	2009
April	24	2009
May	01	2009
May	02	2009
May	03	2009
May	04	2009
May	06	2009
Oct.	13	2009
Oct.	19	2009
Nov.	06	2009
Nov.	17	2009
Nov.	20	2009
Dec.	11	2009
Dec.	12	2009
Dec.	15	2009
Dec.	16	2009
Dec.	20	2009
Dec.	21	2009
Dec.	27	2009
Dec.	29	2009
Jan.	01	2010
Jan.	12	2010
Jan.	13	2010
Jan.	16	2010
Jan.	17	2010
Jan.	18	2010
Jan.	19	2010
Jan.	20	2010
Jan.	21	2010
Jan.	23	2010
Jan.	24	2010
Jan.	25	2010
Feb.	01	2010
Feb.	04	2010
Feb.	06	2010
Feb.	09	2010
Feb.	21	2010
Feb.	23	2010
Feb.	24	2010
Feb.	26	2010

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