

1 ANDREW L. PACKARD (Bar No. 168690)
2 ERIK M. ROPER (Bar No. 259756)
3 HALLIE B. ALBERT (Bar No. 258737)
4 Law Offices of Andrew L. Packard
5 100 Petaluma Blvd. N., Suite 301
6 Petaluma, CA 94952
7 Tel: (707) 763-7227
8 Fax: (707) 763-9227
9 E-mail: Andrew@packardlawoffices.com

6 ROBERT J. TUERCK (Bar No. 255741)
7 Jackson & Tuerck
8 P. O. Box 148
9 429 W. Main Street, Suite C
10 Quincy, CA 95971
11 Tel: (530) 283-0406
12 E-mail: bob@jacksontuerck.com

10 Attorneys for Plaintiff
11 CALIFORNIA SPORTFISHING
12 PROTECTION ALLIANCE

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

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

17 Plaintiff,

18 vs.

19 COOK CONCRETE PRODUCTS, INC., a
20 California corporation, and L. EDWARD
21 SHAW, an individual,

22 Defendants.

Case No. 2:10-CV-01083-JAM-DAD

[PROPOSED] CONSENT AGREEMENT

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

23 WHEREAS, Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
24 (hereinafter "CSPA" or "Plaintiff") is a non-profit public benefit corporation dedicated to the
25 preservation, protection, and defense of the environment, wildlife, and natural resources of
26 California's waters;

28 WHEREAS, Defendants COOK CONCRETE PRODUCTS, INC. (hereinafter "COOK") and

1 L. EDWARD SHAW (collectively, “Defendants”) own and/or operate an approximately 5-acre
2 precast concrete manufacturing facility located at 5461 Eastside Road in Redding, California (the
3 “Facility”). Defendant L. EDWARD SHAW is the Owner and President of COOK;

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

5 **WHEREAS**, the Facility collects and discharges storm water to a system of irrigation ditches
6 which may ultimately flow into the Sacramento River, and the Sacramento-San Joaquin Delta (a map
7 of the Facility, together with drawings demonstrating related storm water management features of the
8 Facility, are attached hereto as Exhibit A and incorporated herein by reference);

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

14 **WHEREAS**, on or about March 2, 2010, Plaintiff provided notice of Defendants’ violations of
15 the Act (“Notice Letter”), and of its intention to file suit against Defendants, to the Administrator of
16 the United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX;
17 the Executive Director of the State Water Resources Control Board (“State Board”); the Executive
18 Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional Board”); and
19 to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a true and correct copy of CSPA’s
20 Notice Letter is attached as Exhibit B and incorporated herein by reference);

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

23 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States
24 District Court, Eastern District of California, on May 3, 2010;

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

28

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

5 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States
6 District Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall
7 stipulate and request that the Court retain jurisdiction for the enforcement of this Agreement through
8 September 30, 2012, as provided herein;

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

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

13 **I. COMMITMENT OF DEFENDANTS**

14 **1. Compliance With General Permit & Clean Water Act.** Defendants shall at all times
15 operate the Facility in full compliance with the requirements of the General Permit and the Clean
16 Water Act, subject to any defenses available under the law.

17 **2. Defendants’ Implementation of Specific Storm Water Best Management Practices**
18 **On or Before October 15, 2010.** On or before October 15, 2010, Defendants shall complete the
19 implementations of the following storm water control measures/best management practices (“BMPs”):

20 (a) Defendants shall install two new precast concrete boxes referred to as Storm
21 Water Discharge Point Boxes (“SWDP #1”) and (“SWDP #2”) as set forth on Exhibit A, just
22 north of the southern border of the Facility over the Facility’s two underground storm water
23 drainage pipes at each of the points over the pipe on Cook property prior to going offsite.
24 SWDP #1 and SWDP #2 will have straw bale filters and serve as the Facility’s new storm
25 water monitoring and sampling locations;

26 (b) Defendants shall install, as set forth on Exhibit A, Sediment Trap & Oil Water
27 Separators (“ST/OWS # 1”) and (“ST/OWS #2 ”), a sediment trap (“ST”), two catch basin
28

1 sediment traps (“CB/ST #1”) and (“CB/ST # 2”), catch basins with wattle filters (“CBFs”), and
2 two concrete trench sediment traps (“CT/ST”) with wheat straw wattles or wheat straw bale
3 filters as needed (and either grates or removable lids to better facilitate maintenance), to
4 eliminate or reduce the concentration of pollutants in the Facility’s storm water discharges to a
5 level at or below EPA benchmark levels;

6 (c) Defendants shall engage in enhanced maintenance of the treatment control
7 BMPs discussed in subsection (b). Pursuant to this Agreement, Defendants agree to an
8 enhanced maintenance schedule whereby the Facility’s treatment control BMPs will be
9 inspected at least once a week during the Wet Season to ensure they are continuing to function
10 as intended. All written records of these maintenance inspections shall be kept with the
11 SWPPP. In the event that Defendants’ weekly inspection results in a finding that any of these
12 BMPs are no longer functioning as intended, Defendants shall repair (e.g., by cleaning it)
13 and/or replace the malfunctioning BMP as needed to ensure compliance with the Act and the
14 General Permit;

15 (d) Defendants shall monitor the level of sludge and sediment accumulation in the
16 Facility’s concrete wash water collection and sediment settling structure (“Settling Basin”) and
17 remove and properly dispose of it as needed to ensure the Facility does not discharge
18 unauthorized non-storm water (e.g., “wash water”) in violation of the General Permit;

19 (e) Defendants shall daily collect all concrete waste having accumulated on the
20 floors of the Facility’s concrete production areas and deposit all such wastes in one of the four
21 (4) fabricated steel hoppers located in the active production areas, and emptied as needed at the
22 west end of the Facility’s Settling Basin. The concrete waste deposited at the west end of the
23 Facility’s Settling Basin shall be properly disposed of off-site as needed to ensure the Settling
24 Basin retains sufficient capacity to properly contain storm water and non-storm water
25 generated at the Facility;

26 (f) Defendants shall require Facility personnel to wash tools which have
27 accumulated concrete waste from the manufacturing process in one of the four fabricated steel
28

1 hoppers located in the active production areas to prevent concrete residue from entering the
2 Facility's storm water drainage system;

3 (g) Defendants shall employ a regenerative sweeper to sweep all impervious
4 surfaces at the Facility the week prior to the onset of each Wet Season for the term of this
5 Agreement. During the Wet Seasons within the term of this Agreement, Defendants shall daily
6 monitor the 5-day national weather service forecast to anticipate when the Facility will most
7 likely next be subjected to a storm event likely to result in discharges from the Facility. In the
8 event that Defendants learn through their monitoring of national weather service forecasts that
9 the Facility is likely to be subjected to a storm event likely to result in discharges from the
10 Facility, Defendants shall make good faith efforts to arrange to lease a regenerative sweeper,
11 consistent with the use described above, at a time one to three days prior to the commencement
12 of such anticipated storm event. CSPA is mindful that the scarcity of available regenerative
13 sweepers in the Redding area may result in Defendants not being able to arrange to have a
14 regenerative sweeper employed at the Facility prior to the commencement of the anticipated
15 qualifying storm event, notwithstanding Defendants having made a good faith effort to do so.
16 In the event Defendants' good faith efforts to lease a regenerative sweeper prior to the
17 commencement of the anticipated storm event are unsuccessful, Defendants shall lease a
18 mechanical sweeper and/or have Facility personnel manually sweep the Facility's impervious
19 surfaces prior to the commencement of the anticipated storm. Consistent with the rationale for
20 employing a regenerative sweeper, the objective of this mechanical and/or manual sweeping
21 would be to remove pollutants from the Facility's impervious surfaces to the greatest extent
22 feasible prior to the storm to prevent such pollutants from discharging in the Facility's storm
23 water discharge;

24 (h) Defendants shall use shop vacuums and/or sweep within the covered production
25 areas of the Facility as needed to collect any dry waste (e.g., Styrofoam, concrete dust, iron
26 dust, etc.) produced as a result of manufacturing processes that accumulates on floors in these
27 areas so that the floors are efficiently cleaned up;

1 (i) Defendants shall replace the limestone gravel formerly covering the ground near
2 the Facility's high traffic product storage and staging areas outside the paved driveway along
3 the south side of the Facility with a much harder 1.5" washed crushed granite gravel. The
4 parties believe the use of this harder, washed granite gravel may significantly reduce the
5 amount of dust entering the Facility's storm drain system;

6 (j) Defendants shall install a roof over the entire rebar rack in front of the Facility's
7 rebar fabrication shop such that all materials on the rebar rack are prevented from coming into
8 contact with storm water at the Facility;

9 (k) Defendants shall remove and properly dispose of obsolete rusty materials from
10 the Facility;

11 (l) Defendants shall daily ensure Facility shop/production personnel
12 contemporaneously sweep up dust, metal filings, welding slag and any other potential pollutant
13 generated as a result of manufacturing processes in the Facility's production and fabrication
14 areas to prevent these materials from entering the Facility's storm water drainage system;

15 (m) Defendants shall update the Facility SWPPP and the SWPPP map to reflect
16 storm water flow vectors, the new sampling locations described above in subsection (a) and the
17 location and type of BMPs employed throughout the Facility;

18 (n) Defendants shall create storm water monitoring and inspection checklist forms
19 and include these as appendices to the updated SWPPP;

20 (o) Defendants shall update the Facility SWPPP to include a detailed discussion of
21 the storm water management training provided to Facility personnel and the storm water
22 monitoring and sampling regimen adhered to by Facility personnel;

23 (p) Defendants shall annually re-train all Facility personnel within the month of
24 September on how to properly manage storm water and how to properly follow and implement
25 the Facility SWPPP. This training will require Facility personnel to receive training in, among
26 other subjects, the proper use of spill kits and the location of such materials within the Facility.
27 Defendants shall maintain a record of these trainings with the Facility SWPPP;
28

1 **3. SWPPP Amendments/Additional BMPs.** Within 30 days of mutual execution of this
2 Consent Agreement, Defendants shall transmit to CSPA the formally amended SWPPP for the
3 Facility. This amended SWPPP shall incorporate all of the relevant requirements of this Consent
4 Agreement, as well as the revised Facility map attached hereto as Exhibit A.

5 **4. Sampling Frequency.** Defendants shall collect and analyze samples from four (4)
6 storm events, as qualified in the General Permit¹ for sampling purposes, in each of the two Wet
7 Seasons occurring during the term of this Consent Agreement (2010-2011 and 2011-2012). The storm
8 water sample results shall be compared with the values set forth in Exhibit C, attached hereto, and
9 incorporated herein by reference. If the results of any such samples exceed the parameter values set
10 forth in Exhibit C, Defendants shall comply with the "Action Memorandum" requirements set forth
11 below. In addition, if by March 1, 2011, Defendants have not sampled and analyzed storm water
12 discharges from four (4) qualifying storm events, Defendants shall sample and analyze two (2)
13 additional storm water discharges, regardless of whether they originate from qualifying storm events
14 as set forth in the General Permit.

15 **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents
16 listed in Exhibit C by a laboratory accredited by the State of California. All samples collected from
17 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample "hold time" is
18 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual
19 constituents at or below the values specified on Exhibit C. Sampling results shall be provided to
20 CSPA within fourteen (14) days of Defendants' receipt of the laboratory report from each sampling
21 event pursuant to the Notice provisions below.

22 **6. "Action Memorandum" Trigger; CSPA Review Of "Action Memorandum";**
23 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4
24 above exceeds the evaluation levels set forth in Exhibit C, or if Defendants fail to collect and analyze
25

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

1 samples from four (4) storm events, Defendants shall prepare a written statement discussing the
2 exceedance(s) and/or failure to collect and analyze samples from four (4) storm events, the possible
3 cause and/or source of the exceedance(s), and additional measures that will be taken to address and
4 eliminate the problem and future exceedances (“Action Memorandum”). The Action Memorandum
5 shall be provided to CSPA upon completion and in any case no later than 30 days after Defendants’
6 receipt of the sample results at issue. Recognizing that a SWPPP is an ongoing iterative process meant
7 to encourage innovative BMPs, such additional measures may include, but are not limited to, taking
8 samples, further material improvements to the storm water collection and discharge system, changing
9 the frequency of Facility sweeping, changing the type and extent of storm water filtration media or
10 modifying other industrial activities or management practices at the Facility. Such additional
11 measures, to the extent feasible, shall be implemented immediately and in no event later than 60 days
12 after the due date of the Action Memorandum. Within seven (7) days of implementation, the Facility
13 SWPPP shall be amended to include all additional BMP measures designated in the Action
14 Memorandum. CSPA may review and comment on an Action Memorandum and suggest any
15 additional pollution prevention measures it believes are appropriate; however, CSPA’s failure to do so
16 shall not be deemed to constitute agreement with the proposals set forth in the Action Memorandum.
17 Upon request by CSPA, Defendants agree to meet and confer in good faith (at the Facility, if requested
18 by Plaintiff) regarding the contents and sufficiency of the Action Memorandum.

19 **7. Inspections During The Term Of This Agreement.** In addition to any site
20 inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as
21 set forth above, Defendants shall permit representatives of CSPA to perform up to three (3) physical
22 inspections of the Facility during the term of this Consent Agreement. These inspections shall be
23 performed by CSPA’s counsel and consultants and may include sampling, photographing, and/or
24 videotaping and CSPA shall provide Defendants with a copy of all sampling reports, photographs
25 and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such physical
26 inspection, except that Defendants shall have the right to deny access if circumstances would make the
27 inspection unduly burdensome and pose significant interference with business operations or any
28

1 party/attorney, or the safety of individuals. In such case, Defendants shall specify at least three (3)
2 dates within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed.
3 Defendants shall not make any alterations to Facility conditions during the period between receiving
4 CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's inspection that Defendants
5 would not otherwise have made but for receiving notice of CSPA's request to conduct a physical
6 inspection of the Facility, excepting any actions taken in compliance with any applicable laws or
7 regulations. Nothing herein shall be construed to prevent Defendants from continuing to implement
8 any BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

9 **8. Defendants' Communications with Regional and State Boards.** During the term of
10 this Consent Agreement, Defendants shall provide CSPA with copies of all documents submitted to
11 the Regional Board or the State Board concerning storm water discharges from the Facility, including,
12 but not limited to, all documents and reports submitted to the Regional Board and/or State Board as
13 required by the General Permit. Such documents and reports shall be provided to CSPA pursuant to
14 the Notice provisions herein (at ¶ 24) and contemporaneously with Defendants' submission to such
15 agencies.

16 **9. SWPPP Amendments.** Defendants shall provide CSPA with a copy of any
17 amendments to the Facility SWPPP made during the term of the Consent Agreement within fourteen
18 (14) days of such amendment.

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

20 **10.** As mitigation of the Clean Water Act violations alleged in CSPA's Complaint,
21 Defendants agree to pay the sum of \$35,000 within seven (7) days after the Court Approval Date to
22 the Rose Foundation for Communities and the Environment for projects to improve water quality in
23 the Sacramento River and/or the Sacramento-San Joaquin River Delta. The Rose Foundation shall
24 provide notice to the SETTLING PARTIES setting forth the recipient and purpose of the funds.

25 **11.** Defendants agree to reimburse CSPA in the amount of \$28,750 to defray CSPA's
26 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs incurred
27 as a result of investigating the activities at the Facility, bringing the Action and negotiating a
28

1 resolution in the public interest. Such payment shall be made to the Law Offices of Andrew L.
2 Packard Attorney-Client Trust Account within seven (7) days after the Court Approval Date.

3 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,
4 expert, consultant and attorneys' fees and costs associated with monitoring Defendants' compliance
5 with this Consent Agreement, Defendants agree to contribute \$6,250 for each of the two years covered
6 by this Consent Agreement, to a compliance monitoring fund maintained by CSPA. Compliance
7 monitoring activities may include, but shall not be limited to, site inspections, review of water quality
8 sampling reports, review of annual reports, discussions with representatives of Defendants concerning
9 the Action Memoranda referenced above, and potential changes to compliance requirements herein,
10 preparation for and participation in meet-and-confer sessions, water quality sampling and analysis, and
11 compliance-related activities. The first such payment in the amount of \$6,250 shall be made payable
12 to the Law Offices of Andrew L. Packard Attorney-Client Trust Account within seven (7) days of the
13 Court Approval Date, with the second installment of \$6,250 due on June 1, 2011.

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

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

28

1 **14. CSPA Waiver and Release.** Upon Court approval and entry of this Consent
2 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,
3 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their
4 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their
5 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other
6 representatives (each a “Released Defendant Party”) from, and waives all claims which arise from or
7 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,
8 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or
9 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged
10 failure of Defendants to comply with the Clean Water Act at the Facility, up to the Effective Date of
11 this Consent Decree.

12 **15. Defendants’ Waiver and Release.** Defendants, on their own behalf and on behalf of
13 those Released Defendant Parties under its control, releases CSPA (and its officers, directors,
14 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and
15 its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain
16 to the Action, including all claims for fees (including fees of attorneys, experts, and others), costs,
17 expenses or any other sum incurred or claimed or which could have been claimed for matters
18 associated with or related to the Action.

19 **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and
20 Order that shall provide that:

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

23 b. the Court shall retain and have jurisdiction over the Parties with respect to
24 disputes arising under this Agreement through September 30, 2012. Nothing in this Consent
25 Agreement shall be construed as a waiver of any party’s right to appeal from an order that
26 arises from an action to enforce the terms of this Consent Agreement.

27
28

1 **IV. MISCELLANEOUS PROVISIONS**

2 17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged
3 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants
4 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,
5 nor shall compliance with this Consent Agreement constitute or be construed as an admission by
6 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph
7 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under
8 this Consent Agreement.

9 18. The Consent Agreement shall terminate on September 30, 2012.

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

13 20. In the event that any one of the provisions of this Consent Agreement is held by a court
14 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15 21. The language in all parts of this Consent Agreement, unless otherwise stated, shall be
16 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed
17 pursuant to California law, without regarding to conflict of law principles.

18 22. The undersigned are authorized to execute this Consent Agreement on behalf of their
19 respective parties and have read, understood and agreed to be bound by all of the terms and conditions
20 of this Consent Agreement.

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

26 24. **Notices.** Any notices or documents required or provided for by this Consent
27 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement
28

1 shall be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the
2 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

3 Bill Jennings, Executive Director
4 California Sportfishing Protection Alliance
5 3536 Rainier Avenue
6 Stockton, CA 95204
7 E-mail: DeltaKeep@aol.com

8 With copies sent to:

9 Andrew L. Packard
10 Law Offices of Andrew L. Packard
11 100 Petaluma Boulevard North, Suite 301
12 Petaluma, CA 94952
13 Tel: (707) 763-7227
14 E-mail: Andrew@packardlawoffices.com
15 Erik@packardlawoffices.com
16 Hallie@packardlawoffices.com

17 And to:

18 Robert J. Tuerck, Esq.
19 Jackson & Tuerck
20 P.O. Box 148
21 429 W. Main Street, Suite C
22 Quincy, CA 95971
23 Tel: (530) 283-0406
24 Fax: 530-283-0416
25 E-mail: Bob@JacksonTuerck.com

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

29 L. Edward Shaw
30 Cook Concrete Products, Inc.
31 5461 Eastside Road
32 Redding, CA 96001
33 Tel: (530) 243-2562
34 Fax: (530) 243-6881

35 With copies sent to:

36 Diane G. Kindermann
37 Abbott & Kindermann, LLP
38 2100 Twenty First Street
Sacramento, CA 95818
Tel: (916) 456-9595

1 Fax: (916) 456-9599
E-mail: dkindermann@aklandlaw.com

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

3 25. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

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

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

17 28. This Consent Agreement shall be deemed to have been drafted equally by the Parties,
18 and shall not be interpreted for or against any Settling Party on the ground that any such party drafted
19 it.

20 29. This Consent Agreement and the attachments contain all of the terms and conditions
21 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede
22 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and
23 communications of the Parties, whether oral or written, respecting the matters covered by this Consent
24 Agreement. This Consent Agreement may be amended or modified only by a writing signed by the
25 Parties or their authorized representatives, and then by order of the Court.

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

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

8
9 Dated: 17 Sept 2010 California Sportfishing Protection Alliance
10
11 By: Bill Jennings
12 Bill Jennings, Executive Director

13 Dated: _____ Cook Concrete Products, Inc. and L. Edward Shaw
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15
16 By: _____
17 L. Edward Shaw, President
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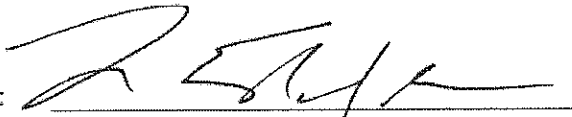
1 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,
2 or within such other period approved in writing by the Party making such allegation, which approval
3 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure
4 or, if the breach or default can be cured but is not capable of being cured within such five (5) day
5 period, has commenced and is diligently pursuing to completion such cure.

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

8
9 Dated: _____ California Sportfishing Protection Alliance

10
11 By: _____
12 Bill Jennings, Executive Director

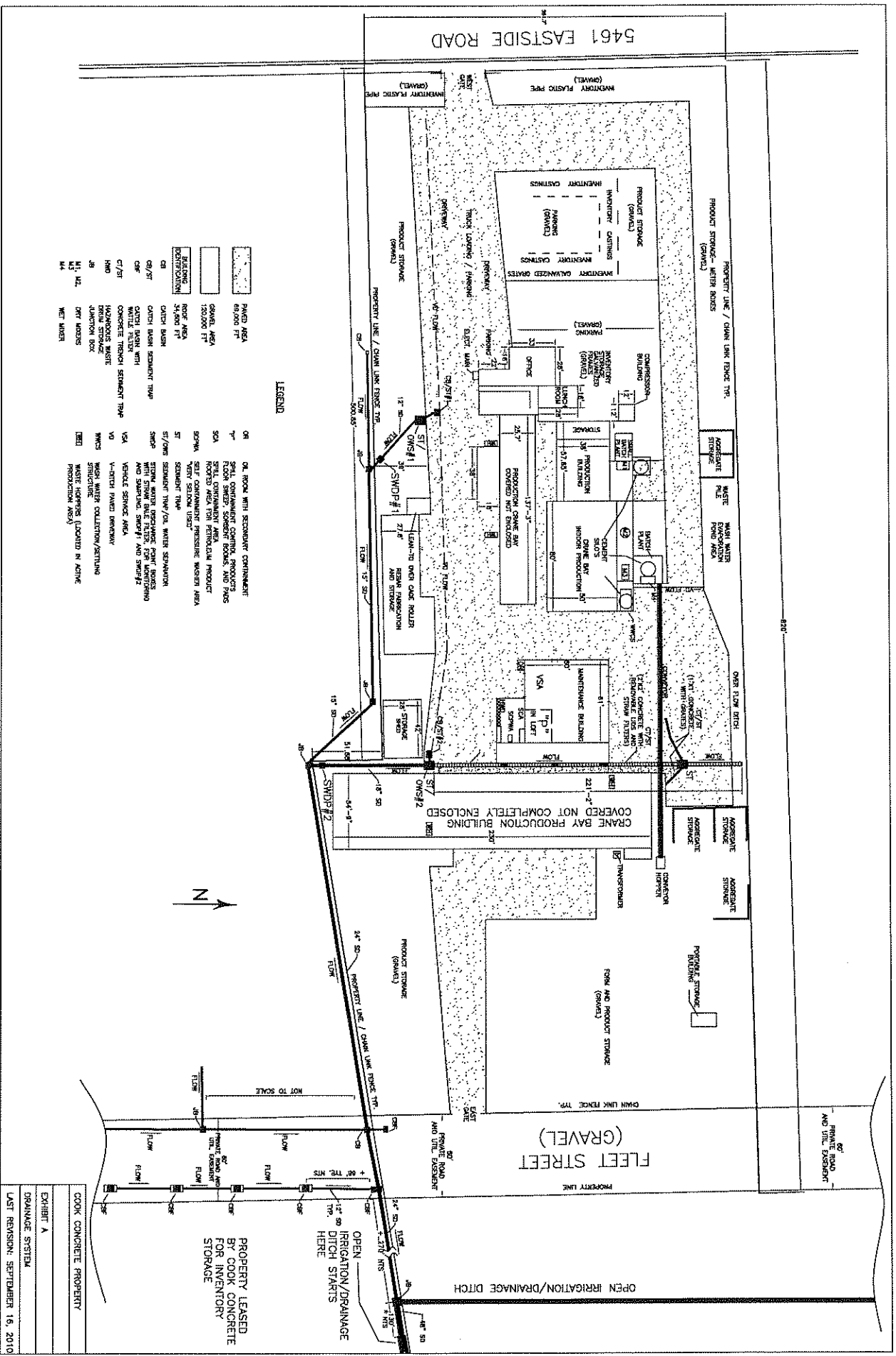
13 Dated: September 17, 2010 Cook Concrete Products, Inc. and L. Edward Shaw

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15 By: 
16 L. Edward Shaw, President

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EXHIBIT A – Facility Site Map & Related BMP Drawings



- LEGEND**
- OR OIL ROOM WITH SECONDARY CONTAINMENT
 - T* SPILL CONTAINMENT CONTROL PRODUCTS
 - SCA SPILL CONTAINMENT AREA
 - ROVED AREA FOR PERIODICAL PRODUCT
 - SCBWA SELF CONTAINMENT PRESSURE WASHING AREA
 - ST VERY SENSITIVE USE*
 - ST/OWS SECONDARY TYP/OIL WATER SEPARATOR
 - STMP STEEL WATER RESISTANCE POINT (PONDING AND SAMPLING SHEET) AND SHEET PZ
 - VSA VEHICLE SERVICE AREA
 - VO WASH WATER COLLECTION/SETTLING
 - WPCS WASTE PILES
 - DEBI DRAINAGE BASIN
 - PRODUCTION AREA
- PAVED AREA 60,000 FT²
 - GRAVEL AREA 150,000 FT²
 - ROOF AREA 24,000 FT²
 - CONCRETE 24,000 FT²
 - CB CATCH BASIN
 - CB/ST CATCH BASIN SECONDARY TRAP
 - CBF CATCH BASIN WITH FILTER
 - CBT/ST CONCRETE TRENCH SECONDARY TRAP
 - HMB HAZARDOUS WASTE JUNCTION BOX
 - DMV DMV ADDRESS
 - M4 MET METER

PROPERTY LEASED BY COOK CONCRETE FOR INVENTORY STORAGE

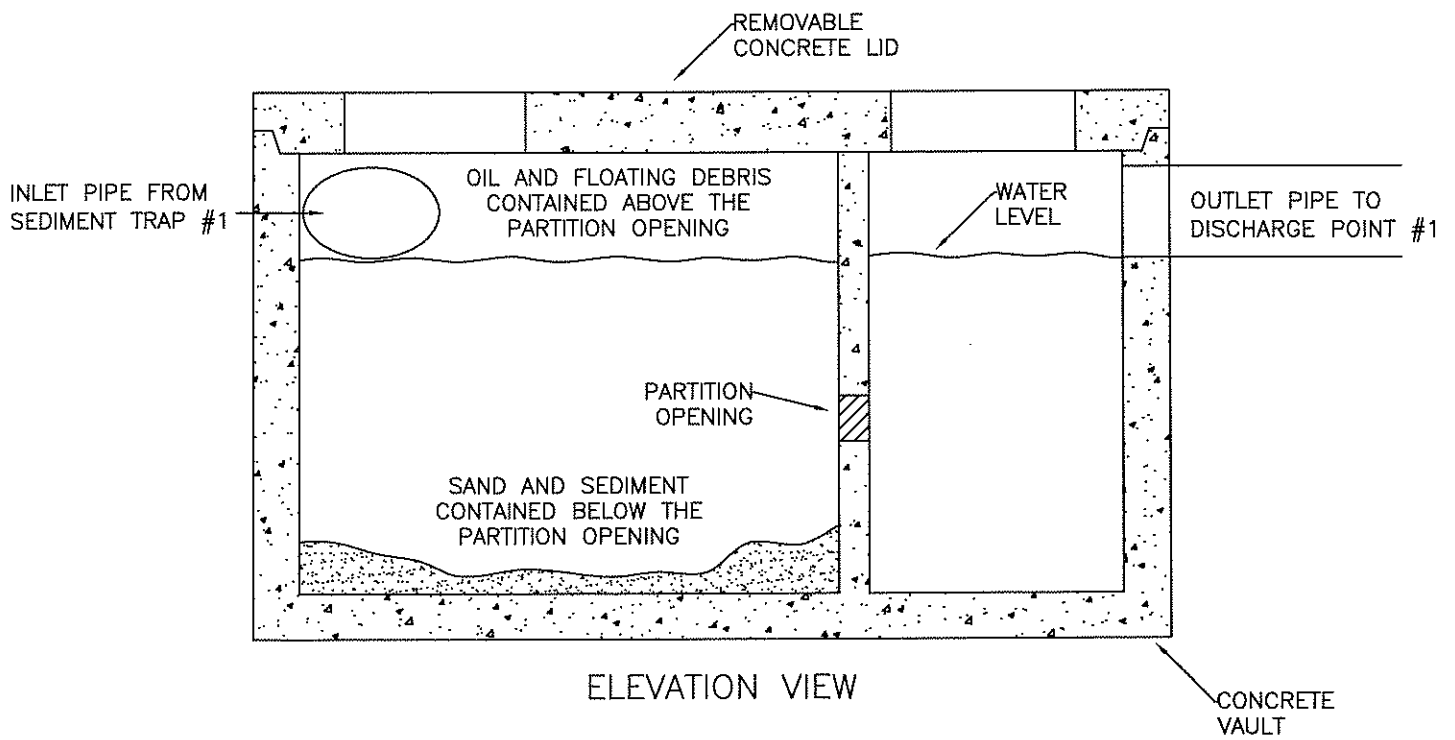
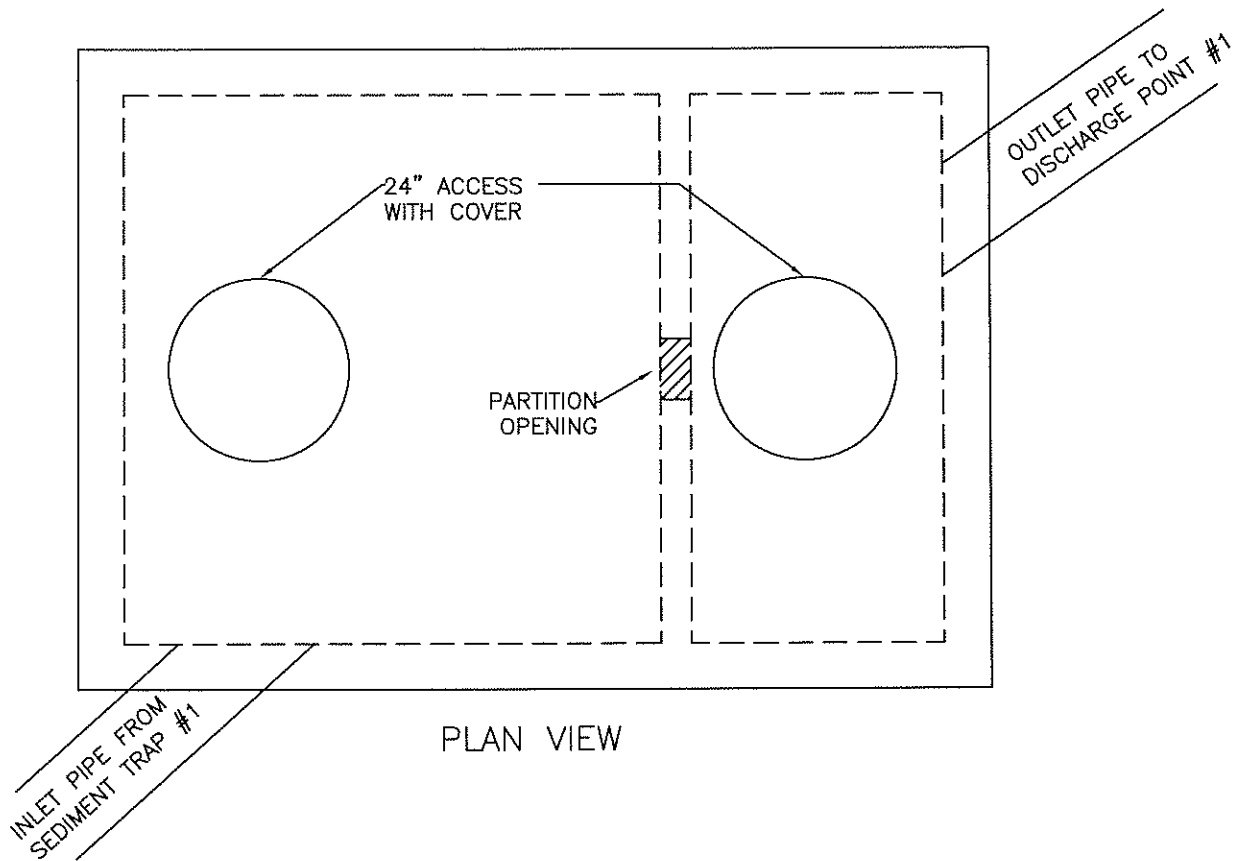
OPEN IRRIGATION/DRAINAGE DITCH STARTS HERE

COOK CONCRETE PROPERTY

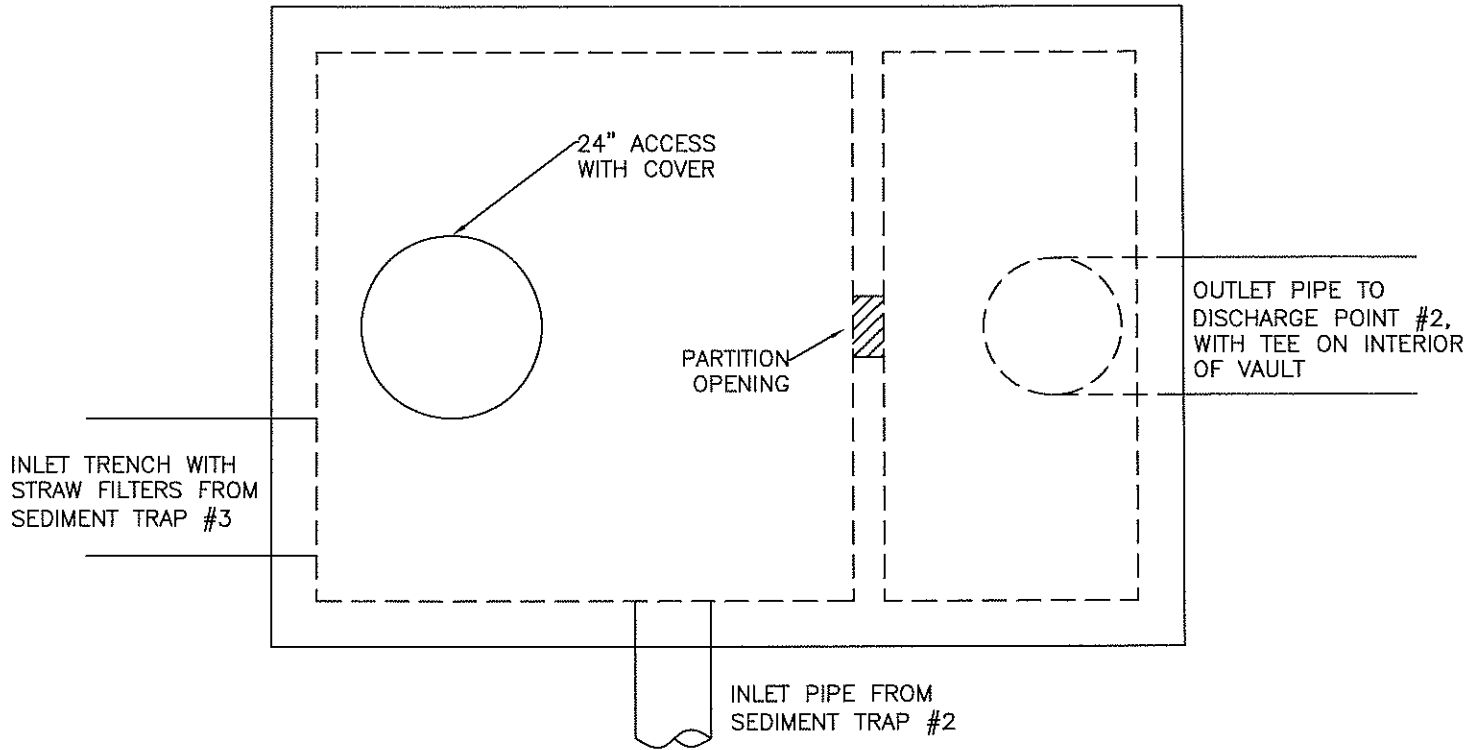
EXHIBIT A

DRAINAGE SYSTEM

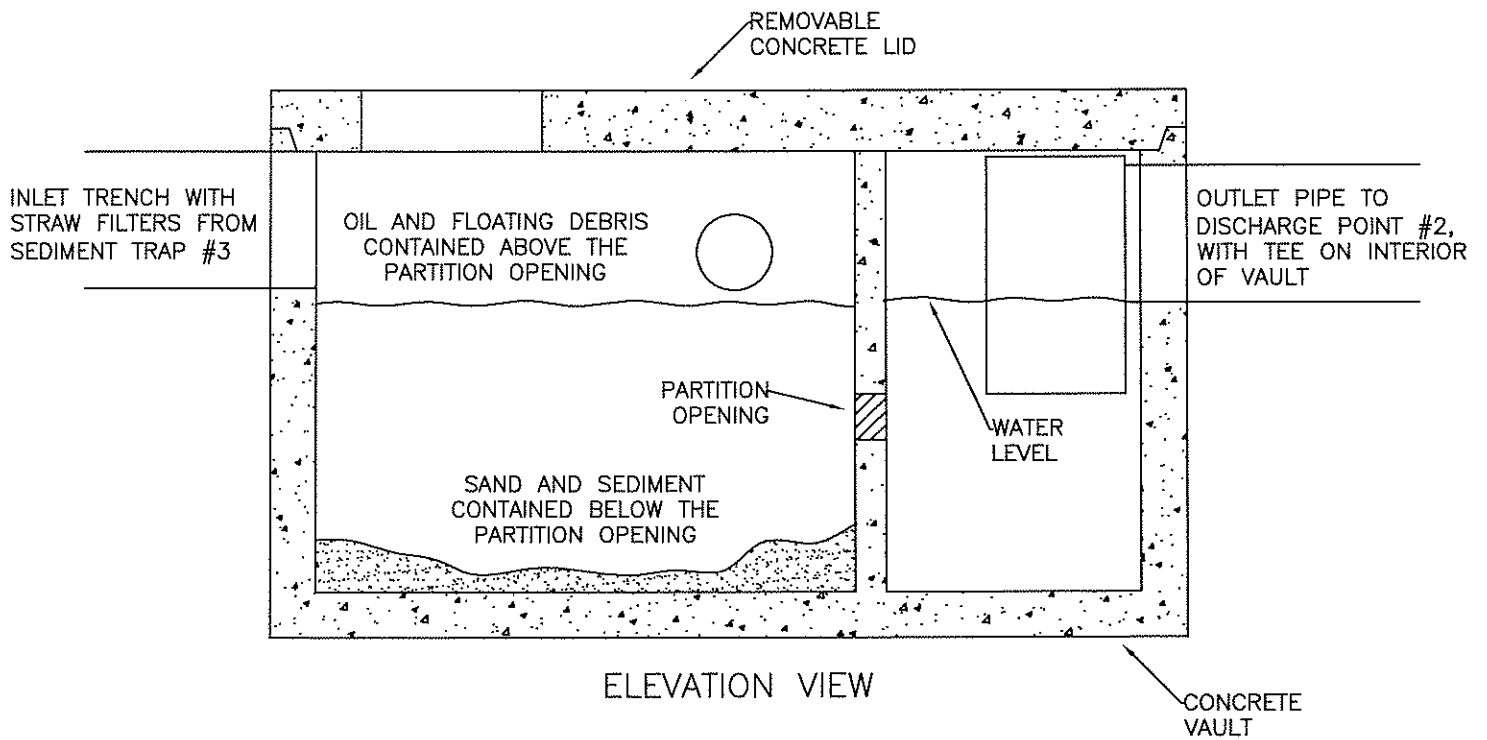
LAST REVISION: SEPTEMBER 16, 2010



SEDIMENT TRAP/OIL WATER SEPARATOR #1
(ST/OWS #1)

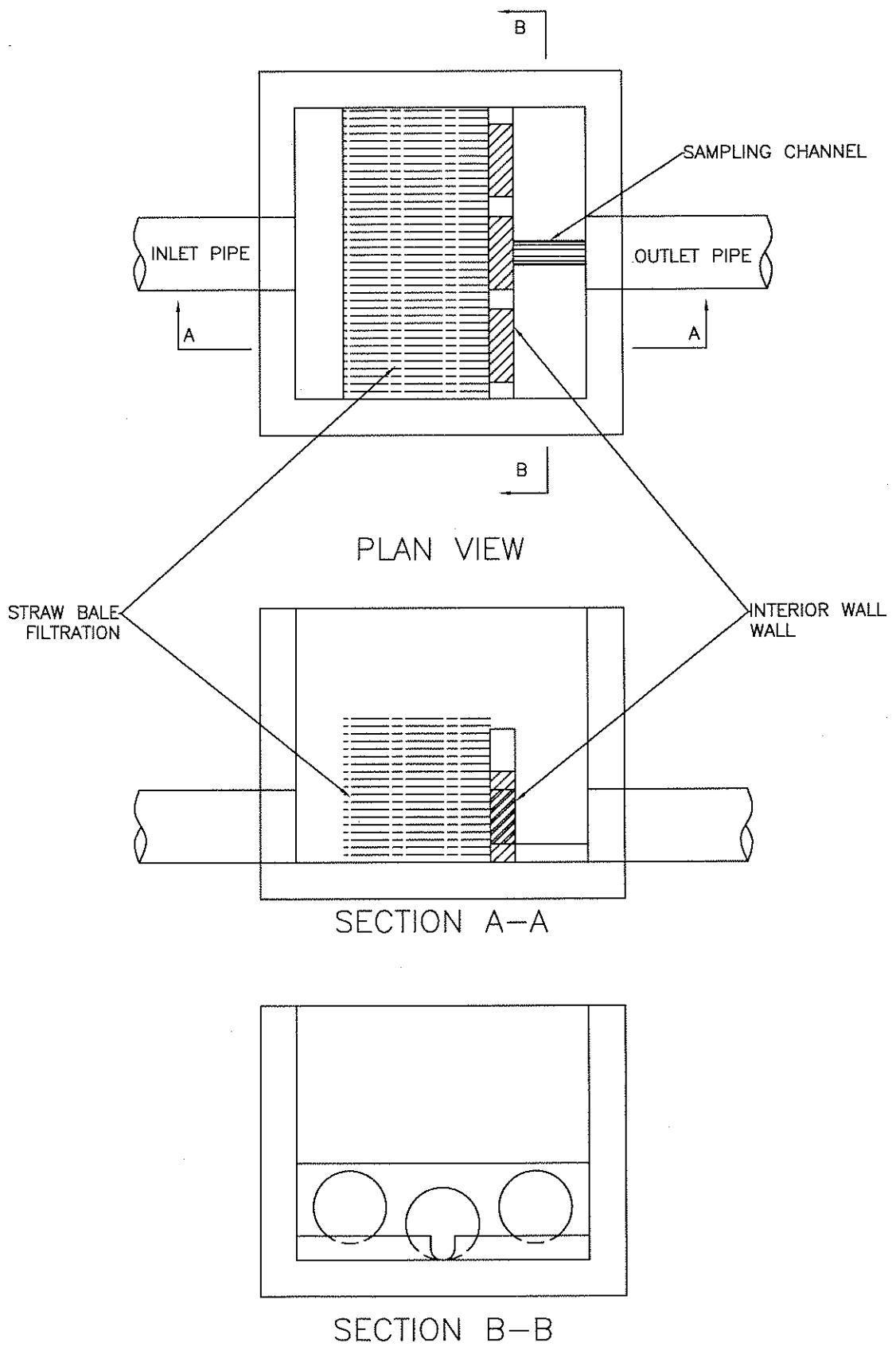


PLAN VIEW



ELEVATION VIEW

SEDIMENT TRAP/OIL WATER SEPARATOR #2
(ST/OWS #2)



STORM WATER DISCHARGE POINT
 BOX WITH STRAW BALE FILTER
 (SWDP #1 AND #2)

EXHIBIT B – Notice of Violation



California Sportfishing Protection Alliance
"An Advocate for Fisheries, Habitat and Water Quality"
3536 Rainier Avenue, Stockton, CA 95204
Tel: 209-464-5067, Fax: 209-464-1028, E: deltakcep@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.

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

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

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

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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
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

Date	Outfall	Parameter	Concentration in Discharge	Proposed Benchmark Value
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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
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

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:

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.

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

(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

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

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

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 black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

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

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

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

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

ATTACHMENT A
Notice of Intent to File Suit, 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.

EXHIBIT C

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	< 200 µmhos/cm
Total Suspended Solids	< 100 mg/L
Total Organic Carbon	< 110mg/L
Iron	< 1 mg/L