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11 Attorneys for Plaintiff
CALIFORNIA SPORTFISHING
12 PROTECTION ALLIANCE

13
14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

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

18 Plaintiff,

19 vs.

20 CONTECH CONSTRUCTION PRODUCTS,
21 INC. an Ohio corporation, and DAN MOODY,
an individual

22 Defendants.
23

Case No. 2:10-CV-00902-LKK-EFB

[PROPOSED] CONSENT AGREEMENT

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

24
25 **WHEREAS**, Defendant CONTECH CONSTRUCTION PRODUCTS, INC. (hereinafter
26 "CONTECH") owns an approximately 34-acre metal work facility, which manufactures metal
27

1 culvert pipe, located at 2245 Canyon Creek Road in Redding, California (the "Facility"), and
2 Defendant DAN MOODY is an employee of CONTECH;

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

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

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

13 **WHEREAS**, on or about February 8, 2010 Plaintiff provided notice of Defendants'
14 alleged violations of the Act, and of its intention to file suit against Defendants, to the
15 Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator
16 of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State
17 Board"); the Executive Officer of the Regional Water Quality Control Board, Central Valley
18 Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. §
19 1365(b)(1)(A) (true and correct copies of CSPA's notice letters are attached as Exhibit B and
20 incorporated herein by reference);

21 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and
22 maintain that they have complied at all times with the provisions of the General Permit, the
23 Clean Water Act, and California Health & Safety Code sections 25249.5 *et seq.*;

1 **2. CONTECH's Implementation of Specific Storm Water Best Management**
2 **Practices.** CONTECH shall implement the following structural and non-structural best
3 management practices ("BMPs") to improve the storm water pollution prevention measures at
4 the Facility, as marked on Exhibit A:

5 (a) CONTECH shall apply an asphalt sealant to all paved areas of the Facility
6 previously used for the application of paint, as designated on Exhibit A, within thirty (30)
7 days of the Court Approval Date;

8 (b) CONTECH shall coat the metal roof and siding of the main fabricating
9 building and the metal siding of the office building with sealant to reduce metals leaching
10 from the metal roof and siding to storm water within sixty (60) days of the Court
11 Approval Date. The locations of these buildings are shown on Exhibit A;

12 (c) CONTECH shall conduct an elevation survey to identify all points of
13 storm water discharge at the Facility within sixty (60) days of the Court Approval Date;

14 (d) CONTECH shall annually vacuum and cover all drop inlets at the Facility
15 during the Dry Season (June 1 through September 30) to reduce the amount of pollutants
16 entering the Facility's discharge points;

17 (e) CONTECH shall design and install swales, berms and infiltration areas to
18 reduce and redirect storm water flow at the Facility no later than September 30, 2011,
19 except as set forth below. The locations of these swales, berms and infiltration areas are
20 generally set forth on Exhibit A and described as follows:

21 (i) A parallel swale and berm at the northern end of the Facility yard
22 beginning at the base of the hill and running east along the northern property
23 boundary of the Facility;

1 (ii) Three (3) pairs of swales and berms perpendicular to the northern
2 boundary swale and berm described above and running generally south east there
3 from; and

4 (iii) Four (4) infiltration areas as generally designated on the attached Facility
5 map (Exhibit A).
6

7 The Parties acknowledge that CONTECH's installation of some of the drainage
8 features described in Paragraph 2(e) may be subject to various authorizations from state
9 and local agencies and that these agencies might require significant alteration of the
10 drainage feature plans as set forth on Exhibit A. Contech agrees to submit plans and / or
11 applications to obtain necessary approvals to construct the drainage features to the City
12 of Redding and other local land use authorities within seven (7) days of the Court
13 Approval Date. Contech shall notify CSPA pursuant to the Notice provisions herein (at ¶
14 24) within seven (7) days of any local authority requiring significant alteration of the
15 drainage features set forth on Exhibit A. Contech shall apply for any additional state or
16 federal permits or authorizations within thirty (30) days of the end of any appeal or
17 review period applicable to Contech's local authorizations. In the event Contech is
18 unable to complete construction of any drainage features described on Exhibit A by
19 September 30, 2011 due to authorization delays, Contech shall complete construction of
20 those drainage features by September 30, 2012 and the Term of this Consent Agreement
21 shall be extended until May 30, 2015;
22

23 (f) CONTECH shall remove the two (2) existing catch basins located in the
24 northern yard of the Facility that lead to Outfall #1 within sixty (60) days of the Court
25 Approval Date;
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27

1 (g) CONTECH shall install concrete pads beneath the roll out racks of the
2 Facility's "Helcor" machines and install a concrete berm around the Facility's arch
3 presses no later than October 1, 2011;

4 (h) CONTECH shall install a filtration system near the Facility's palletizing
5 rack no later than October 1, 2011;

6 (i) CONTECH shall add additional vegetation and rock to the existing bio-
7 swale within thirty (30) days of the Court Approval Date and shall continue to maintain
8 the swale to prevent erosion;

9 (j) CONTECH shall discontinue asphalt dipping operations in the northern
10 yard of the Facility and shall discontinue the cleaning of air filters in the adjacent
11 washout area within thirty (30) days of the Court Approval Date;

12 (k) CONTECH shall employ the use of a regenerative sweeper annually to
13 sweep the paved areas of the Facility no more than seven (7) days immediately prior to
14 the commencement of each of the Wet Seasons occurring during the Term of this
15 Consent Agreement;

16 (l) CONTECH shall conduct regular sweeping of the paved areas of the
17 Facility using a magnetic sweeper once per week during the Wet Season (October 1
18 through May 30) and once per month during the Dry Season (June 1 through September
19 30);

20 (m) CONTECH shall conduct sweeping of the paved areas of the Facility
21 using a regenerative sweeper once per month during the Wet Season (October 1 through
22 May 30);

1 (n) CONTECH shall keep a recorded log of all sweeping activities performed
2 at the Facility. A sample blank log form will be included in the Facility's SWPPP;

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

7
8 **4. Sampling Frequency.** CONTECH shall collect and analyze samples from four
9 (4) Qualifying Storm Events ("QSE"), as set forth in the General Permit¹ for sampling purposes,
10 in each of the Wet Seasons occurring during the Term of this Consent Agreement. The QSE
11 sample results shall be compared with the values set forth in Exhibit C, attached hereto, and
12 incorporated herein by reference. If the results of any QSE samples exceed the parameter values
13 set forth in Exhibit C, CONTECH shall comply with the "Action Memorandum" requirements
14 set forth below (at ¶ 6).

15
16 **5. Sampling Parameters.** All QSE samples shall be analyzed for each of the
17 constituents listed in Exhibit C by a laboratory accredited by the State of California. QSE
18 samples collected from the Facility shall be delivered to the laboratory as soon as possible to
19 ensure that sample "hold time" is not exceeded. Analytical methods used by the laboratory shall
20 be adequate to detect the individual constituents at or below the values specified on Exhibit C.
21 Sampling results shall be provided to CSPA within seven (7) days of CONTECH's receipt of the
22 laboratory report from each QSE sampling event pursuant to the Notice provisions below.

23
24 ¹ "Qualifying Storm Events" under the General Permit are those events in which (i) the samples taken are
25 preceded by at least three (3) working days during which no storm water discharges from the Facility
26 have occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge
27 Point being sampled; and (iii) the samples are collected during daylight and scheduled facility operating
28 hours.

1 Memorandum as set forth above, CONTECH shall permit representatives of CSPA to perform up
2 to three (3) physical inspections of the Facility during the Term of this Consent Agreement.
3 These inspections shall be performed by CSPA's counsel and consultants and may include
4 stormwater water quality sampling, photographing, and/or videotaping and CSPA shall provide
5 CONTECH with a copy of all sampling reports, photographs and/or video. CSPA shall provide
6 at least forty-eight (48) hours advance Notice (as set forth in ¶ 24) of such physical inspection,
7 except that CONTECH shall have the right to deny access if circumstances would make the
8 inspection unduly burdensome and pose significant interference with business operations of
9 CONTECH or its attorney, or threaten the safety of individuals. In such case, CONTECH shall
10 specify at least three (3) dates within the two (2) weeks thereafter upon which a physical
11 inspection by CSPA may proceed. CONTECH shall not make any material alterations to Facility
12 conditions during the period between receiving CSPA's initial forty-eight (48) hour advance
13 notice and the start of CSPA's inspection that CONTECH would not otherwise have made but
14 for receiving notice of CSPA's request to conduct a physical inspection of the Facility, excepting
15 any actions taken in compliance with any applicable laws or regulations. CONTECH shall
16 provide CSPA with written documentation of any alterations to Facility conditions during the
17 period between receiving CSPA's notice of inspection and the start of CSPA's inspection.
18 Nothing herein shall be construed to prevent CONTECH from continuing to implement any
19 BMPs identified in the SWPPP during the period prior to an inspection by CSPA or at any time.

22 **8. CONTECH's Communications with Regional and State Boards.** During the
23 Term of this Consent Agreement, CONTECH shall provide CSPA with copies of all documents
24 submitted to the Regional Board or the State Board concerning storm water discharges from the
25 Facility, including, but not limited to, all documents and reports submitted to the Regional Board
26

1 and/or State Board as required by the General Permit. Such documents and reports shall be
2 provided to CSPA pursuant to the Notice provisions herein (at ¶ 24) and contemporaneously
3 with CONTECH's submission to such agencies.

4 **9. SWPPP Amendments.** CONTECH shall provide CSPA with a copy of any
5 amendments to the Facility SWPPP made during the Term of the Consent Agreement within
6 fourteen (14) days of such amendment.
7

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

9 **10.** As mitigation of the Clean Water Act violations alleged in CSPA Complaint,
10 CONTECH agrees to pay the sum of \$42,500 within fifteen (15) days after the Court Approval
11 Date to the Rose Foundation for Communities and the Environment for the sole purpose of
12 providing grants to environmentally beneficial projects related to Canyon Creek, the Sacramento
13 River or its tributaries, and/or the Sacramento-San Joaquin River Delta. Payment shall be
14 provided to the Rose Foundation as follows: Rose Foundation, 6008 College Avenue, Oakland,
15 CA 94618, Attn: Tim Little. The Rose Foundation shall provide notice to the Parties within thirty
16 (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and
17 purpose of the funds.
18

19 **11.** CONTECH agrees to reimburse CSPA in the amount of \$38,025 to defray
20 CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, incurred as a
21 result of investigating the activities at the Facility, bringing the Action and negotiating a
22 resolution in the public interest. Such payment shall be made to the Jackson & Tuerck Attorney-
23 Client Trust Account within fifteen (15) days after the Court Approval Date.
24

25 **12. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,
26 expert, consultant and attorneys' fees and costs associated with monitoring CONTECH's
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1 compliance with this Consent Agreement, CONTECH agrees to contribute three payments of
2 \$5,000, to a compliance monitoring fund maintained by CSPA. Compliance monitoring activities
3 may include, but shall not be limited to, site inspections, review of water quality sampling
4 reports, review of annual reports, discussions with representatives of CONTECH concerning the
5 Action Memoranda referenced above, and potential changes to compliance requirements herein,
6 preparation for and participation in meet-and-confer sessions, water quality sampling and
7 analysis, and compliance-related activities. The first such payment in the amount of \$5,000 shall
8 be made payable to the Jackson & Tuerck Attorney-Client Trust Account on or before August 1,
9 2011, with the second installment due on August 1, 2012, and the third installment due on
10 August 1, 2013.

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

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

4 **14. CSPA Waiver, Release and Covenant Not to Sue.**

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

17 (b) For the period beginning on the Court Approval Date and ending on the
18 Termination Date, CSPA agrees that neither CSPA, its officers, executive staff, members
19 of its governing board nor any organization under the control of CSPA, its officers,
20 executive staff, or members of its governing board, will file any lawsuit against
21 Defendants seeking relief for the alleged violations of the Clean Water Act or violations
22 of the General Permit occurring at the Facility. CSPA further agrees that, beginning on
23 the Court Approval Date and ending on the Termination Date, CSPA will not support
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1 other lawsuits, by providing financial assistance, personal time or other affirmative
2 actions, against Defendants that may be proposed by other groups or individuals who
3 would rely upon the citizen suit provision of the Clean Water Act to challenge
4 Defendants' compliance with the Clean Water Act or the General Permit.

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

12
13 **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation
14 and Order that shall provide that:

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

17 (b) the Court shall retain and have jurisdiction over the Parties with respect to
18 disputes arising under this Consent Agreement. Nothing in this Consent Agreement shall
19 be construed as a waiver of any Party's right to appeal from an order that arises from an
20 action to enforce the terms of this Consent Agreement.

21
22 **IV. MISCELLANEOUS PROVISIONS**

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

5 **18.** The Term of this Consent Agreement shall be from the Court Approval Date until
6 May 30, 2014, except as provided in Paragraph 2(e) whereby the Term may be extended until
7 May 30, 2015. The Termination Date shall be May 30, 2014 unless extended pursuant to
8 Paragraph 2(e) of this Agreement to May 30, 2015.

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

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

15 **21.** The language in all parts of this Consent Agreement, unless otherwise stated, shall
16 be construed according to its plain and ordinary meaning. This Consent Agreement shall be
17 construed 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
19 their respective parties and have read, understood and agreed to be bound by all of the terms and
20 conditions of this Consent Agreement.

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

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

9 Bill Jennings, Executive Director
10 California Sportfishing Protection Alliance
11 3536 Rainier Avenue
12 Stockton, CA 95204
13 E-mail: DeltaKeep@aol.com

14 With copies sent to:

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

23 And to:

24 Andrew L. Packard
25 Law Offices of Andrew L. Packard
26 100 Petaluma Boulevard North, Suite 301
27 Petaluma, CA 94952
28 Tel: (707) 763-7227
 E-mail: Andrew@packardlawoffices.com

Any notices or documents required or provided for by this Consent Agreement or related thereto
that are to be provided to Defendants pursuant to this Consent Agreement shall be sent by U.S.

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

3 If to CONTECH:

4 Thomas D. Singer
5 Contech Construction Products Inc.
6 9025 Centre Pointe Drive, Suit 400
7 West Chester, Ohio 45069
8 Tel: 513-645-7400
9 Fax.: 513-745-7502
10 E-mail: SingerT@contech-cpi.com

11 With copies sent to:

12 Jill A. Weller, Esq.
13 Keating Muething & Klekamp PLL
14 One East Fourth Street, Suite 1400
15 Cincinnati, Ohio 45202
16 Tel: 513-579-6980
17 Fax.: 513-579-6457
18 E-mail: jweller@kmklaw.com

19 If to Dan Moody:

20 Dan L. Moody
21 Contech Construction Products Inc.
22 9025 Centre Pointe Drive, Suite 400
23 West Chester OH 45069
24 Tel: (513) 645-7055
25 Fax: (513) 645-7994
26 E-mail: dmoody@contech-cpi.com

27 With copies sent to:

28 Jill A. Weller, Esq.
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
Tel: 513-579-6980
Fax.: 513-579-6457
E-mail: jweller@kmklaw.com

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

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

5 **26.** No Party shall be considered to be in default in the performance of any of its
6 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any
7 circumstances beyond the Party's reasonable control, including, without limitation, any act of
8 God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force
9 Majeure event does not include normal inclement weather, such as anything less than or equal to
10 a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this
11 paragraph shall have the burden of establishing that it could not reasonably have been expected
12 to avoid, and which by exercise of due diligence has been unable to overcome, the Force
13 Majeure.
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15 **27.** If for any reason the Court should decline to approve this Consent Agreement in
16 the form presented, the Parties shall use reasonable efforts to work together to modify the
17 Consent Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are
18 unable to modify this Consent Agreement in a mutually acceptable manner, this Consent
19 Agreement shall become null and void.
20

21 **28.** This Consent Agreement shall be deemed to have been drafted equally by the
22 Parties, and shall not be interpreted for or against any Party on the ground that any such party
23 drafted it.

24 **29.** This Consent Agreement and the attachments contain all of the terms and
25 conditions agreed upon by the Parties relating to the matters covered by the Consent Agreement,
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CONFIDENTIAL SETTLEMENT COMMUNICATION


1 and supersede any and all prior and contemporaneous agreements, negotiations, correspondence,
2 understandings, and communications of the Parties, whether oral or written, respecting the
3 matters covered by this Consent Agreement. This Consent Agreement may be amended or
4 modified only by a writing signed by the Parties or their authorized representatives, and then by
5 order of the Court.

6
7 30. Except in case of an emergency but subject to the regulatory authority of any
8 applicable governmental authority, any breach of or default under this Consent Agreement
9 capable of being cured shall be deemed cured if, within five (5) days of first receiving notice of
10 the alleged breach or default, or within such other period approved in writing by the Party
11 making such allegation, which approval shall not be unreasonably withheld, the party allegedly
12 in breach or default has completed such cure or, if the breach or default can be cured but is not
13 capable of being cured within such five (5) day period, has commenced and is diligently
14 pursuing to completion such cure.

15
16 The Parties hereto enter into this Consent Agreement and respectfully submit it to the
17 Court for its approval and entry as an Order and Final Judgment.

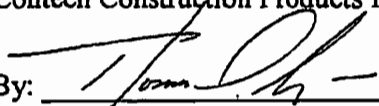
18 Dated: December 15, 2010

California Sportfishing Protection Alliance

19 By: 
Bill Jennings, Executive Director
Bill Jennings
cn=Bill Jennings, o=California Sportfishing
Protection Alliance, ou,
email=deltakeep@aol.com, c=US
2010.12.15 16:03:59 -0800

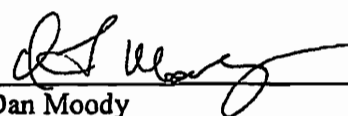
21 Dated: 12/15/10

Contech Construction Products Inc.

22 By: 
Thomas D. Singer
Vice President: Contech

24 Dated: 12/15/10

Dan Moody

25 By: 
Dan Moody

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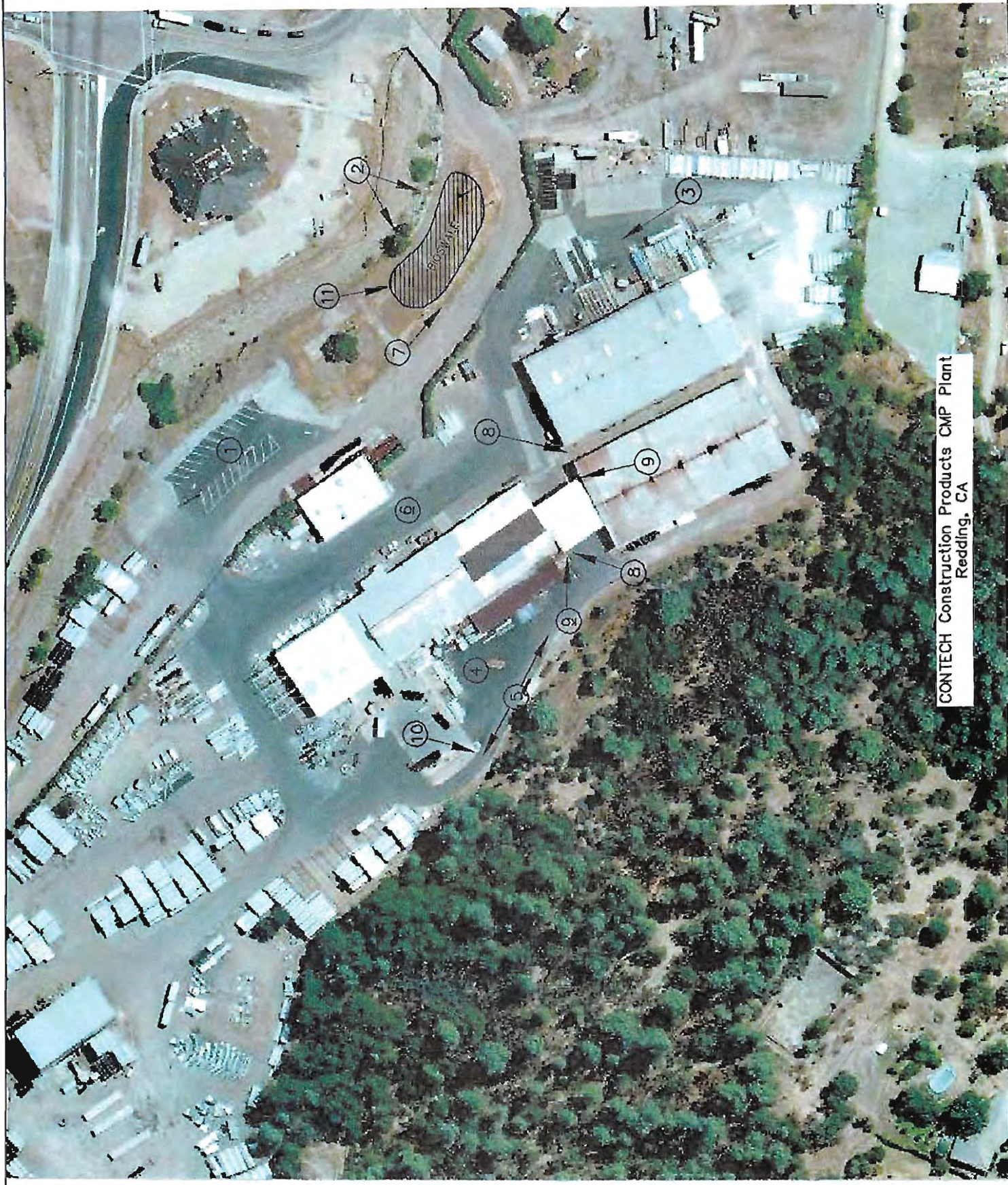
EXHIBIT A – Facility Site

EXHIBIT 'A'

First Page – Aerial view noting BMP's constructed prior to 2010

Second Page – Legend and Notes of BMP's noted on First Page

Third Page – BMP improvements made in 2010 and Future BMP improvements planned

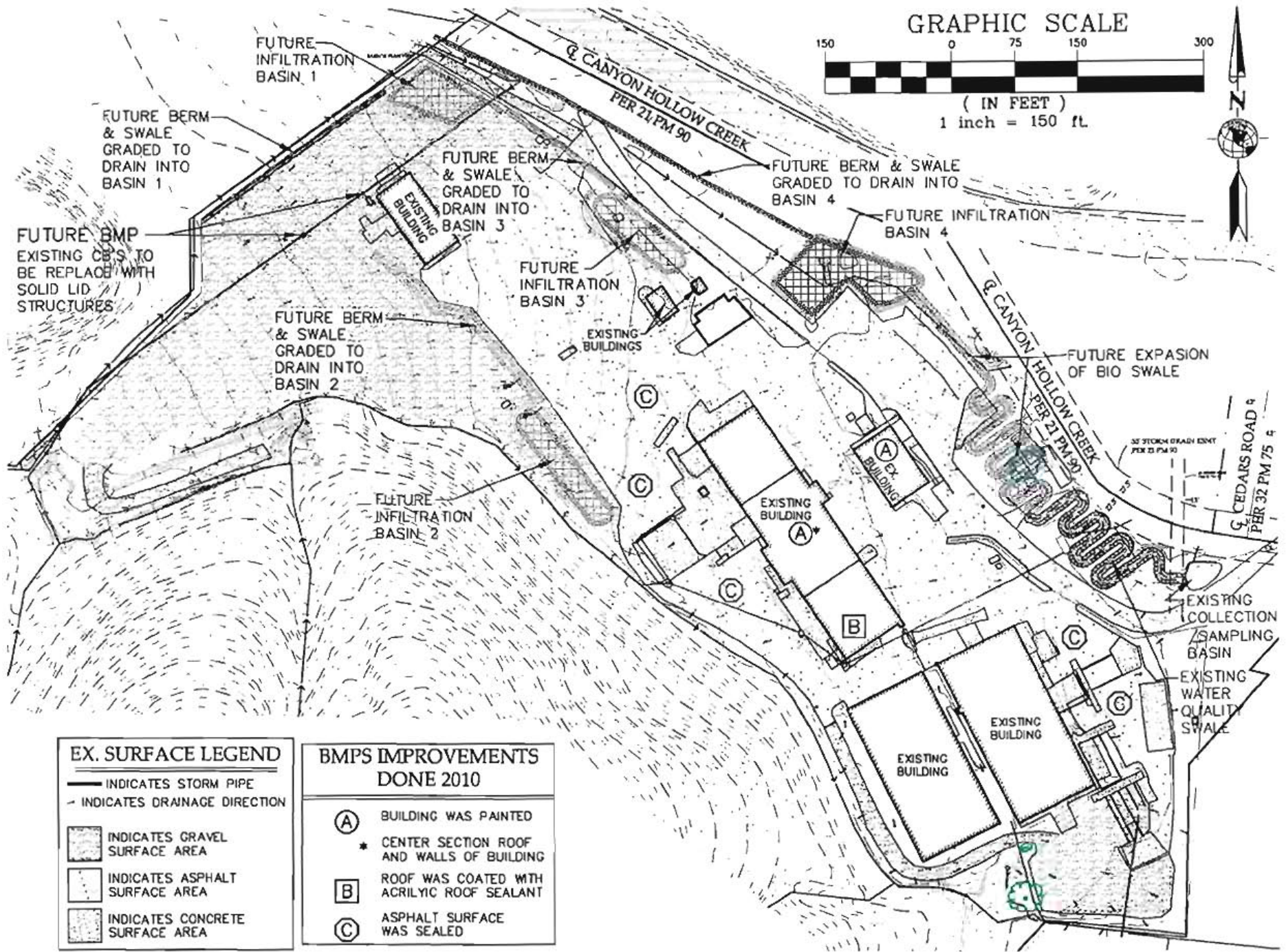


CONTECH Construction Products CMP Plant
Redding, CA

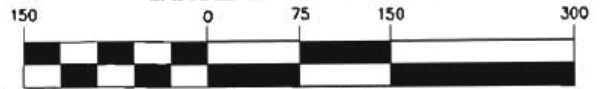
**CONTECH Construction Products CMP Plant
Redding, CA**

LEGEND AND NOTES:

Map Reference No.	Description
1	Parking Lot (Paved in June 2004)
2	Monitored Stormwater Outfalls
3	Asphalt Pavement (Placed Spring 2006)
4	Paved in Fall 2006
5	Old Fabrication Building Location. Removed and Replaced with Paved Surface
6	Blacktop Pavement. (Patched, Repaired, and Layered in Spring 2006)
7	9'x21' CONTECH Stormfilter Vault with 44 StormFilter Cartridges
8	CONTECH TR24RD X 2 Catch Basin Insert
9	CONTECH Single Stage 2 Cartridge Downspout StormFilter
10	CONTECH TR24236 Catch Basin Insert
11	Bioswale



GRAPHIC SCALE



(IN FEET)
1 inch = 150 ft.



EX. SURFACE LEGEND	
	INDICATES STORM PIPE
	INDICATES DRAINAGE DIRECTION
	INDICATES GRAVEL SURFACE AREA
	INDICATES ASPHALT SURFACE AREA
	INDICATES CONCRETE SURFACE AREA

BMPs IMPROVEMENTS DONE 2010	
	BUILDING WAS PAINTED
	CENTER SECTION ROOF AND WALLS OF BUILDING
	ROOF WAS COATED WITH ACRYLIC ROOF SEALANT
	ASPHALT SURFACE WAS SEALED

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EXHIBIT B – Notice of Violation

February 8, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ronald C. Keating
President, Chief Executive Officer
Contech Construction Products, Inc.
9025 Centre Point Drive, Suite 400
West Chester, Ohio 45069

Mr. Dan Moody
Facility Operator
Contech Construction
1001 Grove St
Middletown, Ohio 45044

Mr. Leonard Osborn
Contech Construction Products
2245 Canyon Creek Road
Redding, California 96001

Mr. Jeff Hallam
Contech Construction Products
2245 Canyon Creek Road
Redding, California 96001

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

Dear Sir:

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 culvert pipe manufacturing facility owned and operated by Contech Construction Products ("Contech"), located at 2245 Canyon Creek Road, Redding, CA 96001 ("the Facility"). The WDID identification number for the Facility is 5R45I002236. 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 owners, officers, or operators of Contech.

This letter addresses Contech's unlawful discharges of pollutants from the Facility directly, and indirectly via the local storm water conveyance system, into Canyon Creek, which is a tributary to the Sacramento River and the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Federal Water Pollution Control Act, ("the Clean Water Act") and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit").

CSPA is particularly concerned about these ongoing unlawful discharges because Contech is well aware of issues regarding its compliance with the General Industrial

Storm Water Permit, as it manufactures various piping materials used specifically for drainage treatment and storm-water detention/retention systems that are employed as Best Management Practices (“BMPs”) for compliance with that same permit at other facilities located throughout California. It is CSPA’s intention, through this letter, to bring these violations to Contech’s attention so that they may be resolved in a comprehensive and efficient manner.

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, Contech 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 Contech 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.

On March 31, 1992, Contech submitted its notice of intent to comply (“NOI”) with the terms of the General Industrial Storm Water Permit. The Facility manufactures culvert pipe and is classified as a sheet metal work facility under Standard Industrial Classification code 3444, and as a coating, engraving, and allied services NEC facility under Standard Industrial Classification code 3479. Contech is not a member of any monitoring group. The Facility collects and discharges storm water from its 33-acre industrial site through at least three discharge points to storm water drains which drain to Canyon Hollow Creek and, ultimately, to the Delta.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has 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>.

The Regional 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) 0.1 mg/L for copper, 0.3 mg/L for

iron, and 0.016 mg/L for zinc. *Id.* at III-4.00. 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.*, p. 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 the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; manganese – 0.05 mg/L; and iron – 0.3 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 – 1.0 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; manganese – 0.05 mg/L (secondary); nitrate+nitrite (as nitrogen) – 1.0 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The 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: 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); zinc – 0.12 mg/L (maximum concentration) and 0.12 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 Contech: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; magnesium – 0.0636 mg/L; manganese – 1.0 mg/L; nitrate + nitrite oxygen – 0.68 mg/L; and zinc – 0.117 mg/L. The State Water Quality Control Board also proposed adding a benchmark level for specific conductance of 200 µmho/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

Contech has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

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 total suspended solids ("TSS"), oil and grease ("O&G"), pH, biochemical oxygen demand ("BOD"), and fecal coliform.

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.

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

Contech has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (TSS), zinc (Zn), iron (Fe), aluminum (Al), oil and grease

(O&G), nitrate + nitrite (N+N), and magnesium (Mg) in violation of the General Industrial Storm Water 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. Contech'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 Contech 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 (TSS) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
02/22/2007	Outfall #2	TSS	241 mg/L	100 mg/L
10/16/2007	Outfall #2	TSS	104 mg/L	100 mg/L
10/16/2007	Outfall #3	TSS	745 mg/L	100 mg/L

2. Discharges of Storm Water Containing Zinc (Zn) at Levels in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Zn	2.22 mg/L	0.117 mg/L
11/02/2006	Outfall #3	Zn	0.905 mg/L	0.117 mg/L
02/22/2007	Outfall #2	Zn	1.05 mg/L	0.117 mg/L
02/22/2007	Outfall #3	Zn	0.266 mg/L	0.117 mg/L
10/16/2007	Outfall #2	Zn	0.549 mg/L	0.117 mg/L
10/16/2007	Outfall #3	Zn	7.40 mg/L	0.117 mg/L
01/21/2008	Outfall #2	Zn	0.937 mg/L	0.117 mg/L
01/21/2008	Outfall #3	Zn	0.464 mg/L	0.117 mg/L
01/22/2009	Outfall #2	Zn	1.61 mg/L	0.117 mg/L

3. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Fe	6.48 mg/L	1.0 mg/L
11/02/2006	Outfall #3	Fe	6.03 mg/L	1.0 mg/L
02/22/2007	Outfall #2	Fe	5.92 mg/L	1.0 mg/L
02/22/2007	Outfall #3	Fe	1.29 mg/L	1.0 mg/L
10/16/2007	Outfall #2	Fe	5.56 mg/L	1.0 mg/L
10/16/2007	Outfall #3	Fe	42.3 mg/L	1.0 mg/L
01/21/2008	Outfall #2	Fe	2.34 mg/L	1.0 mg/L
01/21/2008	Outfall #3	Fe	1.98 mg/L	1.0 mg/L
01/22/2009	Outfall #2	Fe	3.74 mg/L	1.0 mg/L

4. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Al	4.48 mg/L	0.75 mg/L
11/02/2006	Outfall #3	Al	4.73 mg/L	0.75 mg/L
02/22/2007	Outfall #2	Al	3.54 mg/L	0.75 mg/L
02/22/2007	Outfall #3	Al	0.907 mg/L	0.75 mg/L
10/16/2007	Outfall #2	Al	4.05 mg/L	0.75 mg/L
10/16/2007	Outfall #3	Al	29.3 mg/L	0.75 mg/L
01/21/2008	Outfall #2	Al	1.66 mg/L	0.75 mg/L
01/21/2008	Outfall #3	Al	1.17 mg/L	0.75 mg/L
01/22/2009	Outfall #2	Al	2.73 mg/L	0.75 mg/L

5. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #3	O&G	40.3 mg/L	15 mg/L
10/16/2007	Outfall #2	O&G	25.0 mg/L	15 mg/L

6. Discharges of Storm Water Containing Nitrate + Nitrite Nitrogen (N+N) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	N+N	0.87 mg/L	0.68 mg/L
11/02/2006	Outfall #3	N+N	0.83 mg/L	0.68 mg/L

7. Discharges of Storm Water Containing Magnesium (Mg) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/02/2006	Outfall #2	Mg	3.00 mg/L	0.0636 mg/L
11/02/2006	Outfall #3	Mg	4.00 mg/L	0.0636 mg/L
02/22/2007	Outfall #2	Mg	1.00 mg/L	0.0636 mg/L
02/22/2007	Outfall #3	Mg	0.50 mg/L	0.0636 mg/L
10/16/2007	Outfall #2	Mg	4.00 mg/L	0.0636 mg/L
10/16/2007	Outfall #3	Mg	18.00 mg/L	0.0636 mg/L
01/21/2008	Outfall #2	Mg	1.00 mg/L	0.0636 mg/L
01/21/2008	Outfall #3	Mg	1.00 mg/L	0.0636 mg/L
01/22/2009	Outfall #2	Mg	2.00 mg/L	0.0636 mg/L

CSPA is informed and believes that Contech has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 8, 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 February 8, 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 Contech has discharged storm water containing impermissible levels of zinc, iron, aluminum, oil and grease, specific conductivity, total suspended solids, and magnesium 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, Contech is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 8, 2005.

B. Contech 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 Contech, designated under standard industrial code (“SIC”) 3444 and 3479 are also required to sample for zinc, iron, aluminum and nitrate + nitrite nitrogen. 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 Contech has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Contech 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, Contech has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility. Third, Contech has failed to analyze its storm water for all pollutants likely to be present in significant quantities in its storm water discharge. 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, Contech is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 8, 2005. These violations are set forth in greater detail below.

1. Contech Has Failed to Collect at Least Two Storm Water Samples From Each Facility Discharge Point During Each of the Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that Contech has failed to collect storm water samples from all discharge points at the Facility for at least two storm events during each Wet Season as required by Section B(5)(a). For example, Contech failed to collect and analyze any samples from Outfall#1 at any time during the last five years. Moreover, Contech failed to collect and/or report any storm water samples from any of its designated discharge points for the entire 2005-2006 Wet Season. Continuing its pattern and practice of failing to collect the

required minimum of two storm water samples from each discharge point, Contech collected and analyzed only one storm water sample during the 2008-2009 Wet Season. CSPA is informed and believes that January 22, 2009 was not the first qualifying storm event for the 2008-2009 wet season, nor was October 16, 2007 the first qualifying storm event for the 2007-2008 wet season. ALI's failure to sample the first qualifying storm event constitutes an additional and separate violation of the General Permit. Contech's failure to comply with the sampling requirements of the GMP and the Permit constitute separate and ongoing violations of the Permit and the Act.

2. *Contech Has Failed to Analyze Its Storm Water for All Pollutants Likely to Be Present in Significant Quantities in Its Storm Water Discharge.*

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 a review of Contech's Annual Reports submitted to the Regional Board, CSPA believes during the 2005-2006 Wet Season Contech has failed to monitor for at least four pollutants likely to be present in storm water discharges in significant quantities – chromium, nickel, copper, and lead. CSPA further believes that Contech has failed to monitor for nickel in any storm water discharge over the past five (5) year period. Contech also failed to collect and analyze nitrate + nitrite nitrogen, as required for industries falling under Standard Industrial Classification 3444, during the 2007-2008 Wet Season. Each failure to monitor for each separate parameter constitutes a separate violation of the General Industrial Storm Water Permit and the Act. The Facility's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and Act.

3. *Contech Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 8, 2005.*

CSPA is informed and believes that available documents demonstrate Contech'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, Contech is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 8, 2005.

C. *Contech 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 Contech

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 Contech has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Contech has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Contech 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 Contech fails to develop and implement an effective SWPPP. Contech is subject to penalties for violations of the Order and the Act occurring since February 8, 2005.

E. Contech 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, Contech is discharging elevated levels of zinc, iron, aluminum, oil and grease, total suspended solids, and magnesium that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Contech 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. Contech has failed to do so.

Based on CSPA's review of available documents, Contech was aware of high levels of many of these pollutants well before February 8, 2005. Likewise, Contech 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). Contech 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 February 8, 2005, and will continue to be in violation every day that Contech fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Contech is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 8, 2005.

F. Contech 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 Contech has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, in its 2008-2009 Annual Report, Contech certified that it failed to collect the requisite number of storm water samples because there was only one qualifying storm events during the wet season; CSPA is informed and believes that this statement is false and constitutes a breach of Section A(9)(d) of the General Permit. Moreover, Contech failed to even submit an Annual Report for the 2005-2006 Wet Season. As indicated above, Contech has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Contech has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Contech submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Contech's failure to submit true and complete

reports constitutes continuous and ongoing violations of the Permit and the Act. Contech is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 8, 2005.

III. Persons Responsible for the Violations.

CSPA puts Contech 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 Contech 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:

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(530) 283-0406

Andrew L. Packard
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319 Pleasant Street
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VI. Penalties.

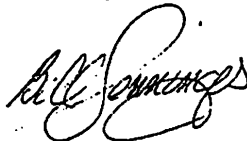
Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Contech to civil penalties of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. 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 Contech 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

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suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

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

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

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Notice of Intent to File Suit, Contech Construction Products, Inc.
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Feb.	13	2005	Nov.	28	2005	Mar.	12	2006
Feb.	16	2005	Nov.	29	2005	Mar.	13	2006
Feb.	17	2005	Nov.	30	2005	Mar.	14	2006
Feb.	19	2005	Dec.	01	2005	Mar.	15	2006
Feb.	20	2005	Dec.	10	2005	Mar.	16	2006
Feb.	21	2005	Dec.	17	2005	Mar.	17	2006
Feb.	22	2005	Dec.	18	2005	Mar.	20	2006
Feb.	27	2005	Dec.	19	2005	Mar.	23	2006
March	01	2005	Dec.	20	2005	Mar.	24	2006
March	02	2005	Dec.	21	2005	Mar.	25	2006
March	18	2005	Dec.	22	2005	Mar.	27	2006
March	19	2005	Dec.	23	2005	Mar.	28	2006
March	20	2005	Dec.	25	2005	Mar.	29	2006
March	21	2005	Dec.	26	2005	Mar.	30	2006
March	22	2005	Dec.	27	2005	Mar.	31	2006
March	23	2005	Dec.	28	2005	April	01	2006
March	24	2005	Dec.	29	2005	April	02	2006
March	25	2005	Dec.	30	2005	April	03	2006
March	27	2005	Dec.	31	2005	April	05	2006
March	28	2005	Jan.	01	2006	April	06	2006
April	03	2005	Jan.	02	2006	April	07	2006
April	07	2005	Jan.	03	2006	April	09	2006
April	08	2005	Jan.	04	2006	April	10	2006
April	09	2005	Jan.	05	2006	April	11	2006
April	23	2005	Jan.	10	2006	April	12	2006
April	24	2005	Jan.	11	2006	April	13	2006
April	25	2005	Jan.	13	2006	April	15	2006
April	30	2005	Jan.	14	2006	April	16	2006
May	04	2005	Jan.	17	2006	April	26	2006
May	05	2005	Jan.	18	2006	May	19	2006
May	08	2005	Jan.	19	2006	May	20	2006
May	09	2005	Jan.	20	2006	May	21	2006
May	10	2005	Jan.	21	2006	May	22	2006
May	15	2005	Jan.	28	2006	Oct.	04	2006
May	17	2005	Jan.	30	2006	Nov.	02	2006
May	18	2005	Feb.	01	2006	Nov.	03	2006
May	19	2005	Feb.	02	2006	Nov.	04	2006
Oct.	14	2005	Feb.	03	2006	Nov.	06	2006
Oct.	26	2005	Feb.	04	2006	Nov.	11	2006
Oct.	28	2005	Feb.	26	2006	Nov.	12	2006
Oct.	29	2005	Feb.	27	2006	Nov.	13	2006
Oct.	30	2005	Feb.	28	2006	Nov.	14	2006
Nov.	03	2005	Mar.	01	2006	Nov.	16	2006
Nov.	04	2005	Mar.	02	2006	Nov.	18	2006
Nov.	07	2005	Mar.	03	2006	Nov.	21	2006
Nov.	08	2005	Mar.	05	2006	Nov.	22	2006
Nov.	09	2005	Mar.	06	2006	Nov.	23	2006
Nov.	25	2005	Mar.	07	2006	Nov.	26	2006

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

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Feb.	26	2009	Oct.	20	2009	Jan.	01	2010
Mar.	01	2009	Oct.	23	2009	Jan.	02	2010
Mar.	03	2009	Nov.	06	2009	Jan.	12	2010
Mar.	04	2009	Nov.	17	2009	Jan.	13	2010
Mar.	15	2009	Nov.	20	2009	Jan.	16	2010
Mar.	16	2009	Nov.	21	2009	Jan.	17	2010
Mar.	17	2009	Nov.	24	2009	Jan.	18	2010
April	09	2009	Dec.	11	2009	Jan.	19	2010
April	10	2009	Dec.	12	2009	Jan.	20	2010
April	24	2009	Dec.	13	2009	Jan.	21	2010
May	01	2009	Dec.	15	2009	Jan.	23	2010
May	02	2009	Dec.	16	2009	Jan.	24	2010
May	03	2009	Dec.	17	2009	Jan.	25	2010
May	04	2009	Dec.	18	2009	Jan.	26	2010
May	05	2009	Dec.	20	2009	Jan.	31	2010
May	06	2009	Dec.	21	2009	Feb.	01	2010
May	07	2009	Dec.	22	2009	Feb.	02	2010
Oct.	13	2009	Dec.	25	2009	Feb.	04	2010
Oct.	14	2009	Dec.	27	2009	Feb.	05	2010
Oct.	16	2009	Dec.	29	2009	Feb.	06	2010
Oct.	18	2009	Dec.	30	2009	Feb.	07	2010
Oct.	19	2009	Dec.	31	2009			

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EXHIBIT C

Parameter	Value
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Zinc	0.117 mg/L
Iron	1.0 mg/L
Aluminum	0.75 mg/L
Magnesium	0.0636 mg/L
Nitrate + Nitrite Nitrogen	0.68 mg/L
Copper	0.0636 mg/L
Cadmium*	0.0159 mg/L
Lead*	0.0816 mg/L

* If the storm water samples demonstrate that cadmium and lead levels are below requisite water quality criteria for three (3) consecutive sampling events, then they may be removed from the monitoring program.