



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

January 20, 2009

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. David King  
President, Castle & King Rock & Ready  
105 Aegean Way  
Vacaville, CA 95687

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

Dear Mr. King:

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 Castle & King, Inc. ("Castle & King") aggregate facility located at 105 Aegean Way in Vacaville, California ("the Facility"). The WDID identification number for the Facility is 5A48S002800. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Cache Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of Castle & King, Inc.

This letter addresses Castle & King's unlawful discharges of pollutants from the Facility to the storm water conveyance system for the city of Vacaville, which ultimately which flows into Alamo Creek, Cache Slough, 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. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("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, Castle & King 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 Castle & King 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.**

Castle & King, Inc. a ready-mix concrete facility located in Vacaville, California. The facility is used to receive, store, 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.

CSPA's investigator's have observed the facility from the adjacent street. The investigators noted that there are no berms or other storm water controls present to prevent run off from either driveway at the facility and that storm water most likely exits the facility in a sheet flow without any treatment, retention, or other pollution control measure in place. CSPA's investigators also observed that several kinds of aggregate materials were stored at the facility in areas exposed to rainfall without any observable storm water pollution control measures in place. Finally, the investigators also noted that several heavy trucks were parked at the facility without the use of drip pans to prevent automotive fluids from dripping onto the facility's pavement and subsequently being discharged during a rain event. CSPA is informed and believes that several pollutant sources at the facility—including sources of sediment-producing materials, metals, oils and greases, and other contaminants—are exposed to rainfall and that pollutants derived from these materials are discharged in storm water from the Facility.

On March 30, 1992 and again on June 13, 1997, Castle & King submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit. The Facility is classified as a power generation facility under Standard Industrial Classification code 3273 ("Ready-mixed Concrete"). The Facility collects and discharges storm water from its two-acre industrial site through at least four discharge points to the local storm water conveyance system and/or Alamo Creek, all of which ultimately drain to Cache Slough, which is tributary 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 Castle & King: 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 parameters for pollutants that CSPA believes are discharged from the Facility are: 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.**

Castle & King 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 (33 U.S.C. § 1342) such as the General Permit. 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 exceedence of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On March 30, 2007, the Regional Water Quality Control Board sent Castle & King two Notices of Violation. The first informed Castle & King that it had submitted an incomplete or erroneous “Form 1” for storm water sampling and analysis. The second Notice of Violation noted that storm water discharges from the facility exceeded the U.S. EPA Benchmark Values and ordered Castle & King 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 Regional board also requested that the Facility’s SWPPP be updated.

Castle & King responded only by blaming the exceedances on local flooding. Based on its review of available public documents, CSPA is informed and believes that Castle & King failed to comply with the Board’s Notice of Violation and that it failed to review its BMPs or to submit a revised SWPPP. CSPA is informed and believes that Castle & King has continued to operate in violation of the General Permit despite the Regional Board’s inspection and notice of violation. Castle & King’s ongoing violations are discussed further below.

**A. Castle & King Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

Castle & King has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (TSS), specific conductivity, and pH 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 as Attachment A. Castle & King’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 Castle & King 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 Water Quality Criteria.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
12/8/2007	NW	TSS	1000 mg/L	100 mg/L
12/8/2007	NE	TSS	1300 mg/L	100 mg/L
1/10/2008	NE	TSS	280 mg/L	100 mg/L
5/2/2007	NW	TSS	310 mg/L	100 mg/L
5/2/2007	NW	TSS	110 mg/L	100 mg/L
3/20/2006	North Outfall	TSS	1000 mg/L	100 mg/L
11/11/2004	NE	TSS	830 mg/L	100 mg/L
12/29/2003	North outfall	TSS	1400 mg/L	100 mg/L

**2. Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Applicable Water Quality Criteria.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
1/10/2008	NW	Spec. Con.	230 µmho/cm	200 µmhos/cm
1/10/2008	NE	Spec. Con.	280 µmho/cm	200 µmhos/cm
5/2/2007	NE	Spec. Con.	400 µmho/cm	200 µmhos/cm
5/4/2007	NE	Spec. Con.	260 µmho/cm	200 µmhos/cm

**3. Discharges of Storm Water with a pH in Excess of Applicable Water Quality Criteria.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
1/10/2008	NW	pH	9.79	6.0 – 9.0
1/10/2008	NE	pH	9.08	6.0 – 9.0
12/8/2007	NE	pH	9.56	6.0 – 9.0
5/2/2007	NE	pH	9.73	6.0 – 9.0
5/4/2007	NE	pH	9.19	6.0 – 9.0
3/20/2006	NW	pH	9.28	6.0 – 9.0
12/29/2003	North	pH	9.67	6.0 – 9.0

CSPA’s investigation, including its review of Castle & King’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 electrical conductivity, indicates that Castle & King has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, and unacceptable levels of pH, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Castle & King was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, Castle & King is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Castle & King has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least January 20, 2004. 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 January 20, 2004, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Castle & King has discharged storm water containing impermissible levels of pH, TSS, and specific conductivity, and other un-monitored 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, Castle & King is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since January 20, 2004.

**B. Castle & King 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 Castle & King, designated under SIC 3273 are also required to sample for iron. 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 Castle & King has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Castle & King 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, Castle & King 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, Castle & King is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since January 20, 2004. These violations are set forth in greater detail below:

**1. *Castle & King 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 Castle & King 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. In its most recent Annual Report to the Regional Board, Castle & King stated that there are four discharge points at the Facility. (Castle & King, 2007-2008 Annual Report, at 2, item E.3). However, during the last five years, Castle & King has never collected storm water samples from Discharge Points Nos. 3 and 4. Moreover, Castle & King has averred that it has reduced its storm water sampling requirements because Discharge Points Nos. 3 and 4 are substantially similar to Discharge Points Nos. 1 and 2. Yet, Castle & King has failed to provide any documentation to support that assertion and has failed to note in the Annual Report the date of the most recent evaluation of the Discharge Points. (*See, e.g.*, Castle & King, 2007-2008 Annual Report, at 3, item E.5).

Specifically, during the 2003-2004 wet season, Castle and King collected only one sample from the North Outfall and none from any of the other three outfalls at the Facility. During the 2004-2005, 2005-2006, and 2007-2008 wet seasons, Castle & King collected only one sample each season from the Northwest and Northeast Discharge Points, respectively, without providing adequate support for its assertion that the NW and NE Discharge Points are adequately representative of all discharge from the Facility.

During the 2006-2007 wet season, Castle & King collected two samples from the Northwest and Northeast outfalls, but none from the other outfalls. Moreover, Castle & King's second sample occurred on May 4, 2007, only two days after Castle & King's first sample for the season (taken on May 2, 2007). Therefore, the second rain event was not a "qualifying rain event" as required by Section B(5)(a) of the General Permit. Finally, CSPA is informed and believes that May 2, 2007 was not the first qualifying storm event for the season. Castle & King's failure to sample the first qualifying storm event constitutes another violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by Castle & King. Each of these failures 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. *Castle & King 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 Castle & King to sample for total suspended solids, specific conductivity, pH, and oil & grease or



total organic carbons. The General Permit also requires facilities such as Castle & King which are designated as SIC 3273 to analyze their storm water discharge for iron. Based on its review of available public documents, CSPA is informed and believes that Castle & King has never sampled for iron in its storm water discharge. Each

Finally, based on its investigation, CSPA is informed and believes that Castle & King has failed to monitor for at least eight other pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, manganese, nickel, nitrate+nitrite, and zinc. Castle & King's failure to monitor these pollutants extends back at least until January 20, 2004. Castle & King'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. *Castle & King Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since January 20, 2004.***

CSPA is informed and believes that available documents demonstrate Castle & King'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, Castle & King is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since January 20, 2004.

**C. *Castle & King 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 Castle & King has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, pH, iron 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, Castle & King 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 Castle & King 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. Castle & King has failed to implement such measures adequately.

Castle & King was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Castle & King 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 Castle & King fails to implement BAT and BCT. Castle & King is subject to penalties for violations of the Order and the Act occurring since January 20, 2004.

**D. Castle & King 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 waterbodies, 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 exceedence of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Castle & King has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Castle & King has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Castle & King 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 Castle & King fails to develop and implement an effective SWPPP. Castle & King is subject to penalties for violations of the Order and the Act occurring since January 20, 2004.

**E. Castle & King 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, Castle & King is discharging elevated levels of total suspended solids, specific conductivity, and pH that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Castle & King 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, Castle & King was aware of high levels of these pollutants prior to January 20, 2004. Likewise, Castle & King 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). Castle & King 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 January 20, 2004, and will continue to be in violation every day that Castle & King fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Castle & King is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since January 20, 2004.

**F. Castle & King 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 Castle & King 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, Castle & King has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Castle & King has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Castle & King submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Castle & King's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Castle & King is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since January 20, 2004.

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

CSPA puts Castle & King, including Mr. David King, 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 Castle & King 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.**

Notice of Violation and Intent To File Suit

January 20, 2009

Page 13 of 14

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

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

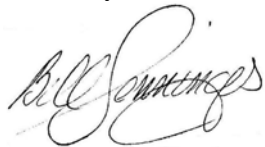
Michael R. Lozeau  
Law Office of Michael R. Lozeau  
1516 Oak Street, Suite 216  
Alameda, California 94501  
(510) 749-9102

**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 Castle & King to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

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



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

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

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, Castle & King (Vacaville, CA)**  
**Significant Rain Events,\* January 20, 2004-January 20, 2009**

Jan.	24	2004	Feb.	27	2005	March	03	2006
Jan.	27	2004	Feb.	28	2005	March	05	2006
Feb.	02	2004	March	02	2005	March	06	2006
Feb.	03	2004	March	04	2005	March	07	2006
Feb.	16	2004	March	19	2005	March	12	2006
Feb.	17	2004	March	20	2005	March	13	2006
Feb.	18	2004	March	22	2005	March	14	2006
Feb.	21	2004	March	27	2005	March	17	2006
Feb.	22	2004	March	28	2005	March	20	2006
Feb.	25	2004	April	04	2005	March	24	2006
Feb.	26	2004	April	08	2005	March	25	2006
March	01	2004	April	28	2005	March	27	2006
March	02	2004	May	05	2005	March	28	2006
March	25	2004	May	08	2005	March	29	2006
Sep.	19	2004	May	09	2005	March	31	2006
Oct.	17	2004	May	18	2005	April	03	2006
Oct.	19	2004	June	09	2005	April	04	2006
Oct.	23	2004	June	16	2005	April	07	2006
Oct.	26	2004	Nov.	07	2005	April	08	2006
Nov.	04	2004	Nov.	08	2005	April	11	2006
Nov.	10	2004	Nov.	25	2005	April	12	2006
Nov.	11	2004	Nov.	29	2005	April	16	2006
Nov.	27	2004	Dec.	01	2005	May	21	2006
Dec.	07	2004	Dec.	02	2005	May	22	2006
Dec.	08	2004	Dec.	17	2005	Nov.	02	2006
Dec.	09	2004	Dec.	18	2005	Nov.	11	2006
Dec.	27	2004	Dec.	19	2005	Nov.	13	2006
Dec.	28	2004	Dec.	21	2005	Nov.	14	2006
Dec.	29	2004	Dec.	22	2005	Nov.	26	2006
Dec.	30	2004	Dec.	25	2005	Dec.	09	2006
Dec.	31	2004	Dec.	26	2005	Dec.	10	2006
Jan.	01	2005	Dec.	27	2005	Dec.	12	2006
Jan.	02	2005	Dec.	28	2005	Dec.	21	2006
Jan.	03	2005	Dec.	29	2005	Dec.	22	2006
Jan.	04	2005	Dec.	30	2005	Dec.	26	2006
Jan.	07	2005	Dec.	31	2005	Dec.	27	2006
Jan.	08	2005	Jan.	01	2006	Feb.	08	2007
Jan.	09	2005	Jan.	02	2006	Feb.	09	2007
Jan.	11	2005	Jan.	03	2006	Feb.	10	2007
Jan.	25	2005	Jan.	14	2006	Feb.	11	2007
Jan.	26	2005	Jan.	18	2006	Feb.	23	2007
Jan.	28	2005	Jan.	30	2006	Feb.	25	2007
Feb.	15	2005	Feb.	17	2006	Feb.	26	2007
Feb.	16	2005	Feb.	19	2006	Feb.	27	2007
Feb.	18	2005	Feb.	26	2006	April	14	2007
Feb.	19	2005	Feb.	27	2006	April	15	2007
Feb.	20	2005	Feb.	28	2006	April	22	2007
Feb.	21	2005	March	02	2006	April	23	2007

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

**ATTACHMENT A**  
**Notice of Intent to File Suit, Castle & King (Vacaville, CA)**  
**Significant Rain Events,\* January 20, 2004-January 20, 2009**

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

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