



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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February 8, 2010

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

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Mr. Jeff Hallam
Contech Construction Products
2245 Canyon Creek Road
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**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 Hallow 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

has not implemented BAT and BCT at the Facility for its discharges of aluminum, oil & grease, chromium, iron, magnesium, manganese, nickel, zinc, total suspended solids and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

On February 20, 2008, an inspector from Tetra Tech, acting as a contractor for the U.S. Environmental Protection Agency, conducted an inspection of the Facility for compliance with the General Industrial Storm Water Permit. On March 24, 2008, the Regional Board sent a letter to Contech with a copy of the inspector's report. The Regional Board, on the inspector's recommendation, noted that "additional BMPs must be implemented to reduce the pollutants that discharge from your site" and that the SWPPP should be revised. Based on available documents, CSPA is informed and believes that Contech failed to implement any additional BMPs and/or to inform the Regional Board of any such improvements or revisions to the SWPPP.

Contech was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Contech 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 Contech fails to implement BAT and BCT. Contech is subject to penalties for violations of the Order and the Act occurring since February 8, 2005.

D. Contech 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 is required to include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and

potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

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

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that 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:

Robert J. Tuerck
Jackson & Tuerck
429 Main Street, Suite C
P.O. Box 148
Quincy, CA 95971
(530) 283-0406

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

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

Notice of Violation and Intent To File Suit

February 8, 2005

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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, prominent initial "B".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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

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

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

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

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

Dan Pedri, Assistant Executive Officer
Regional Water Quality Control Board
Central Valley Region, Redding Office
415 Knollcrest Drive, Suite 100
Redding, CA 96002

CT CORPORATION SYSTEM
Agent for Service of Process for
Contech Construction Products, Inc.
818 West Seventh Street
Los Angeles, CA 90017

ATTACHMENT A
Notice of Intent to File Suit, Contech Construction Products, Inc.
Significant Rain Events*, February 8, 2005 – February 8, 2010

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

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

ATTACHMENT A
Notice of Intent to File Suit, Contech Construction Products, Inc.
Significant Rain Events*, February 8, 2005 – February 8, 2010

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

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

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Notice of Intent to File Suit, Contech Construction Products, Inc.
Significant Rain Events*, February 8, 2005 – February 8, 2010

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			

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