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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 13, 2016

Earl Wettstein, President & Registered Agent
Cast Aluminum and Brass Corporation
677 Whitney Street
San Leandro, CA 94577

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

Dear Mr. Wettstein:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Cast Aluminum and Brass Corporation's industrial facility located at 667 Whitney Street in San Leandro, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other California waters. This letter is being sent to Cast Aluminum and Brass Corporation and Earl Wettstein as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Castco").

This letter addresses Castco's unlawful discharge of pollutants from the Facility to a channel that flows into the San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") is 2 01I000474. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

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

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

I. Background.

On or about March 9, 1992, Castco submitted a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") to the State Board. In November 1998, Castco submitted another NOI. On or about August 14, 2015, Castco submitted an NOI to the State Board to comply with the 2015 Permit. In its NOIs, Castco certifies that the Facility is classified under SIC code 3365. The Facility collects and discharges storm water from its 80,000 square foot industrial site through at least nine outfalls. On information and belief, CSPA alleges that all storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. The outfalls discharge to the City of San Leandro storm drain system, which discharges into a channel that flows into the San Francisco Bay (the "Bay").

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for the Bay in the "Water Quality Control Plan for the San Francisco Bay Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/BP_all_chapters.pdf. The beneficial uses of these waters include among others contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features." *Id.* at 2.1.16. Visible pollution, including visible sheens, discolored water, and cloudy or turbid water from industrial areas, impairs people's use of the Bay for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Francisco Bay. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms." *Id.* at 3.3.18. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3.3.21. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses." *Id.* at 3.3.7. The Basin Plan provides that "[w]aters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.13. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.14. The Basin Plan provides that "[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.6. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." *Id.* at 3.3.9. The Basin Plan provides that "[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses." *Id.* at 3.3.4. The Basin Plan provides that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at 3.3.19.

The Basin Plan establishes Marine Water Quality Objectives ("WQO") for zinc of 0.09 mg/L 1-hour average ("1-HA") and for copper of 0.0048 mg/L (1-HA). Basin Plan at Table 3-3. The EPA has adopted saltwater numeric water quality standards for zinc of 0.09 mg/L (Criteria Maximum Concentration – "CMC") and for copper of 0.0048 mg/L (CMC). California Toxics Rule, 65 Fed.Reg. 31712 (May 18, 2000).

The EPA has published benchmark levels 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").[1] The following benchmarks have been established for pollutants discharged by Castco: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; copper – 0.0332 mg/L; and oil and grease ("O&G") – 15 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; copper –

[1] The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf
(Last accessed on April 1, 2016).

0.0332 mg/L; and O&G – 15 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Castco 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 or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 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. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit 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 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Castco has discharged and continues to discharge storm water with unacceptable levels of TSS, aluminum, iron, zinc, and copper in violation of the General Permit. Castco's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-

monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations of pollutants in excess of applicable numeric and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration/ Conditions	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
11/9/2015	Zinc	0.51 mg/L	0.09 mg/L	4
11/9/2015	Zinc	0.91 mg/L	0.09 mg/L	10
11/9/2015	Zinc	1.7 mg/L	0.09 mg/L	9
11/9/2015	Zinc	0.53 mg/L	0.09 mg/L	1
11/30/2012	Zinc	0.28 mg/L	0.09 mg/L	Point 5
11/30/2012	Zinc	1.2 mg/L	0.09 mg/L	Point 9
11/30/2012	Zinc	0.43 mg/L	0.09 mg/L	Point 10
11/9/2015	Copper	0.077 mg/L	0.0048 mg/L	4
11/9/2015	Copper	0.05 mg/L	0.0048 mg/L	10
11/9/2015	Copper	0.05 mg/L	0.0048 mg/L	9
11/9/2015	Copper	0.085 mg/L	0.0048 mg/L	1
11/30/2012	Copper	0.02 mg/L	0.0048 mg/L	Point 5
11/30/2012	Copper	0.046 mg/L	0.0048 mg/L	Point 9
11/30/2012	Copper	0.031 mg/L	0.0048 mg/L	Point 10
3/31/2014	Narrative	Floating materials	Basin Plan 3.3.6	667 Whitney St. – All Points
3/31/2014	Narrative	Oil and grease	Basin Plan 3.3.7	448 Hester St. – All Points
11/20/2013	Narrative	Floating materials; Suspended materials	Basin Plan 3.3.6 / Basin Plan 3.3.14	667 Whitney St. – All Points
11/20/2013	Narrative	Floating materials; Suspended materials	Basin Plan 3.3.6 / Basin Plan 3.3.14	448 Hester St. – All Points
4/4/2013	Narrative	Suspended materials	Basin Plan 3.3.14	667 Whitney St. – All Points
4/4/2013	Narrative	Floating materials; Suspended materials	Basin Plan 3.3.6 / Basin Plan 3.3.14	448 Hester St. – Point #4
10/22/2012	Narrative	Floating materials; Oil and grease	Basin Plan 3.3.6 / Basin Plan 3.3.7	667 Whitney St. – All Points
10/22/2012	Narrative	Floating materials	Basin Plan 3.3.6	448 Hester St. –

				Point #4
4/3/2011	Narrative	Discoloration	Basin Plan 3.3.4	667 Whitney St. – All Points
4/3/2011	Narrative	Suspended materials	Basin Plan 3.3.14	448 Hester St. – All Points
3/16/2011	Narrative	Oil and grease	Basin Plan 3.3.7	667 Whitney St. – All Points

The information in the above table reflects data gathered from Castco's self-monitoring during the 2010-2011, 2012-2013, and 2013-2014 wet seasons, as well as the 2015-2016 reporting year.[2] CSPA alleges that since April 13, 2011, and continuing through today, Castco has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- Zinc – 0.09 mg/L (Marine WQO and CMC)
- Copper – 0.0048 (Marine WQO and CMC)
- Discoloration – waters shall be free of coloration that causes nuisance or adversely affects beneficial uses (Basin Plan at 3.3.4)
- Suspended Materials – waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses (Basin Plan at 3.3.14)
- Floating Materials – waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses (Basin Plan at 3.3.6)
- Oil and grease – waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses (Basin Plan at 3.3.7)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

[2] As of the present date, Castco has failed to submit its Annual Report for the 2014-2015 wet season to the Regional Board. On information and belief, CSPA alleges that the 2014-2015 Annual Report contains similar violations of water quality standards as those alleged in the above table.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
11/9/2015	Total Suspended Solids	160 mg/L	100 mg/L	4
11/9/2015	Zinc	0.51 mg/L	0.26 mg/L	4
11/9/2015	Copper	0.077 mg/L	0.0332 mg/L	4
11/9/2015	Total Suspended Solids	210 mg/L	100 mg/L	10
11/9/2015	Zinc	0.91 mg/L	0.26 mg/L	10
11/9/2015	Copper	0.05 mg/L	0.0332 mg/L	10
11/9/2015	Total Suspended Solids	150 mg/L	100 mg/L	9
11/9/2015	Zinc	1.7 mg/L	0.26 mg/L	9
11/9/2015	Copper	0.05 mg/L	0.0332 mg/L	9
11/9/2015	Total Suspended Solids	430 mg/L	100 mg/L	1
11/9/2015	Zinc	0.53 mg/L	0.26 mg/L	1
11/9/2015	Copper	0.085 mg/L	0.0332 mg/L	1
11/30/2012	Aluminum	2.4 mg/L	0.75 mg/L	Point 5
11/30/2012	Iron	2.7 mg/L	1.0 mg/L	Point 5
11/30/2012	Zinc	0.28 mg/L	0.26 mg/L	Point 5
11/30/2012	Aluminum	4.2 mg/L	0.75 mg/L	Point 9
11/30/2012	Iron	4.9 mg/L	1.0 mg/L	Point 9
11/30/2012	Zinc	1.2 mg/L	0.26 mg/L	Point 9
11/30/2012	Copper	0.046 mg/L	0.0332 mg/L	Point 9
11/30/2012	Total Suspended Solids	110 mg/L	100 mg/L	Point 10
11/30/2012	Aluminum	4.4 mg/L	0.75 mg/L	Point 10
11/30/2012	Iron	7.1 mg/L	1.0 mg/L	Point 10
11/30/2012	Zinc	0.43 mg/L	0.26 mg/L	Point 10

The information in the above table reflects data gathered from Castco's self-monitoring during the 2012-2013 wet season and the 2015-2016 reporting year.[3] CSPA alleges that since at least April 13, 2011, Castco has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for TSS, aluminum, iron, zinc, and copper.

CSPA's investigation, including its review of Castco's Storm Water Pollution Prevention Plan ("SWPPP"), Castco's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Castco has not implemented BAT and BCT at the Facility for its discharges of TSS, aluminum, iron, zinc, and copper and potentially other pollutants in violation

[3] As noted above, Castco has failed to submit its Annual Report for the 2014-2015 wet season to the Regional Board. On information and belief, CSPA alleges that the 2014-2015 Annual Report contains similar exceedances of benchmark values and NALs as those alleged in the above table.

of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Castco was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Castco is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since April 13, 2011, 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 Castco has discharged storm water containing impermissible and unauthorized levels of TSS, aluminum, iron, copper, and zinc in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[4]

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of TSS, aluminum, iron, copper, zinc, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Castco is subject to penalties for violations of the General Permit and the Act since April 13, 2011.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and

[4] The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station next to the Oakland Airport, approximately 1.4 miles from the Facility. The station is called "KOAK" and the data was accessed via http://www.ncdc.noaa.gov/cdo-web/search (Last accessed on April 13, 2016).

receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit broadens this qualifying storm event definition by requiring that the storm water discharges be preceded by 48 hours without discharge from any drainage area in order to trigger the sampling requirement. *See* 2015 Permit, § XI(B)(1)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

As described in the Facility's SWPPP, there are nine discharge locations for the Facility – five discharge points which drain to Whitney Street and four discharge points that drain to Hester Street. However, during the past five years, Castco has only sampled and analyzed discharges from up to five storm water discharge locations at the Facility. During the 2012-2013 wet season, Castco analyzed storm water discharges from Points 4, 5, 9, and 10. In addition, Castco failed to collect samples from a second storm event during the 2012-2013 wet season. Thus far during the 2015-2016 reporting year, Castco analyzed discharges from Points 1, 4, 9, and 10.

Thus, on information and belief, CSPA alleges that during each of the past five wet seasons, Castco has failed to sample and analyze storm water discharges from the majority of its discharge locations at the Facility during each required sampling event. At a minimum, this results in 14 violations of the General Permit for the 2012-2013 wet season, potentially 18 violations for the 2014-2015 wet season, and potentially 5 violations for the present reporting year. These violations are ongoing. Consistent with the five-year statute of limitations

applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Castco is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since April 13, 2011.

In addition, the 2015 Permit requires that dischargers collect and analyze storm water samples from two qualifying storm events ("QSEs") during the first half of each reporting year (July 1 to December 31) and two QSEs during the second half of each reporting year (January 1 to June 30). § XI(B)(2). On information and belief, CSPA alleges that during the first half of the 2015-2016 reporting year, the Facility failed to collect and analyze a storm water sample from a second QSE. This results in at least nine violations of the General Permit. This violation of the General Permit is ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, VRSD is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 30, 2015.

ii. Failure to Conduct Visual Observations of Storm Water Discharges

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CSPA alleges that Castco failed to conduct monthly visual observations of storm water discharges from all of its drainage areas during the past five years.[5] During the majority of the 2013-2014, 2012-2013, 2011-2012, and 2010-2011 wet seasons, Castco performed visual observations not for each drainage area, but simply for "all points" on each side of the Facility.[6] Castco provided no explanation what "all points" means, or where it actually performed these observations. This results in at least 285 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Castco is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since April 13, 2011.

iii. Failure to Analyze Discharges for Mandatory Parameters

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[5] Castco has filed to submit its Annual Report for the 2014-2015 wet season thus far. On information and belief, CSPA alleges that Castco also failed to conduct proper visual observations during that wet season.

[6] CSPA notes a few exceptions to monitoring for "all points." During the 2012-2013 wet season, Castco monitored Point #4 on Hester Street for all months except May, when it monitored for "all points" on Hester Street. During the 2011-2012 wet season, Castco monitored for "all points" on Whitney Street, when it monitored the "street gutter."

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

During the 2009-2010 and 2012-2013 wet season, Castco analyzed its storm water discharges for both aluminum and iron. Nearly all of the discharges contained levels in excess of the benchmark values for those parameters. In its SWPPP, Castco indicates that it will analyzed its storm water discharges for aluminum and iron. However, in its first sample during the 2015-2016 reporting year, on November 9, 2015, Castco failed to analyze its discharges for aluminum and iron. This failure to analyze for aluminum and iron results in at least 8 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Casto is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since April 13, 2011.

C. Failure to Submit Annual Report

Section B(14) of the 1997 Permit requires dischargers to submit an Annual Report to the Regional Board by July 1 of each year. Section XVI.A of the 2015 Permit requires discharges to submit an Annual Report by July 15 of each year. As of the date of this letter, Castco has failed to submit an Annual Report for the 2014-2015 wet season. This violation of the General Permit is ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Castco is subject to penalties for violations of the General Permit and the Act's annual reporting requirements since July 1, 2015.

D. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). (Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CSPA indicates that Castco has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the

Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Castco has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CSPA puts Castco on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Castco is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Castco is subject to civil penalties for all violations of the CWA occurring since April 13, 2011.

E. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; 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-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as

the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Castco has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(E) of the 2015 Permit. Specifically, the SWPPP map fails to include a north arrow and fails to locate and describe structural control measures that affect industrial storm water discharges.

The SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit. Castco has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement and maintain the required minimum BMPs for material handling and waste management. The SWPPP also notes that the Facility has implemented catch-basins and trench drains yet provides no further description of these measures. These measures are not referred to elsewhere in the SWPPP. On information and belief, CSPA alleges that these measures do not exist at the Facility. The SWPPP also fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not

reflect best industry practice considering BAT/BCT. The SWPPP fails to implement appropriate advanced BMPs.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks, NALs, and water quality standards, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Castco has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges.

CSPA puts Castco on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Castco is subject to civil penalties for all violations of the CWA occurring since April 1, 2011.

III. Persons Responsible for the Violations.

CSPA puts Castco and Earl Wettstein 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 Castco and Earl Wettstein on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067
deltakeep@me.com

V. Counsel.

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

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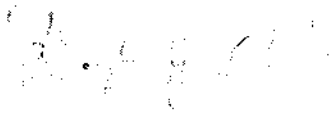
VI. Penalties.

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 Costco to a penalty of up to $37,500 per day per violation for all violations. 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. CSPA intends to file a citizen suit under Section 505(a) of the Act against Costco and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests 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. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



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Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

SERVICE LIST – via certified mail

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U.S. Environmental Protection Agency
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Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
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Sacramento, CA 95812-0100

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

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

Bruce H. Wolfe, Executive Officer II
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

ATTACHMENT A
Rain Dates, Costco, San Leandro, CA

4/13/2011	11/17/2012	3/31/2014
5/14/2011	11/20/2012	4/1/2014
5/16/2011	11/21/2012	4/4/2014
5/28/2011	11/28/2012	4/25/2014
5/31/2011	11/29/2012	9/25/2014
6/1/2011	11/30/2012	10/25/2014
6/4/2011	12/1/2012	10/31/2014
6/28/2011	12/2/2012	11/12/2014
10/3/2011	12/5/2012	11/13/2014
10/4/2011	12/15/2012	11/19/2014
10/5/2011	12/17/2012	11/20/2014
10/6/2011	12/21/2012	11/22/2014
10/10/2011	12/22/2012	11/30/2014
11/4/2011	12/23/2012	12/2/2014
11/5/2011	12/25/2012	12/3/2014
11/11/2011	12/26/2012	12/5/2014
11/19/2011	1/5/2013	12/6/2014
11/20/2011	1/23/2013	12/11/2014
1/19/2012	2/7/2013	12/12/2014
1/20/2012	2/19/2013	12/14/2014
1/21/2012	3/31/2013	12/15/2014
1/22/2012	4/1/2013	12/16/2014
1/23/2012	4/4/2013	12/17/2014
2/7/2012	6/25/2013	12/19/2014
2/29/2012	9/21/2013	2/6/2015
3/13/2012	11/19/2013	2/8/2015
3/14/2012	11/20/2013	4/5/2015
3/16/2012	12/6/2013	4/7/2015
3/24/2012	2/2/2014	4/25/2015
3/25/2012	2/5/2014	6/10/2015
3/27/2012	2/6/2014	11/2/2015
3/31/2012	2/7/2014	11/9/2015
4/10/2012	2/8/2014	11/15/2015
4/11/2012	2/9/2014	11/24/2015
4/12/2012	2/26/2014	12/3/2015
4/13/2012	2/27/2014	12/10/2015
4/25/2012	2/28/2014	12/11/2015
10/22/2012	3/3/2014	12/13/2015
10/24/2012	3/5/2014	12/18/2015
10/31/2012	3/25/2014	12/19/2015
11/1/2012	3/26/2014	12/20/2015
11/16/2012	3/29/2014	12/21/2015

ATTACHMENT A

Rain Dates, Castco, San Leandro, California

12/22/2015	1/18/2016	3/10/2016
12/24/2015	1/19/2016	3/11/2016
1/5/2016	1/22/2016	3/12/2016
1/6/2016	2/17/2016	3/13/2016
1/13/2016	3/4/2016	3/20/2016
1/15/2016	3/5/2016	4/9/2016
1/16/2016	3/6/2016	
1/17/2016	3/7/2016	