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10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA

13 ORANGE COUNTY
14 COASTKEEPER, a non-profit
15 corporation,

16 Plaintiff,

17 v.

18 DBW & ASSOCIATES, INC., a
19 California corporation, and DBW &
20 ASSOCIATES, INC., dba DBW
21 Metals,

Defendants.

Case No. SACV-09-1063-DOC (MLGx)

Hon. David O. Carter

[Proposed]
CONSENT DECREE

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

1 **WHEREAS**, Orange County Coastkeeper is a non-profit corporation dedicated to
2 the preservation, protection and defense of the environment, the wildlife, and the natural
3 resources of Orange County area waters, including the Santa Ana River Watershed and
4 its receiving waters;

5 **WHEREAS**, Orange County Coastkeeper is referred to herein as (“Coastkeeper” or
6 “Plaintiff”);

7 **WHEREAS**, DBW & Associates, Inc. is an owner and/or operator of the scrap
8 metal recycling facility located at 3250 East Frontera Street, Anaheim, California, 92806
9 (“Facility”);

10 **WHEREAS**, DBW & Associates, Inc. dba DBW Metals is an owner and/or
11 operator of the scrap metal recycling facility located at 3250 East Frontera Street,
12 Anaheim, California, 92806;

13 **WHEREAS**, DBW & Associates, Inc., and DBW & Associates, Inc. dba DBW
14 Metals are collectively referred to herein as “Defendants” or “DBW Metals”;

15 **WHEREAS**, on July 1, 2009, Coastkeeper served Defendants, the United States
16 Environmental Protection Agency (“EPA”), EPA Region IX, the State Water Resources
17 Control Board (“State Board”) and the Regional Water Quality Control Board (“Regional
18 Board”), with a notice of intent to file suit for violations of the Federal Water Pollution
19 Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”). The notice letter
20 alleged violations of the Clean Water Act for Defendants’ discharges of pollutants into
21 receiving waters in violation of National Pollution Discharge Elimination System
22 (“NPDES”) General Permit No. CAS0000001 [State Board] Water Quality Order No.
23 92-12-DWQ, as amended by Order No. 97-03-DWQ (“Industrial Permit”);

24 **WHEREAS**, on September 15, 2009, Coastkeeper filed a complaint against
25 Defendants in the United States District Court, Central District of California (Civil Case
26 No. SACV 09-1063-DOC (MLGx)) entitled *Orange County Coastkeeper v. DBW &*
27 *Associates, Inc., and DBW & Associates, Inc. dba DBW Metals* (“Complaint”);

28 **WHEREAS**, Defendants deny all allegations of the Complaint;

1 **WHEREAS**, Plaintiff and Defendants (collectively referred to herein as the
2 “Settling Parties” or “Parties”) have agreed that it is in the Parties' mutual interest to
3 enter into a Consent Decree setting forth terms and conditions appropriate to resolving
4 the allegations set forth in the Complaint without further proceedings;

5 **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree
6 shall be made in compliance with all applicable federal, state and local rules and
7 regulations;

8 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
9 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**
10 **FOLLOWS:**

11 1. The Court has jurisdiction over the subject matter of this action pursuant to
12 Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

13 2. Venue is appropriate in the Central District Court pursuant to Section
14 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facility at which the alleged
15 violations took place is located within this District;

16 3. The Complaint states a claim upon which relief may be granted against
17 Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

18 4. Plaintiff has standing to bring this action;

19 5. The Court shall retain jurisdiction over this matter for purposes of
20 interpreting, modifying or enforcing the terms of this Consent Decree, or as long
21 thereafter as is necessary for the Court to resolve any motion to enforce this Consent
22 Decree.

23 **I. OBJECTIVES**

24 6. It is the express purpose of the Parties entering into this Consent Decree to
25 further the objectives set forth in Section 101 *et seq.* of the CWA, 33 U.S.C. § 1251 *et*
26 *seq.*, and to resolve those issues alleged by Coastkeeper in its Complaint. In light of
27 these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply with
28 the provisions of this Consent Decree and to comply with the requirements of the

1 Industrial Permit and all applicable provisions of the CWA at the Facility. Specifically,
2 Receiving Water Limitation C(2) in the Industrial Permit requires that the Facility “not
3 cause or contribute to the exceedance of an applicable water quality limit.” Effluent
4 Limitation B(3) of the Industrial Permit requires that Best Management Practices
5 (“BMPs”) be developed and implemented to achieve Best Available Technology
6 (“BAT”) and the Best Conventional Pollutant Control Technology (“BCT”). Defendants
7 are required to develop and implement BMPs necessary to comply with the Industrial
8 Permit’s requirement to achieve compliance with Water Quality Standards and BAT/BCT
9 standards. BMPs must be developed and implemented to prevent discharges or to reduce
10 contamination in storm water discharged from the Facility sufficient to achieve the
11 numeric limits detailed in paragraphs 12 and 13 below.

12 **II. COMMITMENTS OF THE PARTIES**

13 **A. Installation of Treatment Train Prior to Curb Discharge Point**

14 7. DBW Metals currently discharges through pipes in the curb between the two
15 driveways on East Frontera Street leading into and out of the Facility. DBW Metals will
16 add a treatment train including a filtration device prior to discharging. The treatment
17 train will include primary filtration, a four stage clarifier, settling tanks and in-line
18 plumbing. For at least the first hour of any discharge, water from the treatment train will
19 be delivered to the adjacent facility to be recycled for use in the adjacent facility’s
20 operations. Records of the volume and timing of any discharge to the adjacent facility
21 shall be maintained by DBW Metals and made available to Coastkeeper within seven (7)
22 days of receipt of a request for them. Discharges from the treatment train through the
23 inline pipe(s) between the two DBW Metals driveways on East Frontera Street shall be
24 sampled (subject to the requirements of this Consent Decree and the Industrial Permit).

25 **B. Industrial Storm Water Pollution Control Measures**

26 8. The storm water pollution control measures and contaminant reduction
27 provisions of this Consent Decree shall only apply to rainfall events up to and including
28 the 5-year, 24-hour return period rain event (“Compliance Storm Event”), as defined by

1 the County of Los Angeles Hydrology Manual (January, 2006) with an assumed dry
2 antecedent condition, a total of 3.4 inches of rainfall over a 24-hour period and an
3 assumed triangular runoff hydrograph. The Parties agree that any discharge of
4 stormwater and/or stormwater pollutants from the Facility in connection with a rainfall
5 event that exceeds a Compliance Storm Event is not a violation of this Consent Decree.

6 9. Defendants shall, by the Effective Date of this Consent Decree, develop a
7 BMP Plan to capture, filter, evaporate, harvest, treat and/or store to prevent off-site
8 discharge of industrial storm water generated during rain events up to and including the
9 Compliance Storm Event at the Facility. The BMP Plan may contain the following
10 measures listed herein, as appropriate, and Defendant shall develop and implement
11 additional measures, if necessary, to reduce contamination in storm water discharged
12 from the Facility to levels below the numeric limits set forth in Table 1 and Table 2
13 below:

14 a. Materials Storage and Industrial Activities. Placing sources of
15 contamination in covered containers or under cover with such areas contained by berming
16 or other containment sufficient to prevent the exposure of pollutants to storm water and
17 non-stormwater, and to therefore prevent the discharge of pollutants;

18 b. Coating. Coating structural sources of contamination (e.g. galvanized
19 building roofs and siding);

20 c. Sweeping. Employing high efficiency sweeping in order to prevent
21 the exposure of pollutants to storm water flows;

22 d. Harvesting and Storing Runoff. Constructing and maintaining on-site
23 retention facilities (such as retention ponds or swales, baker tanks, sumps, cisterns, or dry
24 wells/ injection wells) designed to hold and store all or a portion of the runoff generated
25 by a 5 year return period storm event without any off-site discharge;

26 e. Treating Runoff. Treating runoff discharging from the site with
27 devices such as sand filters evaluated in the Caltrans Retrofit Study (“CRS”) or
28 equivalent treatment devices at appropriate locations;

1 f. Vehicle and Equipment Maintenance and Fueling.

2 i. Conducting all vehicle and equipment maintenance and fueling
3 at the Facility on asphalt or another impermeable surface;

4 ii. Conducting all vehicle and equipment maintenance and fueling
5 at the Facility under cover;

6 iii. Berming or otherwise containing the surface of the area where
7 vehicle maintenance and fueling occurs in order to prevent the exposure of pollutants to
8 storm water and non-storm water, and to therefore prevent the discharge of pollutants;

9 iv. Cleaning the maintenance and fueling area as necessary to
10 control track-off of pollutants;

11 v. Dispensing with all petroleum products within the maintenance
12 and fueling area only;

13 vi. Installing tire washing facilities at exit points from the Facility
14 to prevent off-site tracking from vehicles;

15 vii. Constructing secondary containment adequate to capture all
16 drips, spills, and leaks around the vehicle fueling area and for all other areas where 55-
17 gallon drums are stored for on-site use;

18 g. While Defendants may employ some combination of the measures
19 listed above to achieve compliance with the numeric limits in Table 2 by the end of the
20 Consent Decree period, they agree to immediately install a separation (settling) tank and
21 filtration system to manage storm water from a 5-year, 24-hour rainfall event. The
22 Facility will also be bermed to divert stormwater onsite during Compliance Storm Events
23 through the filtration system. These systems will be operational within thirty (30) days of
24 the Effective Date of this Decree.

25 h. Discharge Elimination: Developing and implementing a plan to
26 prevent the discharge of storm water to surface waters, including a recordkeeping
27 program to track the destination of storm water that is transferred from the Facility, if
28 any.

1 10. Defendants shall complete and provide the BMP Plan to Coastkeeper for
2 review and comment within thirty (30) days of the Effective Date of this Consent Decree.
3 Coastkeeper shall respond with comments within 30 days of receiving the BMP Plan.
4 Within twenty-one (21) days of receiving Coastkeeper's comments, if any, Defendants
5 shall submit a final BMP Plan to Coastkeeper, incorporating Coastkeeper's comments
6 into the BMP Plan, or justifying in writing why any comment is not being incorporated.
7 Defendants shall implement all BMPs in the BMP Plan at the Facility within 90 days of
8 the Effective Date of this Consent Decree. Any disputes as to the adequacy of the BMP
9 Plan shall be resolved pursuant to the dispute resolution procedures of this Consent
10 Decree, set out at Section IV below.

11 **C. Reduction of Pollutants in Discharges**

12 11. Numeric Limits and Contaminant Reduction. During the 2009/2010 Wet
13 Season, Defendants' preparation and compliance with the BMP Plan and monitoring plan
14 required under this Consent Decree and completing the system described in Paragraph
15 9(g) shall constitute compliance with this Section II.C of the Consent Decree. Beginning
16 in the 2010/2011 Wet Season, Defendants shall achieve compliance by demonstrating (a)
17 that concentrations of the contaminants listed in Tables 1 and 2 discharged from the
18 Facility are at or below the limits listed in Tables 1 and 2; or (b) the pollutant
19 concentrations in such discharges are at or below the numeric limits set forth in Table 2,
20 or the corresponding potential mass emission reductions described in paragraphs 16-18
21 below are achieved. Non-stormwater discharges from the Facility not authorized by the
22 Industrial Permit shall be considered a breach of this Consent Decree, subject to the
23 Force Majeure provisions set forth in Paragraph 44 below.

12. BAT/BCT and Technology Based Limits:¹ Contaminants in discharges shall not exceed the limits (“BAT/BCT Levels”) in Table 1:

Table 1: BAT/BCT and Technology Based Limits (BAT/BCT Levels)

Contaminant (All metals are total recoverable)	Limit (All but pH expressed as mg/L)
Total suspended solids	100
Copper	0.0123
Lead	0.069
Zinc	0.11
Oil and grease	15
Aluminum	0.750
Arsenic	0.16854
Cadmium	0.0159
Iron	1
Mercury	0.0024
Nickel	1.417
Silver	0.0318
Chemical oxygen demand	120
pH	6.0-9.0 units

¹ The Best Available Technology (BAT) limits were derived from the International BMP Database assembled by EPA and others for contaminants measured at a variety of BMPs, accepted into the database, and subjected to statistical analysis. The proposed BAT limit is generally based on the maximum median pollutant discharge concentration among all reported BMP types, except hydrodynamic devices (which perform more poorly than land-based BMPs). In some cases the Caltrans Retrofit Pilot Study results for the same BMPs were also consulted to guide the selection. The BAT limit for oil and grease is equivalent to the widely accepted capability of a coalescing plate or equivalent oil/water separator. Other contaminants common in scrap yard discharges are not represented at all, or are not sufficiently represented, in the database to set BAT limits. In these cases the limits are the benchmarks in the EPA multi-sector industrial permit. Defendants are analyzing hardness when collecting samples and Defendants can adjust limits based on hardness where applicable.

1 13. Water Quality Standard (WQS) Based Limits. Contaminants in discharges
2 shall not exceed the limits in Table 2. The chemical oxygen demand and pH limits are
3 from the applicable Basin Plan, all other are the CTR CMC² limits:

4 **Table 2: WQS Based Limits**

5

Contaminant	Limit (All but pH expressed as mg/L)
Arsenic	0.340
Cadmium	0.0043
Copper	0.013
Lead	0.065
Nickel	0.470
Silver	0.0034
Zinc	0.120
Chemical oxygen demand	30
pH	6.5-8.5 units

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14 14. Action Plan for Table 1 or Table 2 Exceedances. When sampling
15 demonstrates discharges of storm water containing concentration of pollutants exceeding
16 a Table 1 or 2 limit, Defendants agree to submit an action plan according to, and in
17 compliance with, the schedule and requirements below. The Parties agree to comply with
18 the dispute resolution procedures set forth in Section IV below if there are any
19 disagreements or disputes regarding any of the action plan(s) discussed below.

20 a. Action Plan for Exceedences of BAT/BCT Levels. If sample results from
21 the first storm event sampled in a Wet Season exceed Table 1 limits, then Defendants
22 shall provide Coastkeeper with a BAT/BCT Action Plan within fourteen (14) days of
23 Defendants' receipt of such data. If sample results from a storm event within thirty (30)

24 _____
25 ² The CTR CMC limits are the California Toxics Rule (CTR) Criterion Maximum Concentrations
26 (CMC) from the Federal Register, Vol. 65, No. 97, May 18, 2000. Defendant shall measure dissolved as
27 well as total recoverable metals. In general, freshwater limits for metals depend on water hardness.
28 Defendants are analyzing hardness when collecting samples and Defendants can adjust limits based on
hardness where applicable.

1 days of submission of the first BAT/BCT Action Plan exceed Table 1 limits, Defendants
2 are not obligated to submit a BAT/BCT Action Plan to address these exceedences, but
3 must include measures to address these exceedences in a BAT/BCT Action Plan due by
4 June 30 following the Wet Season. If sample results from the next storm event sampled
5 in a Wet Season occurring before March 1 (not including those from an event occurring
6 within thirty (30) days of submission of the first BAT/BCT Action Plan) exceed Table 1
7 limits, Defendants shall provide a BAT/BCT Action Plan within fourteen (14) days of
8 Defendants' receipt of such data. If any other sample results exceed a Table 1 limit
9 Defendants shall submit a BAT/BCT Action Plan by June 30 following each Wet Season,
10 which may be incorporated into the WQS Action Plan described below. Any BAT/BCT
11 Action Plan submitted pursuant to this paragraph shall include at a minimum (1) the
12 identification of the pollutant(s) discharged in excess of the BAT/BCT Levels, (2) an
13 assessment of the source of each pollutant exceedance, (3) the identification of additional
14 BMPs that will be implemented to achieve compliance with the BAT/BCT Levels set
15 forth in Table 1, and (4) time schedules for implementation of the proposed BMPs.
16 Coastkeeper shall have fourteen (14) days upon receipt of Defendants' BAT/BCT Action
17 Plan to provide Defendants with comments. Defendants shall have twenty-one (21) days
18 from the date Coastkeeper comments on Defendants' BAT/BCT Action Plan to
19 implement any additional non-structural or structural BMPs recommended by
20 Coastkeeper. Defendants shall provide a written explanation if Defendants refuse to
21 develop and/or implement any of Coastkeeper's recommended additional BMPs. If any
22 structural BMPs require any agency approval, then Defendants shall contact Coastkeeper
23 to request an extension of the deadline to implement the structural BMPs requiring
24 agency approval. Coastkeeper's consent to Defendants' requested extension shall not be
25 unreasonably withheld. Defendants shall notify Coastkeeper in writing when the Action
26 Plan has been implemented.

27 b. WQS Action Plan. Defendants shall provide Coastkeeper with a WQS
28 Action Plan by June 30 following each Wet Season if storm water sampling data

1 demonstrating an exceedance of a WQS Level at the Facility. The objective of the WQS
2 Action Plan is to set forth additional BMPs designed to achieve compliance with Table 2
3 limits. The Action Plan shall include at a minimum (1) the identification of the
4 pollutant(s) discharged in excess of the WQS; (2) an assessment of the source of the
5 pollutant; (3) the identification of additional BMPs that will be implemented to achieve
6 compliance with the applicable WQS; and (4) time schedules for implementation of the
7 proposed structural and non-structural BMPs. Coastkeeper shall have twenty-one (21)
8 days upon receipt of Defendants' WQS Action Plan to provide Defendants with
9 comments. Defendants shall have twenty-one (21) days from the date Coastkeeper
10 comments on Defendants' Action Plan to implement any additional non-structural or
11 structural BMPs. Defendants shall provide a written explanation if Defendants refuse to
12 develop and/or implement any of Coastkeeper's recommended additional BMPs. If any
13 structural BMPs require any agency approval, then Defendants shall contact Coastkeeper
14 to request an extension of the deadline to implement the structural BMPs requiring
15 agency approval. Coastkeeper's consent to Defendants' requested extension shall not be
16 unreasonably withheld. Defendants shall notify Coastkeeper in writing when the Action
17 Plan has been implemented.

18 15. Action Plan for Year 4 Wet Season. If at the end of the 2011/2012 Wet
19 Season, storm water sample results demonstrate that Defendants continue to discharge
20 storm water and/or non-stormwater containing pollutants exceeding the limits set forth in
21 Tables 1 and/or 2, the Parties shall meet and confer by July 1, 2012 to discuss the sample
22 results, current BMPs, and to devise a mutually agreeable action plan ("Year 4 Action
23 Plan"). Within thirty (30) days of meeting and conferring, Defendants will develop and
24 submit the Year 4 Action Plan to Coastkeeper. Coastkeeper will provide comments on
25 the Year 4 Action Pan within thirty (30) days of receipt of the plan. DBW Metals shall
26 revise the Year 4 Action Plan to include Coastkeeper's comments.

27 16. Mass Emission Reduction for Contaminants with WQS Based Limits. If any
28 sampling demonstrates discharges of stormwater containing a concentration of pollutants

1 exceeding the WQS Based Limits in Table 2, Defendants shall have the opportunity to
 2 demonstrate within 180 days that the potential total mass emission of the contaminant has
 3 been reduced through a combination of decreases in its concentrations and reductions of
 4 the volume of the runoff discharged from industrial activities. Defendants agree to
 5 submit a plan for additional mass emission contaminant reduction to Coastkeeper for
 6 review and comment as soon as practicable and in any case within 30 days of receipt of
 7 sampling data demonstrating an exceedance. Coastkeeper shall provide comments, if
 8 any, to the Defendants within 30 days of receipt. Defendants shall incorporate
 9 Coastkeeper’s comments in order to reduce the mass emission of the contaminant and
 10 initiate implementation of the reduction within 30 days of receipt of Coastkeeper
 11 comments and complete implementation within 60 days of receipt of Coastkeeper’s
 12 comments, or as otherwise agreed between Coastkeeper and Defendants. If any of
 13 Coastkeeper’s comments are not adopted and incorporated, Defendants shall justify in
 14 writing why any comment is not being incorporated within 30 days of receiving the
 15 comments. Any disputes as to the adequacy of the mass emission reduction plan shall be
 16 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at
 17 Section IV below.

18 17. The baseline for mass emissions reductions calculations, consisting of the
 19 geometric mean of all concentrations of stormwater contaminants sampled by
 20 Coastkeeper and sampled by Defendant prior to the Effective Date, is as follows:

21 **Table 3: Geometric Mean of Contaminants That Exceed Numeric Limits**

Contaminant	Geometric Mean
Copper	0.824 mg/L
Lead	0.331 mg/L
Zinc	0.783 mg/L
Oil and Grease	7.9 mg/L
Chemical Oxygen Demand	81 mg/L
Total Suspended Solids	26 mg/L

1 For the contaminants listed in Table 3, the demonstration that the potential total mass
2 emission of a contaminant has been reduced shall be made as follows:

- 3 a. Determine the geometric mean of all concentrations of the
4 contaminant measured before and after the Effective Date of the
5 Consent Decree;
- 6 b. Determine the site surface area discharging runoff containing the
7 contaminant before and after this Effective Date;
- 8 c. Multiply the geometric mean of concentrations and site surface area
9 discharging before and after this Effective Date to obtain indicators of
10 potential mass emission before and after this Effective Date; and
- 11 d. Show that the potential mass emission of the contaminant has
12 decreased by the amount(s) specified in Table 4:

13 **Table 4: Mass Emission Decrease Requirements for Table 3 Contaminants**

14 If the concentration exceeds the WQS 15 Based Limit by:	Then the potential total mass emission shall be reduced by:
16 1-100% (i.e., up to 2 times the limit)	50%
17 101-200% (i.e., up to 3 times the limit)	75%
18 201-300% (i.e., up to 4 times the limit)	95%

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20 18. For the Contaminants listed in Table 5 below, for which inadequate baseline
21 data is currently available for such Contaminants' inclusion in Table 3, or for which the
22 geometric means are below the applicable WQS Based Limits set out in Table 2, the
23 following method shall be used to assess compliance with the WQS Based Limits
24 described above for any discharge point where storm water discharges occur during storm
25 events smaller than the Compliance Storm Event.

- 26 a. Based on existing site conditions (100 percent impervious surfaces and no
27 storm water infiltration or diversion) and the amount of rainfall that falls on
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1 the Facility during each of the monitored storm events described, the volume
2 of water that would have discharged from the Facility prior to installation of
3 the filtration and/or diversion measures shall be calculated;

- 4 b. Using the WQS Based Limits described above, the mass of “allowable”
5 pollutants will be calculated (volume of water assuming no
6 filtration/diversion multiplied by the WQS Based Limits) for each listed
7 constituent;
- 8 c. The actual contaminant mass discharged for each of the pollutants listed
9 above will be calculated (volume of water actually discharged multiplied by
10 the analytical results for storm events where discharges occur);
- 11 d. For each of the monitored storm events, the calculated mass of actual
12 contaminants discharged under subparagraph (c) above will be compared to
13 the mass of allowable contaminants calculated under subparagraph (b)
14 above.

15 **Table 5: Contaminants not in Table 3**

Contaminant	Geometric Mean³
Arsenic	Insufficient Data
Cadmium	Less than Table 2
Silver	Insufficient Data
Nickel	Less than Table 2

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20 **D. Sampling, Monitoring, Inspecting, and Reporting**

21 19. Sampling Program. Within thirty (30) days of the Effective Date,
22 Defendants shall revise their monitoring and reporting plan (M&RP) to meet the
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24 _____
25 ³ The references in Table 5 to “Insufficient Data” indicate that the combined storm water
26 discharge sampling data currently available to Coastkeeper lack at least three sample
27 results that are above the reporting limit for that contaminant from which to calculate the
28 geometric mean.

1 requirements of this Consent Decree. All storm water discharge locations shall be
2 sampled at the Facility. Storm water samples collected must represent the discharge at
3 the point it leaves the Facility. Additionally, sampling of stored or contained storm water
4 shall occur at the time the stored or contained storm water is released. The M&RP shall
5 be revised to include sampling at all new or additional discharge points created in the
6 future.

7 20. Coastkeeper's Review of Revised M&RP. Defendants agree to submit the
8 M&RP to Coastkeeper for review and comment as soon as it is completed but in any
9 event no later than thirty (30) days from the Effective Date of this Consent Decree.
10 Coastkeeper shall provide comments, if any, to the Defendants within thirty (30) days of
11 receipt of the M&RP. Defendants shall incorporate Plaintiff's comments into the M&RP,
12 or shall justify in writing why any comment is not incorporated within twenty-one (21)
13 days of receiving comments. Any disputes as to the adequacy of the M&RP shall be
14 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at
15 Section IV below.

16 21. Sample Analysis and Sample Frequency. Beginning with the 2009/2010
17 Wet Season (defined as October 1- May 31), Defendants shall collect storm water
18 samples from each discharge location from each storm event at the Facility. In years 2-5
19 of the Decree, DBW Metals agrees to sample every storm event up to five (5) storm
20 events per Wet Season. Until every storm event up to five (5) storm events are sampled,
21 any water from a storm event that is not transferred to the adjacent property shall be
22 sampled prior to discharge, unless the storm event begins during after operating hours
23 and the discharge becomes necessary before operating hours recommence. In the latter
24 case, the discharge shall be sampled if it is still ongoing when operating hours
25 recommence. Operating hours are defined as 7 a.m. to 5 p.m. Monday through Friday
26 and 8 a.m. to 1:30 p.m. Saturday.

27 22. Defendants shall analyze the samples for the constituents identified in Table
28 1 and Table 2. A California State certified laboratory shall perform all sample chemical

1 analyses. Defendants shall select laboratories and analytical limits such that, at a
2 minimum, the method detection limits (“MDLs”) shall be below both the Table 1 and
3 Table 2 Limits set forth herein. In addition, Defendants shall perform sampling as
4 required by the Industrial Permit for the Facility.

5 **E. Storm Water Pollution Prevention Plan**

6 23. SWPPP Revisions. Within thirty (30) days of the Effective Date of this
7 Consent Decree, Defendants agree to revise the SWPPP currently in effect at the Facility
8 to incorporate all storm water pollution prevention measures and other requirements set
9 forth in this Consent Decree and/or the Industrial Permit. Specifically, the SWPPP shall
10 include a description of all industrial activities and corresponding potential pollution
11 sources and, for each potential pollutant source, a description of the potential pollutants
12 from the sources. The SWPPP shall also identify BMPs (and their implementation dates)
13 designed to achieve compliance with Numeric Limits set forth in Table 1 and Table 2.
14 Defendants shall revise the SWPPP as necessary to incorporate additional BMPs
15 developed pursuant to this Consent Decree.

16 24. Coastkeeper’s Review of Revised SWPPP. Defendants shall submit the
17 revised SWPPP to Coastkeeper for review and comment as soon as it is completed but in
18 any event no later than thirty (30) days from the Effective Date of this Consent Decree.
19 Within thirty (30) days of Coastkeeper’s receipt of the revised SWPPP, Coastkeeper shall
20 provide Defendants with comments and suggestions, if any, concerning the revisions to
21 the SWPPP. Defendants shall incorporate or shall justify in writing why any comment is
22 not incorporated within twenty-one (21) days of Defendants’ receipt of Coastkeeper’s
23 comments on the revised SWPPP and re-issue the SWPPP. Any disputes as to the
24 adequacy of the SWPPP shall be resolved pursuant to the dispute resolution provisions of
25 this Consent Decree, set out in Section IV below.

26 **F. Employee Training**

27 25. Within thirty (30) days of the Effective Date, Defendants shall develop a
28 training program, including any materials needed for effectiveness, and shall provide

1 training for employees as follows:

2 a. Non-Storm Water Discharge Training. Defendants shall conduct training
3 on the Industrial Permit's prohibition of non-storm water discharges so that employees
4 know what non-storm water discharges are and how to avoid them. Such training shall
5 be specified in the SWPPP;

6 b. BMP Training. Defendants shall provide training to all employees
7 responsible for BMP implementation and maintenance. Training shall be provided by a
8 private consultant or representative of Defendants familiar with the Industrial Permit
9 requirements and shall be repeated as necessary to ensure that all such employees are
10 familiar with the Industrial Permit and SWPPP requirements. Defendants shall maintain
11 training records to document compliance with this paragraph, and shall provide
12 Coastkeeper with a copy of these records within fourteen (14) days of receipt of a written
13 request;

14 c. Sampling Training. Defendants shall provide training to all individuals
15 performing sampling pursuant to the Industrial Permit at the Facility. All employees
16 shall thereafter be trained prior to becoming responsible for conducting sampling
17 activities. The training shall be provided by a private consultant or representative of
18 Defendants familiar with the Industrial Permit requirements and shall be repeated as
19 necessary to ensure Industrial Permit compliance. Defendants shall maintain training
20 records to document compliance with this paragraph, and shall provide Coastkeeper with
21 a copy of these records within fourteen (14) days of receipt of a written request.

22 d. Visual Observation Training. Defendants shall provide additional training
23 to all individuals performing visual observations pursuant to the Industrial Permit at the
24 Facility. The training will be provided by a private consultant or representative of
25 Defendants and shall be repeated as necessary to ensure Industrial Permit compliance.
26 All new staff will receive this training before assuming responsibilities for implementing
27 the SWPPP. Defendants shall maintain training records to document compliance with
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1 this paragraph, and shall provide Coastkeeper with a copy of these records within
2 fourteen (14) days of a written request.

3 **G. Compliance Monitoring**

4 26. Site Inspections. Coastkeeper, Dr. Richard Horner, or an alternative water
5 quality engineer identified by Coastkeeper, accompanied by Coastkeeper's attorney or
6 other representative, may conduct up to two (2) site inspections at the Facility during the
7 first year following the Effective Date of the this Consent Decree. The number and
8 frequency of site inspections in the following years will be based on whether Defendants
9 have achieved and remain in compliance with the Consent Decree. The Parties agree to
10 negotiate in good faith to schedule inspections in following years, with the understanding
11 that inspections are a necessary part of evaluating compliance and that Orange County
12 Coastkeeper is entitled to reasonable compensation for these activities. Site inspections
13 shall occur during normal business hours. Coastkeeper shall provide Defendants' with as
14 much notice as possible, but at least twenty-four (24) hours notice during the Wet
15 Weather season and forty-eight (48) hours notice during the dry season prior to each
16 inspection. Notice will be provided by phone and electronic mail to the individuals listed
17 in paragraph 48 below. During site inspections, Coastkeeper and/or its representatives
18 shall be allowed access to the Facility's SWPPP and monitoring records and to all
19 monitoring reports and data for the Facility. During site inspections, Coastkeeper and/or
20 its representatives may collect samples of storm water discharges at the Facility.

21 27. Compliance Monitoring and Oversight. Defendants agree to help defray
22 Coastkeeper's reasonable costs incurred in conducting site inspections and compliance
23 monitoring for the first year following the Effective Date of this Consent Decree by
24 making a payment of Five Thousand Dollars (\$5,000.00). This payment shall be made
25 within sixty (60) days of the Effective Date of this Decree. This payment shall be made
26 payable to:

27 **Lawyers for Clean Water Attorney Client Trust Account**

1 and shall be sent certified mail or overnight delivery and mailed to Lawyers for Clean
2 Water, Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129. The Parties
3 agree to negotiate in good faith the funding for compliance monitoring, including
4 additional site inspections, in following years, with the understanding that such
5 monitoring is a necessary part of evaluating Defendants' compliance with this Consent
6 Decree. Defendants specifically agree that Orange County Coastkeeper is entitled to
7 reasonable compensation for compliance monitoring. Coastkeeper shall provide copies
8 of any invoicing for site inspections and compliance oversight within thirty (30) days of
9 receiving a written request by Defendants.

10 28. Reporting. During the life of this Consent Decree, on a monthly basis,
11 Defendants shall provide Coastkeeper with a copy of all compliance and monitoring data,
12 including inspection reports, related to the Facility. During the life of this Consent
13 Decree, Defendants shall provide Coastkeeper with all laboratory analyses related to the
14 Facility within seven (7) days of Defendants' receipt of such information.

15 29. Document Provision. During the life of this Consent Decree, Defendants
16 shall copy Coastkeeper on all documents related to water quality at the Facility that are
17 submitted to the Regional Board, the State Board, and/or any State or local agency or
18 municipality. Such reports and documents shall be provided to Coastkeeper concurrently
19 as they are sent to the agencies and/or municipalities. Any correspondence related to
20 water quality received by DBW Metals from any regulatory agency shall be provided
21 within three (3) business days of receipt by DBW Metals.

22 **H. Environmental Projects and Fees and Costs**

23 30. Environmental Mitigation Project. Defendants agree make a payment of
24 Fifteen Thousand Dollars (\$15,000) to the Public Interest Green Fund at the Orange
25 County Community Foundation, 30 Corporate Park, Suite 410, Irvine, California 92606,
26 www.oc-cf.org. The Public Interest Green Fund is a non-profit organization that uses its
27 funds to support environmental advocacy by area law students on behalf of non-profit
28 organizations, either via stipends or scholarships. This mitigation payment shall be used

1 to support student advocacy in projects that reduce or mitigate the impacts of storm water
2 pollution in Orange County. Defendants shall make the mitigation payment within sixty
3 (60) days of the Effective Date and mail the payment via certified mail or overnight
4 delivery to the Public Interest Green Fund. Defendants shall provide Coastkeeper with a
5 copy of such payment.

6 31. Coastkeeper's Fees and Costs. Defendants agree to partially reimburse
7 Coastkeeper for their investigation fees and costs, consultant fees and costs, reasonable
8 attorneys' fees, and other costs incurred as a result of investigating and filing the lawsuit,
9 and negotiating a resolution of this matter in the amount of Fifty-One Thousand Five
10 Hundred Dollars (\$51,500.00). Defendants shall make this payment within sixty (60)
11 days of the Effective Date. All such payments shall be made payable to:

12 **Lawyers for Clean Water Attorney-Client Trust Account**

13 and delivered by certified mail or overnight delivery to: Lawyers for Clean Water, Inc.,
14 1004 A O'Reilly Avenue, San Francisco, California 94129.

15 32. Stipulated Payment. Defendants shall make a remediation payment of One
16 Thousand Dollars (\$1,000) for each missed deadline included in or contemplated by this
17 Consent Decree, unless the missed deadline results from a Force Majeure Event.
18 Payments for a missed deadline shall be made for the restoration and/or improvement of
19 the watershed in the area affected by Defendants' discharges and shall be awarded to the
20 Environmental Mitigation Project recipient identified in paragraph 30 above. Defendants
21 agree to make the stipulated payment within thirty (30) days of a missed deadline and
22 mail the payment via certified mail or overnight delivery. Defendants shall provide
23 Coastkeeper with a copy of each such payment.

24 **I. Commitments of Plaintiff**

25 33. Plaintiff shall submit this Consent Decree to the United States
26 Environmental Protection Agency and the United States Department of Justice ("DOJ")
27 within three (3) days of the final signature of the Parties for agency review consistent
28 with 40 C.F.R. §135.5. The agency review period expires forty-five (45) days after

1 receipt by both agencies, as evidenced by the certified return receipts, copies of which
2 shall be provided to Defendants if requested. In the event that EPA or DOJ object to
3 entry of this Consent Decree the Parties agree to meet and confer to attempt to resolve the
4 issue(s) raised by EPA or DOJ.

5 34. Plaintiff shall file this Consent Decree with the District Court within three
6 (3) days of the Effective Date. Coastkeeper is responsible for notifying Defendants of the
7 District Court's entry of the Order dismissing these claims with prejudice. Such
8 notification can be satisfied by the Central District of California's Case
9 Management/Electronic Case Filing ("CM/ECF") notification to the Parties that the
10 Order was executed and entered by the District Court.

11 **III. EFFECTIVE DATE AND TERMINATION DATE**

12 35. The term "Effective Date," as used in this Consent Decree, shall mean the
13 last date for the United States Department of Justice and the United States Environmental
14 Protection Agency ("Federal Agencies") to comment on the Consent Decree, i.e., the
15 45th day following the United States Department of Justice and United States
16 Environmental Protection Agency's receipt of the Consent Decree, or the date on which
17 the Federal Agencies provide notice that they require no further review and the Court
18 enters the final Consent Decree, whichever occurs earlier.

19 36. This Consent Decree will terminate on its own terms five (5) years from the
20 Effective Date.

21 **IV. DISPUTE RESOLUTION**

22 37. This Court shall retain jurisdiction over this matter for the purposes of
23 adjudicating all disputes among the parties that may arise under the provisions of this
24 Consent Decree. The Court shall have the power to enforce this Consent Decree with all
25 available legal and equitable remedies, including contempt.

26 38. Meet and Confer. A party to this Consent Decree shall invoke the dispute
27 resolution procedures of this Section by notifying all other Parties in writing of the
28 matter(s) in dispute and of the party's proposal to resolve the dispute under this Section.

1 The Parties shall then meet and confer in an attempt to resolve the dispute no later than
2 ten (10) calendar days from the date of the notice.

3 39. If the Parties cannot resolve a dispute by the end of the meet and confer
4 process, the party invoking the dispute resolution provision may invoke formal dispute
5 resolution by filing a motion before the United States District Court for the Central
6 District of California. The Parties shall jointly apply to the Court for an expedited
7 hearing schedule on the motion.

8 40. If Coastkeeper initiates a motion or proceeding before the Court to enforce
9 the terms and conditions of this Consent Decree, Coastkeeper shall be entitled to recover
10 reasonable fees incurred to enforce the terms of this Consent Decree consistent with the
11 provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §§ 1365, 1319.

12 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

13 41. In consideration of the above, upon the Effective Date of this Consent
14 Decree, the Parties hereby fully release, except for claims for the Defendants' failure to
15 comply with this Consent Decree and as expressly provided below, each other and their
16 respective successors, assigns, officers, agents, employees, and all persons, firms and
17 corporations having an interest in them, from any and all alleged CWA violations
18 claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

19 42. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to
20 address or take any position that it deems necessary or appropriate in any formal or
21 informal proceeding before the Regional Board, EPA, or any other judicial or
22 administrative body on any other matter relating to Defendants.

23 43. Neither the Consent Decree nor any payment pursuant to the Consent Decree
24 shall constitute or be construed as a finding, adjudication, or acknowledgement of any
25 fact, law or liability, nor shall it be construed as an admission of violation of any law,
26 rule, or regulation. Defendants maintain and reserve all defenses they may have to any
27 alleged violations that may be raised in the future.

1 44. Force Majeure. Defendants shall notify Coastkeeper pursuant to the terms of
2 this paragraph, when implementation of the requirements set forth in this Consent
3 Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite
4 the timely good-faith efforts of Defendants, due to circumstances beyond the reasonable
5 control of Defendants or its agents, and which could not have been reasonably foreseen
6 and prevented by the exercise of due diligence by Defendants. Any delays due to
7 Defendants' failure to make timely and bona fide applications and to exercise diligent
8 efforts to obtain any necessary permits, or due to normal inclement weather shall not, in
9 any event, be considered to be circumstances beyond DBW Metals' control.

10 a. If Defendants claim impossibility, they shall notify Coastkeeper in writing
11 within twenty-one (21) days of the date that DBW Metals first knew of the event or
12 circumstance that caused or would cause a violation of this Consent Decree or the date
13 DBW Metals should have known of the event or circumstance by the exercise of due
14 diligence. The notice shall describe the reason for the nonperformance and specifically
15 refer to this Section. It shall describe the anticipated length of time the delay may persist,
16 the cause or causes of the delay, the measures taken or to be taken by DBW Metals to
17 prevent or minimize the delay, the schedule by which the measures will be implemented,
18 and the anticipated date of compliance. DBW Metals shall adopt all reasonable measures
19 to avoid and minimize such delays.

20 b. The Parties shall meet and confer in good-faith concerning the non-
21 performance and, where the Parties concur that performance was or is impossible, despite
22 the timely good faith efforts of DBW Metals, due to circumstances beyond the control of
23 DBW Metals that could not have been reasonably foreseen and prevented by the exercise
24 of due diligence by DBW Metals, new deadlines shall be established.

25 c. If Coastkeeper disagrees with DBW Metals' notice, or in the event that the
26 Parties cannot timely agree on the terms of new performance deadlines or requirements,
27 either party shall have the right to invoke the Dispute Resolution Procedure pursuant to
28 Section IV. In such proceeding, DBW Metals shall bear the burden of proving that any

1 delay in performance of any requirement of this Consent Decree was caused or will be
2 caused by force majeure and the extent of any delay attributable to such circumstances.

3 **VI. MISCELLANEOUS PROVISIONS**

4 45. Construction. The language in all parts of this Consent Decree shall be
5 construed according to its plain and ordinary meaning, except as to those terms defined in
6 the Industrial Permit, the Clean Water Act, or specifically herein.

7 46. Choice of Law. The laws of the United States shall govern this Consent
8 Decree.

9 47. Severability. In the event that any provision, paragraph, section, or sentence
10 of this Consent Decree is held by a court to be unenforceable, the validity of the
11 enforceable provisions shall not be adversely affected.

12 48. Correspondence. Except as otherwise specifically stated herein, all notices
13 required herein or any other correspondence pertaining to this Consent Decree shall be
14 sent by first-class mail and electronic mail as follows:

15 If to Plaintiff:

16 Daniel Cooper
17 Drevet Hunt
18 Lawyers for Clean Water
19 1004 A O'Reilly Ave
20 San Francisco, CA 94129
21 daniel@lawyersforcleanwater.com
22 drev@lawyersforcleanwater.com

23 With copies to:

24 Orange County Coastkeeper
25 Garry Brown
26 3151 Airway Ave # F110
27 Costa Mesa, CA 92626-4621
28 garry@coastkeeper.org

If to Defendant:

1 William W. Funderburk, Jr.
2 Ruben A. Castellon, Esq.
3 Stanzler Funderburk & Castellon LLP
4 811 Wilshire Blvd. Suite 1025
5 Los Angeles, CA 90017
6 wfunderburk@sfcfirm.com
7 rcastellon@sfcfirm.com@sfcfirm.com

8 With copies to:

9 DBW & Associates, Inc.
10 Attn: David Williams
11 3250 East Frontera Street
12 Anaheim, CA 92806
13 david@dbwmetals.com

14 Notifications of communications shall be deemed submitted three (3) days after the
15 date that they are postmarked and sent by first-class mail. Any change of address or
16 addresses shall be communicated in the manner described above for giving notices.

17 49. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent
18 Decree, warrant or aver in any manner that the Defendants' compliance with this Consent
19 Decree will constitute or result in compliance with any federal or state law or regulation.
20 Nothing in this Consent Decree shall be construed to affect or limit in any way the
21 obligation of the Defendants to comply with all federal, state, and local laws and
22 regulations governing any activity required by this Consent Decree.

23 50. Counterparts. This Consent Decree may be executed in any number of
24 counterparts, all of which together shall constitute one original document. Telecopy
25 and/or facsimile copies of original signature shall be deemed to be originally executed
26 counterparts of this Consent Decree.

27 51. Modification of the Consent Decree. This Consent Decree, and any
28 provisions herein, may not be changed, waived, discharged, or terminated unless by a
written instrument, signed by the Parties.

1 52. Full Settlement. This Consent Decree constitutes a full and final settlement
2 of this matter.

3 53. Integration Clause. This is an integrated Consent Decree. This Consent
4 Decree is intended to be a full and complete statement of the terms of the agreement
5 between the parties and expressly supersedes any and all prior oral or written agreements
6 covenants, representations, and warranties (express or implied) concerning the subject
7 matter of this Consent Decree.

8 54. Authority. The undersigned representatives for Plaintiff and Defendants
9 each certify that he/she is fully authorized by the party whom he/she represents to enter
10 into the terms and conditions of this Consent Decree.

11 55. The provisions of this Consent Decree apply to and bind the Parties,
12 including any successors or assigns. The Parties certify that their undersigned
13 representatives are fully authorized to enter into this Consent Decree, to execute it on
14 behalf of the Parties, and to legally bind the Parties to its terms.

15 56. The Parties agree to be bound by this Consent Decree and not to contest its
16 validity in any subsequent proceeding to implement or enforce its terms. By entering into
17 this Consent Decree, the Defendants do not admit liability for any purpose as to any
18 allegation or matter arising out of this Action.

19 The undersigned representatives for Coastkeeper and Defendants each certify that
20 he/she is fully authorized by the party whom he/she represents to enter into the terms
21 and conditions of this Consent Decree and that this Consent Decree binds that party.

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1 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as
2 of the date first set forth above.

3
4 LAWYERS FOR CLEAN WATER, INC.

5
6 Dated: December _____, 2009 _____

7 Daniel Cooper
8 Drevet Hunt
9 Lawyers for Clean Water, Inc.
Attorneys for Plaintiff

10 ORANGE COUNTY COASTKEEPER

11
12 Dated: December _____, 2009 _____

13 Garry Brown
14 Orange County Coastkeeper

15 STANZLER FUNDERBURK CASTELLON LLP

16
17
18 Dated: December _____, 2009 _____

19 Ruben A. Castellon
20 Attorney for Defendants

21 DBW & ASSOCIATES, INC.

22
23
24 Dated: December _____, 2009 _____

25 David B. Williams, Owner
26 DBW & Associates, Inc.

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IT IS SO ORDERED:

Date:

Honorable David O. Carter
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA