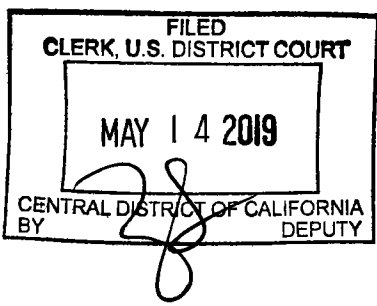


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15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 MATT SALNICK,
 18 Plaintiff,
 19 vs.
 20 AMERON POLE PRODUCTS, LLC,
 21 Defendant,

Civil Case No.: 2:17-cv-00359-CBM(JCx)

~~PROPOSED~~ CONSENT DECREE

JS6

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

1 CONSENT DECREE

2 The following Consent Decree is entered into by and between Matt Salnick (“Plaintiff”) and
3 Ameron Pole Products, LLC (“Ameron”). The entities entering into this Consent Decree are each an
4 individual “Settling Party” and collectively the “Settling Parties.”

5 **WHEREAS**, Plaintiff is a citizen of the State of California.

6 **WHEREAS**, Plaintiff is concerned with the environmental health of the Sespe Creek and overall
7 Santa Clara River Watershed, of which the Sespe Creek is a part, and uses and enjoys the waters of the
8 Sespe Creek, its inflows, outflows and other waters of the Santa Clara River Watershed;

9 **WHEREAS**, Ameron is the owner and operator of a facility that operates as a manufacturer of
10 traditional and contemporary concrete poles located at 1020 B Street, Fillmore, CA 93015, hereinafter
11 referred to by the Settling Parties as the “Facility;”

12 **WHEREAS**, Plaintiff’s use and enjoyment of these waters are negatively affected by the pollution
13 allegedly caused by the operations at the Facility;

14 **WHEREAS**, Plaintiff acts in the interest of the general public to prevent pollution in these
15 waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities
16 who use these waterways for various recreational, educational, and spiritual purposes;

17 **WHEREAS**, the discharges from the Facility are regulated by the National Pollutant Discharge
18 Elimination System (“NPDES”), General Permit No. CAS000001, [State Water Resources Control Board]
19 Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“1997 Storm Water
20 Permit”), and as amended by Order No. 2014-0057-DWQ (“IGP”), and the Federal Water Pollution
21 Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”);

22 **WHEREAS**, the Facility is listed as operating under SIC Code 3272, relating to Concrete
23 Products, except Block and Brick. Defendant applied for coverage under the California Industrial General
24 Permit on March 27, 1992, and was issued WDID No. 4 56I001604. Defendant reapplied for coverage
25 under the 2015 Industrial Stormwater Permit on April 1, 2015, and was granted the continued use of its
26 previously issued WDID No. The March 27, 1992, and April 1, 2015 “Notice of Intent” for the Facility
27

1 to comply with the terms of the Industrial Stormwater Permit list “Ameron Pole Product” and “Ameron
2 Pole Products” as the Operator and Facility names, respectively;

3 **WHEREAS**, on October 13, 2016, Plaintiff sent Ameron, the United States Environmental
4 Protection Agency (“EPA”), EPA Region IX, the State Water Resources Control Board (“State Board”),
5 and the Regional Water Quality Control Board – Los Angeles Region (“Regional Board”) a notice of
6 intent to file suit (“Notice Letter”) under Sections 505(a) and (b) of the Clean Water Act, 33 U.S.C. §§
7 1365(a) and (b). The Notice Letter alleged violations of Section 301(a) of the Clean Water Act, 33 U.S.C.
8 § 1311(a) and violations of the 1997 Storm Water Permit and the IGP at the Ameron Facility¹;

9 **WHEREAS**, on January 17, 2017, Plaintiff filed a complaint against Ameron in the United States
10 District Court, Central District of California (Case No.), alleging violations of Section 301(a) of the Clean
11 Water Act, 33 U.S.C. § 1311(a), and violations of the Storm Water Permit at the Ameron Facility
12 (“Complaint”);

13 **WHEREAS**, Plaintiff alleges Ameron to be in violation of the substantive and procedural
14 requirements of the 1997 Storm Water Permit, the IGP and the Clean Water Act with respect to the
15 Ameron Facility;

16 **WHEREAS**, on March 10, 2017, Ameron filed an answer in response to the Complaint, denying
17 all allegations in the Notice Letter and Complaint relating to the Ameron Facility (“Answer”);

18 **WHEREAS**, on August 30, 2017, Ameron uploaded a 2016-2017 Storm Water Season Level 1
19 Exceedance Response Action Evaluation & Report (the “Level 1 ERA Report”), prepared by its QISP,
20 adding revised and additional BMPs to the Facility’s monitoring and reporting program with the goal of
21 preventing future numeric action level exceedances, and to comply with the IGP;

22 **WHEREAS**, on September 26, 2017, Plaintiff’s consultant conducted an inspection of the
23 Facility;

24 **WHEREAS**, on October 3, 2017, Ameron uploaded a revised SWPPP to SMARTS, attached and
25 incorporated herewith as Exhibit A, containing the BMPs described in the August 30, 2017, Level 1 ERA

26
27 ¹ For purposes of this Consent Decree, the NPDES permit and any amendments thereto in effect at the
28 time of Ameron’s required compliance with the terms of this Consent Decree shall be referred to as “the
Industrial General Permit” or “IGP.”

1 Report;

2 **WHEREAS**, Ameron continues to deny all allegations in the Notice Letter and Complaint relating
3 to the Ameron Facility;

4 **WHEREAS**, Plaintiff and Ameron have agreed that it is in the Settling Parties' mutual interest to
5 enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations set
6 forth in the Complaint without further proceedings; and

7 **WHEREAS**, all actions taken by Ameron pursuant to this Consent Decree shall be made in
8 compliance with all applicable federal and state laws and local rules and regulations.

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

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

13 2. Venue is appropriate in the Central District of California pursuant to Section 505(c)(1) of
14 the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Ameron Facility is located within this District;

15 3. The Complaint states claims upon which relief may be granted pursuant to Section
16 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

17 4. Plaintiff has standing to bring this action;

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

21 **I. OBJECTIVES**

22 It is the express purpose of the Settling Parties entering into this Consent Decree to further the
23 objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, et seq., and to resolve those issues alleged
24 by Plaintiff in his Complaint. Specifically, Ameron agrees to comply with Receiving Water Limitation
25 VI.A. in the IGP which requires that Ameron "shall ensure that industrial storm water discharges ... do
26 not cause or contribute to the exceedance of any applicable water quality standards in any affected
27 receiving water," and Effluent Limitation V.A. of the IGP which requires that Ameron "shall implement

1 Best Management Practices (“BMPs”) that comply with the BAT/BCT requirements of the [IGP] to
2 reduce or prevent discharges of pollutants in [Ameron’s] storm water discharge in a manner that reflects
3 best industry practice considering technological availability and economic practicability and
4 achievability.” Ameron shall develop and implement BMPs necessary to achieve compliance with
5 BAT/BCT standards and with the applicable water quality standards as those terms are defined by the
6 IGP. Nothing herein shall be interpreted as an admission by Ameron that it has previously failed to comply
7 with these or any other requirements of the CWA or the IGP.

8 **II. AGENCY REVIEW AND TERM OF CONSENT DECREE**

9 **A. Agency Review and Comment.** Plaintiff shall submit this Consent Decree to the United States
10 Department of Justice and the EPA (collectively “Federal Agencies”) within three (3) days of the final
11 signature of the Settling Parties for agency review consistent with 40 C.F.R. § 135.5. The agency review
12 period expires forty-five (45) days after receipt by both agencies, as evidenced by written
13 acknowledgement of receipt by the agencies or the certified return receipts, copies of which shall be
14 provided to Ameron if requested. In the event that the Federal Agencies object to entry of this Consent
15 Decree, the Settling Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal
16 Agencies within a reasonable amount of time.

17 **B. Effective Date.** The term “Effective Date” as used in this Consent Decree shall mean the day the
18 Court enters this Consent Decree.

19 **C. Termination Date.** This Consent Decree shall terminate two (2) years after the Effective Date
20 (“Termination Date”), or at such time as Ameron ceases to have stormwater discharges subject to the IGP
21 and Ameron: 1) files all necessary and appropriate submissions regarding the same to the State Board
22 and/or the Regional Board; and 2) provides notice of such filing to Plaintiff, unless there is a prior ongoing,
23 unresolved dispute regarding Ameron’s compliance with this Consent Decree.

24 **III. POLLUTION CONTROL REQUIREMENTS**

25 **A. Storm Water Pollution Reduction Measures**

26 1. The storm water pollution control measures required by this Consent Decree shall be
27 designed and operated to manage storm water discharges, through full compliance with the IGP.

1 2. Commencing from the Effective Date through the termination date, Ameron shall engage
2 in the following activities to achieve compliance with the Permit and this Consent Decree:

3 (a) Ameron will appoint a Qualified Industrial Storm Water Practitioner (“QISP”) within sixty
4 (60) days after the Effective Date;

5 (b) Certify and submit to Plaintiff, the Court and the RWQCB via SMARTS the QISP’s
6 identification number, name, and contact information (telephone number, e-mail address).

7 3. In addition to the activities described in Sections III.A.2(a) above, Ameron will assure the
8 incorporation of the following BMPs, as more fully described in Ameron’s SWPPP, which shall be
9 implemented at the Facility, the boundaries of which are outlined on the Ameron Facility Site Map
10 accompanying the SWPPP (“Site Map”), (the SWPPP and Site Map are attached as Exhibit “A” hereto).
11 The Parties agree that the SWPPP may be modified from time to time as more fully described in this
12 Consent Decree. In the event of a modification to the SWPPP or Facility Site Map during the term of this
13 Consent Judgment, Ameron will provide a copy of the revised exhibits to Plaintiff and the Court in the
14 manner described herein, and to the RWQCB via SMARTS.

15 (a) **Non-Structural BMPs**

16 (i) **Good Housekeeping**

- 17 a) Observe and maintain industrial activity outdoor areas;
- 18 b) Minimize or prevent material tracking offsite;
- 19 c) Minimize dust generated by industrial activities;
- 20 d) Cleanup areas affected by rinse and wash water;
- 21 e) To the extent practical, cover stored industrial materials that can be readily
22 mobilized by contact with storm water;
- 23 f) Contain stored non-solid industrial materials or wastes;
- 24 g) Prevent improper disposal of rinse/wash waters; and
- 25 h) Minimize flows of offsite storm water and NSWDS into material handling areas.
- 26 i) Waste receptacles exposed to storm water shall be tightly closed or otherwise
27 covered when not in use, to the extent practicable.

1 (ii) **Preventative Maintenance**

- 2 a) Identify industrial equipment and systems that may leak;
- 3 b) Observe the equipment and systems to detect leaks;
- 4 c) Establish a schedule for maintenance; and
- 5 d) Establish procedures for maintenance and repair.

6 (iii) **Spill Prevention and Response Procedures**

- 7 a) Establish procedures and/or controls to minimize spills and leaks;
- 8 b) Develop and implement spill and leak response procedures to prevent industrial
- 9 materials from being discharged;
- 10 c) Clean up spills and leaks promptly;
- 11 d) Identify and describe needed spill and leak response equipment; and
- 12 e) Train Storm Water Team in appropriate spill response.

13 (iv) **Material Handling and Waste Management**

- 14 a) Prevent or minimize handling of industrial materials or wastes that can be
- 15 readily mobilized;
- 16 b) Utilize engineered solution for liquid materials or wastes stored outdoors to the
- 17 extent possible;
- 18 c) Cover industrial waste disposal containers and industrial material storage
- 19 containers that contain industrial materials to the extent practicable when the
- 20 facility is not in operation;
- 21 d) Divert run-on and storm water generated from the Facility, within the Facility,
- 22 away from all stockpiled materials to the extent possible;
- 23 e) Observe and clean as appropriate any outdoor material or waste that could cause
- 24 contamination to storm water if contact is made.

25 (v) **Employee Training.** Ameron will provide sufficient training to Ameron team

26 members assigned to perform activities required by the SWPPP including:

- 27 a) Preparing or acquiring necessary and appropriate training materials;
- 28

- b) Providing a training schedule; and
- c) Maintaining training documentation.

(vi) Quality Assurance and Record Keeping

- a) Develop and implement management procedures to ensure implementation of plans;
- b) Develop a method of tracking and recording program implementation; and
- c) Maintain implementation records (i.e., BMP deployment records, employee training logs, spill occurrence and clean-up records).

(b) Advanced BMPs. Advanced BMPs, as set forth below, and in addition to what has already been included in the revised SWPPP uploaded to SMARTS on October 3, 2017 (incorporated herewith) will be implemented in order to prevent and reduce storm water contact with industrial pollutants, including:

- (i)** Ameron will cover with appropriate material all raw product containing zinc and aluminum stored outside and utilized at the Facility up through the time such raw material is utilized in the production process. The SWPPP will be amended to include the above description in the appropriate BMP sections;
- (ii)** Scrap Metals and Cement will be added to the SWPPP's list of Industrial Materials; and
- (iii)** The Facility Site Map will be revised to include residential homes across the street from the Facility.

4. Within forty-five (45) days after the Effective Date, Ameron shall revise the SWPPP for the Ameron Facility to include any BMPs required by the Consent Decree and comply with all provisions of the Permit.

5. Ameron shall submit its SWPPP, including any revisions, to Plaintiff for review and comment. Plaintiff shall provide comments, if any, to Ameron within sixty (60) days of receipt of the SWPPP. Ameron shall incorporate Plaintiff's comments into the SWPPP, or shall justify in writing why any comment is not incorporated within fifteen (15) days of receiving comments.

1 6. Throughout the term of this Consent Decree, Ameron shall submit any SWPPP revisions
2 made pursuant to the requirements of this Section III.A to Plaintiff for review and comment within ten
3 (10) days of the SWPPP revision. Plaintiff will provide comments, if any, to Ameron within thirty (30)
4 days of receipt of such revised SWPPP. Ameron shall incorporate Plaintiff's comments into the SWPPP
5 or shall justify in writing why any comment is not incorporated within fifteen (15) days of receiving
6 comments.

7 **B. Numeric Action Level ("NAL") for Discharges from the Ameron Facility.** Ameron
8 acknowledges that Numeric Action Levels ("NALs") in the IGP are applicable to the Facility and that it
9 will continue to act in conformity with the IGP and the SWPPP for the Facility, as may be amended from
10 time to time.

11 **1. Exceedance Response Actions (ERAs)**

12 a. Ameron acknowledges that it is required to comply with the Exceedance
13 Response Action requirements of the permit as stated in IGP § XII.

14 **C. Sampling and Analysis**

15 1. Ameron has installed a recording rain gauge capable of recording rainfall to 0.1 inches at
16 the Ameron Facility. Ameron shall maintain the recording rain gauge in accordance with the
17 manufacturers' recommendations, maintain records of all maintenance and rain data, and provide such
18 rain gauge data in Ameron's Monitoring Report described in Part F below for the term of this Consent
19 Decree. In the event there is a dispute about the quantity of rainfall at the Facility, the rain gauge installed
20 pursuant to this section shall be deemed to be the actual rainfall at the site.

21 2. Within ninety (90) days of the Effective Date, Ameron shall review its plan for monitoring
22 all storm water discharges from the Ameron Facility that meet the requirements of this Consent Decree
23 and Section XI of the Permit, and incorporate the same into its SWPPP.

24 3. Ameron shall submit any revisions to its Monitoring Plan for the Ameron Facility to
25 Plaintiff for review and comment. Plaintiff shall provide comments, if any, to Ameron within thirty (30)
26 days of receipt of the Monitoring Plan. Ameron shall incorporate Plaintiff's comments into the Monitoring
27 Plan, or shall justify in writing why any comment is not incorporated within fifteen (15) days of receiving

1 comments.

2 4. During the life of this Consent Decree, and as set forth in the IGP, Ameron shall collect
3 samples of any Qualifying Storm Event (“QSE”), as defined in the IGP, from at least one QSE during
4 each quarter of each reporting year from each sampling point at the Ameron Facility in conformity with
5 its “Monitoring Plan” and in compliance with the IGP. However, nothing herein shall require Ameron to
6 conduct sampling in quarters when a QSE, as defined by the IGP, does not occur.

7 5. Ameron shall comply with the analytical methods as required by Section XI.B of the IGP
8 as more fully described in the Monitoring Plan.

9 6. Ameron shall request that results of all sample analyses required by this Consent Decree
10 be reported to it within thirty (30) days of laboratory receipt of the sample.

11 7. During the term of the Consent Decree, Ameron will give notice to Plaintiff of the filing
12 of any reports or other documents containing the complete laboratory results of samples collected as
13 required by this Consent Decree concurrently with the posting of the same on SMARTS.

14 **D. Visual Observations.** During the life of this Consent Decree, Ameron shall conduct and
15 document visual observations pursuant to Section XI.A of the IGP and as more fully described in the
16 Ameron SWPPP.

17 **E. Annual Comprehensive Facility Compliance Evaluation.** Ameron shall give notice, pursuant
18 to Paragraph VII.E. hereof, to Plaintiff when Ameron submits an Annual Comprehensive Facility
19 Compliance Evaluation (“Annual Evaluation”) to the State Board no later than July 15 of each year during
20 the term of this Consent Decree. The Annual Evaluation shall contain all information required by the IGP
21 and/or the SWPPP.

22 **IV. MONITORING AND REPORTING**

23 **A. Site Inspections.**

24 1. Once during the life of this Consent Decree, Plaintiff may conduct an inspection of the
25 Facility up to forty-five (45) days prior to the Termination Date. Up to three (3) of Plaintiff’s
26 representatives may attend the site inspection. The site inspection shall occur during normal business
27 hours. Plaintiff and Ameron shall work in good faith to select a mutually acceptable date for the
28

1 inspection, which will be scheduled at least ten (10) business days in advance. Ameron's personnel or
2 contractors may accompany Plaintiff's representative(s) throughout the inspection.

3 **2.** Plaintiff shall provide Ameron with any comments regarding the Site Inspection within
4 seventy-two (72) hours of the completion thereof. Said comments shall be prepared, signed and certified
5 by Plaintiff's designated QISP. Ameron shall respond to Plaintiff's comments within thirty (30) days of
6 the date on which they are received; however, Ameron is not obligated to respond to any comments
7 regarding the Site Inspection received after seventy-two (72) hours has passed.

8 **B. Compliance Monitoring and Oversight.** Ameron shall make a one-time payment of Fifteen
9 Thousand Dollars (\$15,000.00) to compensate Plaintiff's Counsel for costs and fees to be incurred for
10 monitoring Ameron's compliance with this Consent Decree. Payment shall be made within fourteen (14)
11 business days of the Effective Date payable to "Brodsky & Smith, LLC" via U.S. Mail.

12 **C. Ameron Document Provision.** During the life of this Consent Decree, within ten (10) days,
13 Ameron shall give notice to Plaintiff of all documents related to storm water quality at the Ameron Facility
14 that are submitted to the Regional Board, the State Board, and/or any state or local agency, county, or
15 municipality. Any correspondence related to Ameron's compliance with the Permit or storm water quality
16 received by Ameron from any regulatory agency, state or local agency, county, or municipality shall be
17 provided to Plaintiff within ten (10) days of receipt by Ameron. Provided, however, that this Consent
18 Decree shall not require Ameron to disclose any information or documents subject to the Attorney Client
19 Privilege or the Attorney Work Product doctrine.

20 **V. ENVIRONMENTAL PROJECT & REIMBURSEMENT OF LITIGATION FEES & COSTS**

21 **A. Environmental Project.** To remediate the alleged environmental harms resulting from non-
22 compliance with the 1997 Storm Water Permit and IGP alleged in the Complaint, Ameron agrees to make
23 a payment of Eight Thousand Five Hundred Dollars (\$8,500.00) to "The Nature Conservancy" and mailed
24 to The Nature Conservancy, attention E.J. Remson, 601 South Figueroa Street, Suite 1425, Los Angeles,
25 CA 90017 to fund the Santa Clara River Conservation Program, dedicated to the acquisition, restoration
26 and creation of aquatic, riparian and other important habitats in the Santa Clara River Watershed. The
27 payment shall be made within fourteen (14) business days of the Effective Date.

1 **B. Reimbursement of Attorneys' Fees and Costs.** Ameron shall pay a total of Fifty-One Thousand
2 Five Hundred Dollars (\$51,500.00) to "Brodsky & Smith, LLC" for their investigation fees and costs,
3 expert/consultant fees and costs, and reasonable attorneys' fees incurred as a result of investigating and
4 preparing the lawsuit and negotiating this Consent Decree. Payment shall be made payable to "Brodsky
5 & Smith, LLC" within fourteen (14) business days of the Effective Date via U.S. Mail.

6 **VI. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

7 **A. Continuing Jurisdiction.** This Court shall retain jurisdiction over this matter until the
8 Termination Date defined above for the purposes of implementing and enforcing the terms and conditions
9 of this Consent Decree and adjudicating all disputes among the Parties that may arise under the provisions
10 of this Consent Decree, unless a Party files and is granted a timely motion requesting an extension of time
11 for the Court to retain jurisdiction. The Court shall have the power to enforce this Consent Decree with
12 all available legal and equitable remedies, including contempt.

13 **B. Meet and Confer.** A Party to this Consent Decree shall invoke the dispute resolution procedures
14 of this Section by notifying the other Party in writing of the matter(s) in dispute. The Settling Parties shall
15 then meet and confer in good faith (either telephonically or in person) in an attempt to resolve the dispute
16 informally over a period of ten (10) days from the date of the notice. The Parties may elect to extend this
17 time in an effort to resolve the dispute without court intervention.

18 **C. Dispute Resolution.** If the Parties cannot resolve a dispute by the end of meet and confer informal
19 negotiations, then the parties shall attempt to settle the dispute through mediation provided by the
20 American Arbitration Association ("AAA") pursuant to AAA's Commercial Mediation Provisions in
21 effect at the time the act or acts being disputed occurred.

22 **D. Burden of Proof.** In any dispute resolution proceeding, the Party invoking the dispute resolution
23 procedures provided herein shall have the burden of demonstrating that the other Party has failed to meet
24 its obligations as set forth herein.

25 **E. Enforcement Fees and Costs.** If formal dispute resolution is not successful, then the parties may
26 file a motion to enforce the settlement with the Court. The litigation costs and fees incurred in prosecuting
27 a motion to enforce such shall be awarded to the prevailing party.

1 **VI. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

2 **A. Plaintiff's Public Release of Claims.** This Consent Judgment is a final and binding resolution
3 between Plaintiff, on his own behalf, and on behalf of the public and in the public interest, and Ameron,
4 and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents,
5 employees, attorneys, if any (collectively "Releasees"), and shall have a preclusive effect such that no
6 other person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
7 permitted to pursue and/or take any action with respect to any violation of the CWA that was alleged in
8 the Complaint, or that could have been brought pursuant to the Notice. Nothing in this Consent Decree
9 waives the rights of the United States to enforce its rights under Federal Law.

10 **B. Plaintiff's Release of Additional Claims.** As to Plaintiff for and in his individual capacity only,
11 this Consent Judgment shall have preclusive effect such that he shall not be permitted to pursue and/or
12 take any action with respect to any other statutory or common law claim, to the fullest extent that any of
13 the foregoing were or could have been asserted by him against Ameron or the Releasees based on the facts
14 alleged in the Complaint and the Notice, whether or not based on actions committed by Ameron.

15 **C. Waiver of Rights Under Section 1542 of the California Civil Code**

16 1. Plaintiff acting in his individual capacity waives all rights to institute any form of legal
17 action, and releases all claims against Ameron, and the Releasees, (referred to collectively in this Section
18 as the "Claims"). In furtherance of the foregoing, Plaintiff waives any and all rights and benefits which he
19 now has, or in the future may have, conferred upon him with respect to the Claims by virtue of the
20 provisions of § 1542 of the California Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
22 NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
23 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
24 SETTLEMENT WITH THE DEBTOR.

25 2. Plaintiff understands and acknowledges that the significance and consequence of this
26 waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of or
27 resulting from, or related directly or indirectly to, in whole or in part, the facts in the Complaint, Plaintiff

1 will not be able to make any claim for those damages against Releasees.

2 **D. Ameron's Release of Plaintiff.** Ameron, on behalf of itself, its past and current agents,
3 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Plaintiff,
4 his attorneys, and other representatives for any and all actions taken or statements made (or those that
5 could have been taken or made) by Plaintiff and his attorney and other representatives, whether in the
6 course of investigating the Claims or otherwise.

7 **E. Parties' Release.** Unless specifically provided for in this Consent Decree, the Parties, on their
8 own behalf and on behalf of their current and former officers, directors, employees, and each of their
9 successors and assigns, and their agents, and other representatives release all persons including, without
10 limitation, all other Parties to this Consent Decree (and each of their direct and indirect parent and
11 subsidiary companies and affiliates, and their respective current and former officers, directors, members,
12 employees, shareholders, and each of their predecessors, successors, and assigns, and each of their agents,
13 attorneys, consultants, and other representatives) from any additional attorneys' fees or expenses related
14 to the resolution of this matter.

15 **F.** Nothing in this Consent Decree limits or otherwise affects any Party's right to address or take any
16 position that it deems necessary or appropriate in any formal or informal proceeding before the State
17 Board, Regional Board, EPA, or any other administrative body on any other matter relating to Ameron's
18 compliance with the IGP or the Clean Water Act occurring or arising after the Effective Date of this
19 Consent Decree.

20 **VII. MISCELLANEOUS PROVISIONS**

21 **A. No Admission of Liability.** Neither this Consent Decree, the implementation of additional or
22 modified BMPs, nor any payment pursuant to the Consent Decree shall constitute or be construed as a
23 finding, adjudication, admission, or acknowledgment of any fact, law, or liability, nor shall it be construed
24 as an admission of violation of any law, rule, or regulation. Ameron maintains and reserves all defenses
25 it may have to any alleged violations that may be raised in the future.

26 **B. Construction.** The language in all parts of this Consent Decree shall be construed according to
27 its plain and ordinary meaning, except as to those terms defined in the IGP, the Clean Water Act, or

1 specifically herein.

2 **C. Choice of Law and Venue.** The laws of the United States shall govern this Consent Decree, with
3 venue proper only in the Central District of California.

4 **D. Severability.** In the event that any provision, paragraph, section, or sentence of this Consent
5 Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be
6 adversely affected.

7 **E. Correspondence and Notices.** Any and all notices and/or correspondence between the Parties
8 provided for or permitted under this Consent Decree shall be in writing and personally delivered or sent
9 by:

- 10 1. First-class (registered or certified) mail return receipt requested; or
- 11 2. Overnight or two-day courier; or
- 12 3. By email with confirmed receipt only (thus at the risk of the email sender); on any Party

13 by the other Party to the following addresses:

14 **If to Plaintiff:**

15 Evan J. Smith, Esquire
16 Brodsky & Smith, LLC
17 Two Bala Plaza, Suite 510
18 Bala Cynwyd, PA 19004
T: 877.354.2590
Email: esmith@brodskysmith.com

19 **If to Ameron:**

20 Tarifa B. Laddon, Esquire
21 Faegre Baker Daniels LLP
22 11766 Wilshire Blvd., Suite 750
23 Los Angeles, CA 90025
T: 310.500.2090
Email: tarifa.laddon@faegrebd.com

24 Any change of address or addresses shall be communicated in the manner described above for giving
25 notices.

26 **F. Counterparts.** This Consent Decree may be executed in any number of counterparts, all of which
27 together shall constitute one original document. Telecopy, email of a .pdf signature, or facsimile copies

1 of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

2 **G. Modification of the Consent Decree.** Except as otherwise provided herein, this Consent Decree,
3 and any provisions herein, may not be changed, waived, discharged, or terminated unless by a written
4 instrument, signed by the Settling Parties, or upon motion of any Party as provided by law and upon an
5 entry of a modified Consent Judgment by the Court. If any Settling Party wishes to modify any provision
6 of this Consent Decree, the Settling Party must notify the other Settling Party in writing at least twenty-
7 one (21) days prior to taking any step to implement the proposed change.

8 **H. Full Settlement.** This Consent Decree contains the sole and entire agreement and understanding
9 of the Parties with respect to the entire subject matter hereof, and any and all discussions, negotiations,
10 commitments and understandings related thereto. No representations, oral or otherwise, express or
11 implied, other than those contained herein have been made by any party hereto. No other agreements not
12 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

13 **I. Integration Clause.** This is an integrated Consent Decree. This Consent Decree is intended to
14 be a full and complete statement of the terms of the Consent Decree between the Settling Parties and
15 expressly supersedes any and all prior oral or written Consent Decrees, covenants, representations, and
16 warranties (express or implied) concerning the subject matter of this Consent Decree.

17 **J. Authority of Counsel.** The undersigned representatives for Plaintiff and Ameron each certify that
18 he/she is fully authorized by the party whom he/she represents to approve this Consent Decree as to form.

19 **K. Authority.** Ameron certifies that its undersigned representative is fully authorized to enter into
20 this Consent Decree, to execute it on behalf of Ameron, and to legally bind Ameron to its terms.

21 **L. Agreement to be Bound.** The Settling Parties, including any successors or assigns, agree to be
22 bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement
23 or enforce its terms.


1 **VIII. COURT APPROVAL**

2 The Parties hereby respectfully request that the Court promptly approve and enter this Consent Decree.
3 Upon entry of this Consent Decree, Plaintiff and Defendant waive their respective rights to a hearing or
4 trial on the allegations of the Complaint and Notice which are at issue in this action. If this Consent
5 Decree is not approved by the Court, it shall be of no force and effect, and it may not be used in any
6 proceeding for any purpose.

7 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date
8 first set forth below.

9 **SO AGREED AND APPROVED AS TO CONTENT**

10 Dated: 3/12/2019

11 **PLAINTIFF**

12 Matt Samick

13 Dated: 03/11/2019

14 **AMERON POLE PRODUCTS, LLC**
15 By: A. Besse
16 Alexandra Besse
17 VP and General Manager, Ameron Pole Products

18 **APPROVED AS TO FORM**

19 Dated: 3/12/2019

20 **BRODSKY & SMITH, LLC**
21 By: [Signature]
22 Evan J. Smith (SBN:242352)
23 Attorneys for Plaintiff

24 Dated: 3/11/19

25 **FAEGRE BAKER DANIELS LLP**
26 By: [Signature]
27 Tarifa B. Laddon (SBN:240419)
28 Attorneys for Ameron Pole Products, LLC

IT IS SO ORDERED.

1 **VIII. COURT APPROVAL**

2 The Parties hereby respectfully request that the Court promptly approve and enter this Consent Decree.
3 Upon entry of this Consent Decree, Plaintiff and Defendant waive their respective rights to a hearing or
4 trial on the allegations of the Complaint and Notice which are at issue in this action. If this Consent
5 Decree is not approved by the Court, it shall be of no force and effect, and it may not be used in any
6 proceeding for any purpose.

7 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date
8 first set forth below.

9 **SO AGREED AND APPROVED AS TO CONTENT**

10 Dated: _____ **PLAINTIFF**

11 _____
12 Matt Salnick

13 Dated: _____ **AMERON POLE PRODUCTS, LLC**

14 By: _____
15 Alexandra Besse
16 VP and General Manager, Ameron Pole Products

17 **APPROVED AS TO FORM**

18 Dated: _____ **BRODSKY & SMITH, LLC**


19 By: _____
20 Evan J. Smith (SBN:242352)
21 Attorneys for Plaintiff

22 Dated: _____ **FAEGRE BAKER DANIELS LLP**

23 By: _____
24 Tarifa B. Laddon (SBN:240419)
25 Attorneys for Ameron Pole Products, LLC

26 **IT IS SO ORDERED.**

27 Date: 5/14/19

28 
The Honorable Conseulo B. Marshall
United States District Court Judge
Central District of California