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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OUR CLEAN WATERS, a non-profit corporation,

Plaintiff,

v.

Aircraft X-Ray Laboratories, Inc., a California corporation,

Defendant.

Case No.: CV 17-8500-DMG (RAOx)

CONSENT DECREE [19]

CONSENT DECREE

This Consent Decree (“Consent Decree”) is entered into between Our Clean Waters (“OCW”) and Aircraft X-Ray Laboratories, Inc. (“AXL”) (all parties collectively are referred to as the “SETTLING PARTIES”) with respect to the following facts and objectives:

RECITALS

WHEREAS, OCW is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to working with communities to improve the social and natural environment.

WHEREAS, AXL owns and operates a facility located at 5216 Pacific Blvd, Huntington Park, CA 90255 (the “Facility”). Through June 30, 2015, the Facility

1 has operated pursuant to State Water Resources Control Board Water Quality Order
2 No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit
3 No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water
4 Associated with Industrial Activities Excluding Construction Activities. Beginning
5 on July 1, 2015, the Facility has operated pursuant to State Water Resources Control
6 Board Water Quality Order No. 2014-0057-DWQ, National Pollutant Discharge
7 Elimination System General Permit No. CAS000001 (hereinafter "General Permit").

8 A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

9 **WHEREAS**, on or about July 24, 2017, OCW provided AXL with a Notice
10 of Violations and Intent to File Suit ("60-Day Notice Letter") under Section 505 of
11 the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33
12 U.S.C. § 1365;

13 **WHEREAS**, OCW filed its Complaint in the United States District Court for
14 the Central District of California (Our Clean Waters v. Aircraft X-RAY
15 Laboratories, Inc., a California corporation Case No. 2:17-cv-08500, on November
16 21, 2017;

17 **WHEREAS**, AXL denies any and all of OCW's claims in its 60-Day Notice
18 Letter and Complaint;

19 **WHEREAS**, OCW and AXL, through their authorized representatives and
20 without either adjudication of OCW's claims or admission by AXL of any alleged
21 violation or other wrongdoing, have chosen to resolve in full OCW's allegations in
22 the 60-Day Notice Letter and Complaint through settlement and avoid the cost and
23 uncertainties of further litigation; and

24 **WHEREAS**, OCW and AXL have agreed that it is in their mutual interest to
25 enter into this Consent Decree setting forth the terms and conditions appropriate to
26 resolving OCW's allegations set forth in the 60-Day Notice Letter and Complaint.

1 8. **Additional Structural Best Management Practices.** By the Effective
2 Date, AXL shall implement the following structural best management practices
3 (“BMPs”) to improve the storm water pollution prevention measures at the Facility:
4

5 (a) Assure that the sections of the Facility identified on Exhibit A,
6 exclusive of indented landscaped areas, have been paved with asphalt in a
7 sufficient manner to allow for the cleaning of the surface;

8 (b) Assure that all forklifts maintained by the company at the
9 Facility have, to the extent reasonably practical and available, low-zinc tires (i.e.
10 tires with less than 2.1% zinc) as represented by the tire dealer or manufacturer of
11 the tires;

12 (c) Maintain at least 12 each, 4” x 72” weighted zeolite (or
13 comparable material) wattles at the facility and distribute them in the flow paths of
14 storm water run-off prior to oncoming storms.
15

16 9. **Confirmation of New Structural BMPs.** Within 30 days of the
17 Effective Date, AXL shall confirm to OCW the installation of the measures
18 described above in Paragraph 8.
19

20 10. **Monitoring of Storm Water Discharges.** AXL shall collect and
21 analyze storm water discharges from the Facility in accordance with the General
22 Permit and this Consent Decree for, at a minimum, pH, total suspended solids, oil
23 and grease, nitrate + nitrite as nitrogen, and zinc.

24 11. **Monitoring Results.** Results from the Facility’s sampling and analysis
25 during the term of this Consent Decree shall be uploaded to the State Water
26 Resources Control Board’s (“State Board”) Storm Water Multiple Application and
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1 Report Tracking System (“SMARTS”) in accordance with the requirements of the
2 General Permit.

3
4 12. **Additional Measures.** If the Facility’s storm water sampling results
5 during the 2017-2018 and/or 2018-2019 reporting years indicate that the average of
6 the analytical results for a particular parameter indicates that storm water discharges
7 from the Facility exceed the annual NALs (as set forth in the General Permit) or if
8 two or more analytical results from samples taken for any parameter within the
9 2017-2018 or 2018-2019 reporting years exceed the instantaneous maximum NAL,
10 AXL agrees to take responsive actions to improve its storm water management
11 practices to address exceedances of the NAL attributable to its industrial sources,
12 including re-evaluating its structural and non-structural BMPs and considering
13 implementing additional BMPs aimed at reducing levels observed in storm water
14 samples.

15 13. **Amendment of Storm Water Pollution Prevention Plan**
16 **(“SWPPP”).** By sixty (60) days after the Effective Date, AXL shall have amended
17 the Facility’s SWPPP to incorporate all changes, improvements, sample log forms,
18 and best management practices set forth in paragraph 8 of this Consent Decree.
19 AXL shall ensure that all maps, tables, and text comply with the requirements of the
20 General Permit. AXL shall ensure that the SWPPP describes all structural and non-
21 structural BMPs and details the measures to be installed.

22
23 14. **Reimbursement for Fees, Costs, and Expenses.** In recognition of the
24 good faith efforts by AXL to comply with all aspects of the General Permit and the
25 Clean Water Act, and in lieu of payment by AXL of any penalties, which have been
26 disputed but may have been assessed in this action if it had been adjudicated adverse
27 to AXL, the SETTLING PARTIES agree that AXL will pay the sum of \$40,000.00
28 to OCW for reimbursement of all administrative, out of pocket, consulting, filing

1 and legal and expert fees. In addition such payment will provide reimbursement to
2 OCW for monitoring AXL's operations during the duration listed in this Consent
3 Decree, as described as the Termination Date. Payment shall be mailed to Levitt
4 Law, APC – Client Trust, as follows: 311 Main Street, #8, Seal Beach, CA 90740.
5 Payment shall be made by AXL to OCW within five (5) calendar days of the
6 District Court's entry of the Order dismissing the action described in Paragraph 2 of
7 this Consent Decree. AXL shall copy OCW with any correspondence.
8

9 15. **Mitigation Payment.** In recognition of the good faith efforts by AXL
10 to comply with all aspects of the General Permit and the Clean Water Act, and in
11 lieu of payment by AXL of any penalties, which have been disputed but may have
12 been assessed in this action if it had been adjudicated adverse to AXL, the
13 SETTLING PARTIES agree that AXL will pay the sum of \$10,000.00 to the Rose
14 Foundation for Communities and the Environment (“Rose Foundation”) for the sole
15 purpose of providing environmentally beneficial projects relating to water quality
16 improvements in the Los Angeles River Reach 2 watershed. Payment shall be
17 mailed to: Rose Foundation, 1970 Broadway, #600, Oakland, CA 94612-2218,
18 Attn: Tim Little, Executive Director. (The Rose Foundation is a tax-exempt
19 organization under Section 501(c)(3) of the Internal Revenue Code. Our Tax ID
20 number is 94-3179772. Donations to the Rose Foundation are tax-deductible as
21 allowed by law). Payment shall be made by AXL to the Rose Foundation within
22 five (5) calendar days of the District Court's entry of the Order dismissing the action
23 described in Paragraph 2 of this Consent Decree. AXL shall copy OCW with any
24 correspondence and check copy.

25 16. **Review by Federal Agencies.** OCW shall submit this Consent Decree
26 to the U.S. EPA and the U.S. Department of Justice (hereinafter, the “Agencies”)
27 within five (5) days after the lodging of this Consent Decree with this Court for
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1 review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires
2 forty-five (45) days after receipt of the Consent Decree by both Agencies, as
3 evidenced by the return receipts and the confirming correspondence of DOJ. In the
4 event that the Agencies comment negatively on the provisions of this Consent
5 Decree, OCW and AXL agree to meet and confer to attempt to resolve the issue(s)
6 raised by the Agencies. If OCW and AXL are unable to resolve any issue(s) raised
7 by the Agencies in their comments, OCW and AXL agree to expeditiously seek a
8 settlement conference with the Magistrate Judge assigned to this matter to resolve
9 the issue(s). If the SETTLING PARTIES cannot resolve the issue(s) through a
10 settlement conference, this Consent Decree shall be null and void. The date of (a)
11 the Agencies' unconditioned approval of this Consent Decree, (b) the expiration of
12 the Agencies' review period, or (c) the SETTLING PARTIES' resolution of all
13 issues raised by the Agencies, whichever is earliest, shall be defined as the "Agency
14 Approval Date."

15
16 17. **No Admission or Finding.** Neither this Consent Decree nor any
17 payment pursuant to the Consent Decree nor compliance with this Consent Decree
18 shall constitute evidence or be construed as a finding, adjudication, or
19 acknowledgment of any fact, law or liability, nor shall it be construed as an
20 admission of violation of any law, rule, or regulation. However, this Consent
21 Decree may constitute evidence in actions seeking compliance with this Consent
22 Decree. Evidence of the payment amount may be used to enforce the payment
23 provisions of this Consent Decree.

24 18. **Mutual Release of Liability and Covenant Not to Sue.** In
25 consideration of the above, and except as otherwise provided by this Consent
26 Decree, the SETTLING PARTIES hereby fully release each other and their
27 respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns,
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1 and current and former employees, attorneys, officers, directors, members,
2 shareholders, and agents from any and all claims and demands of any kind, nature,
3 or description whatsoever, known and unknown, and from any and all liabilities,
4 damages, injuries, actions or causes of action, either at law or in equity, which it
5 may presently have, or which may later accrue or be acquired by it, arising from the
6 Complaint or Notice Letters, including, without limitation, all claims for injunctive
7 relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of
8 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed
9 or which could have been claimed in the Complaint or Notice Letters, for the
10 alleged failure of Defendant to comply with the Clean Water Act at the Facility, up
11 to and including the Termination Date.

12
13 19. **1542 Acknowledgment.** The SETTLING PARTIES acknowledge that
14 they are familiar with section 1542 of the California Civil Code, which provides:

15 A general release does not extend to claims which the creditor does not
16 know or suspect to exist in his or her favor at the time of executing the
17 release, which if known by him or her must have materially affected his
18 or her settlement with the debtor.

19 The SETTLING PARTIES hereby waive and relinquish any rights or benefits
20 they may have under California Civil Code section 1542 with respect to any other
21 claims against each other arising from, or related to, the allegations and claims as set
22 forth in the 60-Day Notice Letter and Complaint at the Facility up to and including
23 the Termination Date of this Consent Decree.

24 20. **No Further Actions.** For the period beginning on the Effective Date
25 and ending on the Termination Date, neither OCW, nor its officers, executive staff,
26 members of its Steering Committee or counsel will bring any enforcement action or
27 pursue or take any action with respect to any statutory or common law claim, to the
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1 full extent that any of the foregoing were or could have been asserted by OCW
2 against AXL or the RELEASEES (as defined in paragraph 21, below) in the
3 Complaint, the Notice, or covered by this AGREEMENT, except as provided for in
4 this AGREEMENT, nor will they file or support other lawsuits, by contacting,
5 providing financial assistance or personnel time or taking any other affirmative
6 actions, against or relating to the Facility by other groups or individuals who would
7 rely upon the citizen suit provision of the Clean Water Act or any other statutory or
8 common law claim, to challenge the Facility's compliance with the Clean Water
9 Act, or the General Permit.

10
11 21. **Releases.** This AGREEMENT is a final and binding resolution
12 between Plaintiff, on his own behalf, and on behalf of the public and in the public
13 interest, and AXL, and each of their respective parents, affiliates, subsidiaries,
14 divisions, insurers, successors, assigns, and current and former employees,
15 attorneys, officers, directors, members, shareholders, and agents ("RELEASEES")
16 regarding the matters addressed in this AGREEMENT and shall have preclusive
17 effect such that no other person or entity, whether purporting to act in his, her or its
18 interests or the public interest shall be permitted to pursue and/or take action with
19 respect to any violation of the CWA that was alleged in the Complaint, that could
20 have been brought pursuant to the Notice or that is addressed by this
21 AGREEMENT.

22 22. **Dispute Resolution Procedures.** Except as specifically noted herein,
23 any disputes with respect to any of the provisions of this Consent Decree shall be
24 resolved through the following procedure. The SETTLING PARTIES agree to first
25 meet and confer in good faith to resolve any dispute arising under this Consent
26 Decree. In the event that such disputes cannot be resolved through this meet and
27 confer process, the SETTLING PARTIES agree to request a settlement meeting
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1 before the Magistrate Judge assigned to this action. In the event that the
2 SETTLING PARTIES cannot resolve the dispute by the conclusion of the
3 settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to
4 submit the dispute via motion to the District Court.

5 **GENERAL PROVISIONS**

6 23. **Force Majeure.** AXL will notify OCW if timely implementation of
7 AXL's respective duties under this Consent Decree becomes impossible due to
8 circumstances beyond the control of AXL or its agents, and which could not have
9 been reasonably foreseen and prevented by the AXL's exercise of due diligence.
10 Any delays due to AXL's respective failure to make timely and bona fide
11 applications and to exercise diligent efforts to comply with the terms in this Consent
12 Decree will not, in any event, be considered to be circumstances beyond the AXL's
13 control.

14
15 (a) If AXL claims impossibility, it will notify OCW in writing
16 within twenty (20) business days of the date that AXL discovers the event or
17 circumstance that caused or would cause non-performance with the terms of this
18 Consent Decree. The notice must describe the reason for the non-performance and
19 specifically refer to this section of this Consent Decree. The notice must describe
20 the anticipated length of time the non-performance may persist, the cause or causes
21 of the non-performance, the measures taken or to be taken by AXL to prevent or
22 minimize the non-performance, the schedule by which the measures will be
23 implemented, and the anticipated date of compliance. AXL will adopt all
24 reasonable measures to avoid and minimize such non-performance.

25 (b) The SETTLING PARTIES will meet and confer in good faith
26 concerning the non-performance and, if the SETTLING PARTIES concur that
27 performance was or is impossible, despite the timely good faith efforts of AXL, due
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1 to circumstances beyond the control of AXL that could not have been reasonably
2 foreseen and prevented by the exercise of due diligence by AXL, new performance
3 deadlines will be established.

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5 (c) If OCW disagrees with AXL's notice, or in the event that the
6 SETTLING PARTIES cannot timely agree on the terms of new performance
7 deadlines or requirements, either SETTLING PARTY may invoke the dispute
8 resolution process described in Paragraph 22 of this Consent Decree. In such
9 proceeding, AXL will bear the burden of proving that any delay in performance of
10 any requirement of this Consent Decree was caused or will be caused by force
11 majeure and the extent of any delay attributable to such circumstances.

12 24. **Construction.** The language in all parts of this Consent Decree shall
13 be construed according to its plain and ordinary meaning, except as to those terms
14 defined by law, in the General Permit, and the Clean Water Act or specifically
15 herein.

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17 25. **Choice of Law.** This Consent Decree shall be governed by the laws of
18 the United States, and where applicable, the laws of the State of California.

19 26. **Severability.** In the event that any provision, section, or sentence of
20 this Consent Decree is held by a court to be unenforceable, the validity of the
21 enforceable provisions shall not be adversely affected.

22
23 27. **Correspondence.** All notices required herein or any other
24 correspondence pertaining to this Consent Decree shall be sent by regular, certified,
25 overnight mail, or e-mail as follows:

26 If to OCW:

Copy to:
Scott L. Levitt, Esq.
LEVITT LAW, APC
311 Main Street, Suite #8
Seal Beach, CA 90740

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(562) 493-7548

If to AXL:
James Newton

Copy to:
Charles H. Pomeroy
cpomeroy@stilesPomeroy.com
StilesPomeroy LLP
790 E. Green Street
Pasadena, CA 91101
(626) 243-5599

5216 Pacific Blvd.
Huntington Park, CA 90255

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

28. **Counterparts.** This Consent Decree may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

29. **Assignment.** Subject only to the express restrictions contained in this Consent Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

30. **Modification of the Agreement.** This Consent Decree, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

31. **Full Settlement.** This Consent Decree constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Consent Decree has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

32. **Integration Clause.** This is an integrated Consent Decree. This Consent Decree is intended to be a full and complete statement of the terms of the

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agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this Consent Decree.

33. **Authority.** The undersigned representatives for OCW and AXL each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Consent Decree.

34. **Continuing Jurisdiction.** This Court shall retain jurisdiction to enforce the terms of the Consent Decree.

IT IS SO ORDERED.

DATED: February 12, 2018



DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

**METAL FINISHING ASSOCIATION OF SOUTHERN CALIFORNIA
COMPLIANCE GROUP
SITE MAP LOCATOR**

Page 2 of 2

BUSINESS NAME:	Aircraft X-Ray Laboratories, Inc.
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SITE MAP INFORMATION	N/A	MAP ID
FACILITIES BOUNDARIES		1
DRAINAGE AREAS		2
DIRECTION OF STORM WATER FLOW		3
AREAS IMPACTED BY DISCHARGES FROM SURROUNDING AREAS	✓	4
ON-SITE WATER BODIES	✓	5
AREAS OF SOIL EROSION	✓	6
NEARBY WATER BODIES	✓	7
MUNICIPAL STORM DRAIN INLETS		8
POINTS OF DISCHARGE		9
STRUCTURAL CONTROL MEASURES	✓	10
NON-IMPERVIOUS AREAS	✓	11
LOCATIONS WHERE MATERIALS MAY BE DIRECTLY EXPOSED TO PRECIPITATION (ONLY DURING SHIPPING/RECEIVING)		12
SIGNIFICANT SPILLS & LEAKS AREAS	✓	13
MATERIAL STORAGE AREAS / TANKS		14
SHIPPING & RECEIVING AREAS		15
FUELING AREAS	✓	16
VEHICLE & EQUIPMENT STORAGE/MAINTENANCE AREAS		17
MATERIAL HANDLING AND PROCESSING AREAS		18
AREAS OF INDUSTRIAL ACTIVITY DIRECTLY EXPOSED TO PRECIPITATION	✓	19
WASTE TREATMENT AND DISPOSAL AREAS		20
DUST/PARTICULATE GENERATION AREAS		21
AUTHORIZED NON-STORM WATER DISCHARGES	✓	22
NON-AUTHORIZED NON-STORM WATER DISCHARGES	✓	23
OTHER AREAS OF INDUSTRIAL ACTIVITIES	✓	24
STORMWATER DISCHARGE COLLECTION POINT		25
HOUSEKEEPING AREAS		26