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**United States District Court
Central District of California**

10 INLAND EMPIRE WATERKEEPER;
11 ORANGE COUNTY COASTKEEPER,
12 Plaintiffs,

13 v.

14 MARUHACHI CERAMICS OF
15 AMERICA, INC.; DELILAH
16 PROPERTIES, INC.;
17 Defendants.

Case No. 5:14-cv-01525-ODW (AGR_x)

CONSENT DECREE

18 **CONSENT DECREE**

19 The following Consent Decree is entered into by and between Plaintiffs Orange
20 County Coastkeeper and Inland Empire Waterkeeper (“Plaintiffs” or “Waterkeeper”), and
21 Defendants Maruhachi Ceramics of America, Inc., and Delilah Properties, Inc.
22 (“Defendants” or “MCA”). The entities entering into this Consent Decree are each an
23 individual “Settling Party” and collectively “Settling Parties.”

24 **WHEREAS**, Inland Empire Waterkeeper is a program of Orange County
25 Coastkeeper. Orange County Coastkeeper is a non-profit public benefit corporation
26 organized under the laws of the State of California.

27 **WHEREAS**, Plaintiffs are dedicated to the preservation, protection, and defense of
28 the environment, wildlife, and natural resources of the Santa Ana River and Inland
Empire area receiving waters;

1 **WHEREAS**, together, Orange County Coastkeeper and Inland Empire
2 Waterkeeper have over 2,000 members who live and/or recreate in and around the Santa
3 Ana River watershed;

4 **WHEREAS**, MCA operates a facility for structural clay manufacturing, which
5 includes exposed raw clay material loading/unloading and storage, exposed ceramic
6 product storage, exposed fueling areas, and related materials handling;

7 **WHEREAS**, Maruhachi Ceramics of America, Inc. and Delilah Properties, Inc.
8 are owners and/or operators of a structural clay manufacturing facility located at 1985
9 Sampson Avenue, Corona, California 92879, hereinafter referred to by the Settling
10 Parties as the “MCA Facility”;

11 **WHEREAS**, on May 14, 2014, Plaintiffs sent Defendants, the United States
12 Environmental Protection Agency (“EPA”), EPA Region IX, the State Water Resources
13 Control Board (“State Board”) and the Santa Ana Regional Water Quality Control Board
14 (“Regional Board”) a notice of intent to file suit (“Notice Letter”) under Sections 505(a)
15 and (b) of the CWA, 33 U.S.C. §§ 1365(a) and (b). The Notice Letter alleged violations
16 of Section 301(a) of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
17 (“Clean Water Act” or “CWA”), 33 U.S.C. § 1311(a), and violations of California’s
18 Permit for Discharges of Stormwater Associated with Industrial Activities (National
19 Pollution Discharge Elimination System General Permit No. CAS000001, State Water
20 Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order
21 No. 97-03-DWQ) (hereinafter “Storm Water Permit”) at the MCA Facility;

22 **WHEREAS**, on July 24, 2014, Plaintiffs filed a complaint against Defendants in
23 the United States District Court, Central District of California (Case No. EDCV14-
24 01525-ODW (AGRx)) alleging violations of Section 301(a) of the Clean Water Act, 33
25 U.S.C. § 1311(a), and violations of the Storm Water Permit at the MCA Facility
26 (hereinafter “Complaint”);

27 **WHEREAS**, discharges from the MCA Facilities are regulated by the Storm
28 Water Permit and the Clean Water Act;

1 **WHEREAS**, Plaintiffs allege Defendants to be in violation of the substantive and
2 procedural requirements of the Storm Water Permit and the Clean Water Act with respect
3 to the MCA Facility;

4 **WHEREAS**, Defendants deny all allegations in the Notice Letter and Complaint
5 relating to the MCA Facility;

6 **WHEREAS**, Defendants have submitted documentation to Plaintiffs that the
7 onsite infiltration basin draining to Drain 4 receives discharges from the MCA Facility is
8 sized appropriately to receive storm water discharges from the MCA Facility up to the
9 85% Design Storm;¹

10 **WHEREAS**, the Settling Parties have agreed that it is in their mutual interest to
11 enter into a Consent Decree setting forth terms and conditions appropriate to resolving
12 the allegations set forth in the Complaint without further proceedings;

13 **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree
14 shall be made in compliance with all applicable federal and state laws and local rules and
15 regulations.

16 **NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY AND**
17 **BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY**
18 **THE COURT, AS FOLLOWS:**

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

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

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

26 ¹ For purposes of this Settlement Agreement, “85% Design Storm” means the storm event whose total
27 precipitation is less than or equal to eighty-five (85) percent of all 24-hour storms in an area on an
28 annual basis.

1 4. Plaintiffs have standing to bring this action;

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

5 **I. AGENCY REVIEW AND TERM OF CONSENT DECREE**

6 6. On December 31, 2014, the United States Department of Justice,
7 Environment and Natural Resources Division, Law and Policy Section notified the Court
8 that it reviewed the Consent Decree and does not object to its entry. *See* 33 U.S.C.
9 § 1365(c)(3). (ECF No. 14.)

10 7. Termination Date. This Consent Decree shall terminate two (2) years from
11 the Effective Date, unless there is an ongoing, unresolved dispute regarding Defendants'
12 compliance with this Consent Decree. In the event there is a pending motion to enforce
13 the Consent Decree, the Consent Decree will terminate upon the earlier of (1) the Court's
14 ruling on such motion if it resolves the dispute, or (2) thirty (30) days following the
15 Parties' notice to the Court of agreement by the Parties that the dispute that is the subject
16 of the pending motion has been fully resolved.

17 **II. COMMITMENTS OF THE SETTLING PARTIES**

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

19 a. **Definitions**

20 8. For purposes of this Consent Decree, "Driveway" means the paved private
21 access route from Sampson Avenue leading to the northeast corner of the Facility near
22 SR-91.

23 9. For purposes of this Consent Decree, "Warehouse" means that main clay tile
24 manufacturing building at the MCA site, as seen in the Proposed BMP Locations Map
25 attached to ECF No. 15-1 as Exhibit A.

26 10. For purposes of this Consent Decree, "Loading Dock" means the area on the
27 northern border of the Facility abutting the Warehouse, as seen in the Proposed BMP
28 Locations Map attached to ECF No. 15-1 as Exhibit A.

1 11. For purposes of this Consent Decree, “Design Storm” means the 85th
2 percentile 24 hour storm event for the Corona area, which measures 0.71 inches, as seen
3 in the Infiltration Study attached to ECF No. 15-1 as Exhibit B.

4 12. For purposes of this Consent Decree, “Raw Material Storage Area” means
5 the outdoor raw clay storage area abutting the Driveway near Drains 1 and 2, as seen in
6 the Proposed BMP Locations Map attached to ECF No. 15-1 as Exhibit A.

7 13. For purposes of this Consent Decree, “Cottage” means the building adjacent
8 to the Warehouse and the parking lot, as seen in the Proposed BMP Locations Map
9 attached to ECF No. 15-1 as Exhibit A.

10 14. For purposes of this Consent Decree, “Drain 1” means the northernmost
11 drain on the Driveway, near the Raw Material Storage Area, as seen in the Proposed
12 BMP Locations Map attached to ECF No. 15-1 as Exhibit A.

13 15. For purposes of this Consent Decree, “Drain 2” means the drain located on
14 the Driveway to the north of the berm, as seen in the Proposed BMP Locations Map
15 attached to ECF No. 15-1 as Exhibit A.

16 16. For purposes of this Consent Decree, “Drain 3” means the southernmost
17 drain on the Driveway, near the parking lot and to the south of the berm, as seen in the
18 Proposed BMP Locations Map attached to ECF No. 15-1 as Exhibit A.

19 17. For purposes of this Consent Decree, “Drain 4” means the drain located in
20 the south portion of the Facility, as seen in the Proposed BMP Locations Map attached to
21 ECF No. 15-1 as Exhibit A.

22 18. For purposes of this Consent Decree, “Grassy Swale” means the area in the
23 southwest portion of the Facility where storm water is directed for infiltration and
24 possible discharge through Drain 4, as seen in the Proposed BMP Locations Map
25 attached to ECF No. 15-1 as Exhibit A.

26 b. **Defendants’ Obligations**

27 19. Defendant shall retain a qualified consultant to effectively train MCA
28 employees responsible for collective storm water samples on the correct methods to

1 collect and handle storm water samples.

2 20. Defendants shall construct a berm along the northwest border of the
3 property, extending halfway along the property line, with sufficient freeboard to capture
4 run-on from SR-91 and infiltrate storm water onsite within thirty (30) days of the
5 Effective Date of this Consent Decree], pursuant to the design details provided in the
6 Proposed BMP Locations Map attached ECF No. 15-1 as Exhibit A. If discharge
7 volumes exceed the de minimis quantities alleged by Caltrans, crushed rock will be
8 installed in the basin to improve infiltration within thirty (30) days of a discharge from
9 the bermed area to the MCA site.

10 21. Defendants shall convert Drains 1 and 2 into blind sumps designed to collect
11 all storm water from the Driveway during a Design Storm by within thirty (30) days of
12 the Effective Date of this Consent Decree in accordance with the details provided in the
13 Proposed BMP Locations Map attached to ECF No. 15-1 as Exhibit A.

14 22. Defendants shall redirect Warehouse roof downspouts away from the Raw
15 Material Storage Area to a permanent bioswale located adjacent to the Cottage and the
16 parking lot within thirty (30) days of the Effective Date of this Consent Decree, in
17 accordance with details provided in the Proposed BMP Locations Map attached to ECF
18 No. 15-1 as Exhibit A.

19 23. Defendants shall construct three curb cuts of approximately one (1) foot in
20 width along the curb surrounding the Grassy Swale to direct storm water from the
21 parking lots to the infiltration basin within thirty (30) days of the Effective Date of this
22 Consent Decree, in accordance with the details provided in the Proposed BMP Locations
23 Map attached ECF No. 15-1 as Exhibit A.

24 24. Defendants shall construct two (2) crushed rock check dams approximately
25 one and a half (1.5) feet high in the last one hundred (100) feet of the cement lined
26 drainage channel before the grassy swale along the west side of the property, pursuant to
27 the design specifications in Exhibit B attached to ECF No. 15-1. Construction shall be
28 complete within thirty (30) days of the Effective Date of this Consent Decree

1 25. Defendant shall repair and/or replace all unvegetated areas in the infiltration
2 basin around Drain 4 with appropriate vegetation for this BMP within thirty (30) days of
3 the Effective Date of this Consent Decree.

4 26. Defendant shall install crushed rock at the interface between the cement
5 lined drainage channel and the Grassy Swale within thirty (30) days of the Effective Date
6 of this Consent Decree in order to spread flow over a larger area, in accordance with the
7 details provided in the Proposed BMP Locations Map attached to ECF No. 15-1 as
8 Exhibit A and the Infiltration Study attached to ECF No. 15-1 as Exhibit B.

9 27. Defendants shall cover material in the Raw Material Storage Area with
10 properly secured plastic sheeting prior to any rain event during business hours, as well as
11 any rain event during non-business hours preceded by a National Oceanic and
12 Atmospheric Administration prediction of a seventy (70) percent chance of rain or
13 higher. All plastic sheeting must be sufficiently secured against wind gusts. Defendants
14 shall implement coverage of the Raw Material Storage Area within thirty (30) days of the
15 Effective Date of this Consent Decree

16 28. Defendants shall install float switch activated sump pumps in Drain 1 and
17 Drain 2 to direct storm water from the blind sumps to a 20 micron bag filter housed in a
18 Pentek Eyebolt Bag Filter Housing (Grainger catalog item #4BB31) or equivalent, in the
19 northeast corner of the property within thirty (30) days of the Effective Date of this
20 Consent Decree Storm water will be discharged from the bag filter to the northwest
21 corner of the property where it will enter a drainage channel leading to Drain 4.

22 29. Defendants shall install a Pentek Eyebolt Bag Filter Housing (Grainger
23 catalog item #4BB31) or equivalent, equipped with a 20 micron bag filter, at the Loading
24 Dock sump pump discharge point within thirty (30) days of the Effective Date of this
25 Consent Decree Storm water will be discharged from the bag filter to the drainage
26 channel leading to Drain 4.

27 30. Defendants shall convert the “Grassy Swale” to an infiltration basin by
28 sealing the opening for Drain 4 and installing a vertical standpipe to function as an

1 overflow inlet within thirty (30) days of the Effective Date of this Consent Decree. The
2 standpipe will be 58-62 inches in height and 6-8 inches in diameter. A sampling port will
3 be installed in the standpipe to collect storm water in the event of a storm exceeding the
4 Design Storm.

5 31. Defendants shall evaluate additional BMPs for Drain 3 if sampling results do
6 not meet the benchmarks detailed in Table 1 after the second sample of the 2014-2015
7 wet season or July 1, 2015, whichever is earlier.

8 32. Defendants shall regulate the flow of storm water discharges from the sump
9 pumps to the infiltration basin to allow for controlled infiltration. If infiltration is
10 occurring too slowly, then Defendant shall reduce the rate of storm water reaching the
11 infiltration basin until such time that there is sufficient capacity to infiltrate.

12 33. Defendants shall diligently file and pursue all required local agency
13 applications for permits for the best management practices (“BMPs”) at the MCA
14 Facility, shall diligently pursue the procurement of contractors, labor, and materials to
15 complete all such BMPs by the required deadlines, and shall use their best efforts to meet
16 these deadlines.

17 **B. Reduction of Pollutants in Discharges**

18 34. Storm Water Pollution Reduction. Beginning in the 2014-2015 wet season,
19 identified in the Storm Water Permit as October 1 – May 30 (hereinafter the “Wet
20 Season”), Drain 3 pollutants discharged subject to the Storm Water Permit shall not
21 exceed the concentrations listed in Table 1, as provided in this Consent Decree.

22 **Table 1 – Concentrations for Storm Water Discharges**

<u>Pollutant</u>	<u>Concentration</u>
Total Suspended Solid	100 mg/L
pH	6.5-8.5 units
Oil & Grease	15 mg/L
Specific Conductance	200 umhos/cm
Total Recoverable Aluminum	0.75 mg/L

Total Recoverable Iron	1.0 mg/L
Chemical Oxygen Demand	120 mg/L
Biological Oxygen Demand (5 Day)	30 mg/L
Dissolved Lead	0.065 mg/L²
Dissolved Copper	0.013 mg/L
Dissolved Zinc	0.120 mg/L

35. Action Plan for Table 1 Exceedances. If any storm water sample collected at Drain 3, pursuant to the Storm Water Permit or this Consent Decree, contains a level of pollutant(s) above Table 1 concentration, MCA shall submit a plan for reducing the discharge of such pollutant(s) to achieve the Table 1 concentrations (“Action Plan”). In any year that the Action Plan is required, it shall be submitted to Waterkeeper by July 1 following the Wet Season during which the exceedance(s) occurred.

36. Action Plan Requirements. Each Action Plan submitted shall include at a minimum: (1) the identification of the pollutant(s) discharged in excess of Table 1 concentration(s), (2) an assessment of the source of each pollutant exceedance, (3) the identification of additional BMPs, including the possibility of additional treatment, to reduce pollutants in storm water below Table 1 concentrations, and (4) time schedules for implementation of the proposed BMPs. The time schedule(s) for implementation of the BMPs shall be developed with good faith efforts to have all BMPs implemented prior to the next Wet Season, and shall include an explanation of any inability to implement the additional BMPs prior to the beginning of the next Wet Season.

37. Action Plan Review. Waterkeeper shall have thirty (30) days upon receipt of MCA’s Action Plan to provide MCA with comments. Within thirty (30) days of MCA’s

² Several of the Table 1 concentrations are hardness dependent. The hardness dependent concentrations are in bold. The California Toxics Rule concentrations expressed assume hardness of 100 mg/L CaCO₃. Defendant shall adjust the concentrations using the methods provided in the California Toxics Rule as applicable.

1 receipt of Waterkeeper’s comments on the Action Plan, MCA shall accept and
2 incorporate Waterkeeper’s comments of recommended BMPs into the Action Plan, or
3 shall provide Waterkeeper with a written explanation if MCA refuses to develop and/or
4 implement any of Waterkeeper’s recommended BMPs. It is the Parties’ intent that
5 disputes regarding the adequacy of a particular BMP shall not impact the schedule for
6 implementing other BMPs set forth in the Action Plan. Disputes relating to the Action
7 Plan shall be resolved pursuant to the dispute resolution provisions of this Consent
8 Decree, set out below.

9 38. Within ninety (90) days following the completion of an Action Plan review,
10 MCA shall revise its SWPPP and Monitoring and Reporting Program (“M&RP”), as
11 applicable, to reflect the changes required by the Action Plan. “Completion of Action
12 Plan review,” as used herein, shall mean (1) the date on which any disputes relating to the
13 Action Plan are resolved or, if there are no disputes, (2) thirty (30) days following
14 MCA’s receipt of Waterkeeper’s comments on the Action Plan or, if there are no
15 comments, (3) thirty (30) days following Waterkeeper’s receipt of MCA’s Action Plan.
16 MCA shall notify Waterkeeper when the Action Plan has been completely implemented,
17 and shall submit the revised SWPPP and/or M&RP to Waterkeeper for review and
18 comment as set out in paragraphs 55 and 58 below.

19 **C. Sampling at the MCA Facility**

20 39. Defendants shall install a recording rain gauge capable of recording rainfall
21 to 0.10 inches at the MCA Facility within thirty (30) days of the Execution Date.
22 Defendants shall maintain the recording rain gauge in accordance with the
23 manufacturers’ recommendations, maintain records of all maintenance, maintain records
24 of rain data, and provide such records upon request by Waterkeeper.

25 a. **Sampling During Term of Consent Decree**

26 40. During the life of this Consent Decree, Defendants shall collect samples of
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1 any storm water discharging from the MCA Facility during operating hours.³ Any failure
2 to sample a discharge from each discharge location at the MCA Facility shall be
3 documented and submitted to Coastkeeper within five (5) days of the date a sample could
4 have been collected but was not.

5 41. During the life of this Consent Decree, Defendants shall collect two samples
6 per year of storm water discharged from the SR-91 infiltration basin to the MCA Facility
7 during operating hours to assess the properties of run-on to the Facility.

8 42. All samples collected pursuant to paragraphs 40–41 shall be analyzed for the
9 following parameters: total suspended solids, copper, lead, zinc, oil and grease,
10 aluminum, iron, biochemical oxygen demand, chemical oxygen demand, specific
11 conductance, and pH.

12 43. Defendants shall sample discharges from the post-filtration sump pump for
13 turbidity using a turbidity meter. If the sample results in a reading greater than 25 NTU,
14 then the bag filter size will be reduced, in stages, from 20 microns to as few as 1 micron.

15 44. Storm Water Sampling Frequency. For the life of this Consent Decree, MCA
16 shall collect storm water discharge samples from the first storm event of the Wet Season
17 and from three (3) other storm events for a sampling total of four (4) storm events that
18 produce a discharge during the 2014–15 and 2015–16 Wet Seasons (provided there are
19 four (4) or more storm events that produce a discharge during those seasons). Samples
20 shall be collected according to the method described in paragraph 40 and the revised
21 SWPPP and M&RP.

22 45. Sampling Reduction. MCA may discontinue analyzing storm water samples
23 collected pursuant to this Consent Decree at any discharge point(s) for a parameter listed
24 in paragraph 42, so long as the sample is below the corresponding for four (4)

25 _____
26 ³ The operating hours for the MCA Facility are Monday – Friday, 3:30am – 12:30 pm during the
27 summer season and 5:30am – 2:00pm during the winter season. The summer season begins at 12:00am
28 on June 1, and continues until 12:00am on October 1, each year. All other time periods comprise the
winter season.

1 consecutive sampling events, and MCA has collected and analyzed the sample in
2 accordance with the terms of this Consent Decree and the Storm Water Permit.

3 **b. Sampling Analysis and Reporting**

4 46. Defendants shall use a state certified laboratory to conduct all analysis
5 pursuant to this Consent Decree, except for the turbidity analysis detailed above. When
6 requesting analysis of storm water samples, the laboratory will be instructed to utilize the
7 analytical limits such that, at a minimum, the method detection limits are below the EPA
8 Benchmarks and applicable water quality standards set forth in Table 1 above.

9 47. Defendants shall request that all sample analyses be reported to them within
10 thirty (30) days of laboratory receipt of the sample.

11 48. Defendants shall request that results of all sample analyses for lead, copper,
12 and zinc be reported as both total and dissolved concentration levels. Defendants shall
13 request that results of aluminum and iron be reported as total recoverable concentration
14 levels.

15 49. Defendants shall provide the complete laboratory results of all samples
16 collected at the MCA Facility to Plaintiffs within fifteen (15) days of receiving the
17 results.

18 50. Where Defendants observe and/or sample a discharge at the MCA Facility,
19 Defendants shall provide rain gauge data to Plaintiffs within twenty-one (21) days of the
20 rain event producing the discharge.

21 **D. Prohibition Against Discharges**

22 51. Prohibition Against Discharges. Storm water shall not discharge from the
23 MCA Facility during any storm at or below the Design Storm, except for discharges to
24 Drain 3. In the event that a discharge occurs during any storm at or below the Design
25 Storm (except for discharges to Drain 3), the parties agree to promptly meet and confer to
26 address the prevention of a further discharge.

27 **E. Monitoring and Reporting Program Revisions**

28 52. Revising the M&RP. Within thirty (30) days of the Effective Date of this

1 Consent Decree, Defendants shall revise their M&RP for the MCA Facility to update any
2 information required by the revised SWPPP, Storm Water Permit and/or this Consent
3 Decree.

4 53. Visual Observations. During the life of this Consent Decree, Defendants
5 shall conduct visual observations during every significant rain event⁴ that occurs during
6 normal scheduled operating hours of all infiltration areas and all discharges, if any, at the
7 MCA Facility.

8 54. Defendants shall record any pollutants, odors, discolorations, or other
9 pollutant indicators observed during these visual observations and compare the results of
10 these observations to any sampling analyses conducted at the same locations.

11 55. Plaintiff's Review of Revised M&RP. Defendants shall submit the revised
12 M&RP for the MCA Facility to Plaintiffs for review and comment. Plaintiffs shall
13 provide comments, if any, to Defendants relating to compliance with the terms of this
14 Consent Decree and the Storm Water Permit within thirty (30) days of receipt of the
15 M&RP. Defendants shall incorporate Plaintiffs' comments into the M&RP, or shall
16 justify in writing why any comment was not incorporated within thirty (30) days of
17 receiving comments.

18 **F. Storm Water Pollution Prevention Plan Revisions**

19 56. Within thirty (30) days of the Effective Date of this Consent Decree,
20 Defendants shall revise the SWPPP for the MCA Facility to include all BMPs required by
21 the Consent Decree, as well as operating procedures for the storm water BMPs, including
22 a specific section providing guidance on regulating sump pump discharges to improve
23 infiltration basin performance, plus all requirements of Section A of the Storm Water
24 Permit.

25 57. Additional SWPPP Revisions. Defendants shall revise the SWPPP for the
26 _____

27 ⁴ A significant rain event is defined by EPA as a rainfall event generating .1 inches or more of rainfall,
28 which generally results in measurable discharges of a typical industrial facility.

1 MCA Facility if there are any changes in the MCA Facility's operations, including, but
2 not limited to, changes to storm water discharge point(s). These SWPPP revisions shall
3 occur within sixty (60) days of the changes in operations.

4 58. Plaintiff's Review of Revised SWPPPs. Defendants shall submit any
5 revised SWPPP for the MCA Facility to Plaintiffs for review and comment within ten
6 (10) days of the SWPPP revision. Plaintiffs shall provide comments, if any, to
7 Defendants relating to compliance with the terms of this Consent Decree and the Storm
8 Water Permit within thirty (30) days of receipt of any revised SWPPP. Defendants shall
9 incorporate Plaintiffs' comments into any revised SWPPP, or shall justify in writing why
10 any comment was not incorporated within thirty (30) days of receiving comments.

11 **G. Employee Training**

12 59. Within forty-five (45) days of the Effective Date of this Consent Decree,
13 Defendants shall develop and implement a training program, including any training
14 materials needed for effective implementation of the training program, for the MCA
15 Facility ("Training Program"). The Training Program shall ensure: (1) that there are a
16 sufficient number of employees delegated to achieve compliance with the Storm Water
17 Permit and this Consent Decree at the MCA Facility, and (2) that these employees are
18 properly trained to perform the required activities to achieve compliance with the Storm
19 Water Permit and this Consent Decree. At a minimum the Training Program shall require
20 at least the following:

21 a. Language. Defendants shall conduct the Training Program in the language
22 or languages in which all employees participating are fluent;

23 b. Non-Storm Water Discharges. Defendants shall train all employees on the
24 Storm Water Permit's prohibition of non-storm water discharges, so that employees know
25 what non-storm water discharges are, that non-storm water discharges can result from
26 improper surface washing or dust control methods, and how to detect and prevent non-
27 storm water discharges;

28 c. BMPs. Defendants shall train all employees on BMP implementation and

1 maintenance to ensure that BMPs are implemented effectively to prevent the exposure of
2 pollutants to storm water, to prevent the discharge of contaminated storm water, and to
3 ensure the proper treatment of storm water at the MCA Facility;

4 d. Storm Water Sampling. Defendants shall designate an adequate number of
5 employees necessary to collect storm water samples as required by this Consent Decree.
6 The Training Program shall include the proper sampling protocols, including chain of
7 custody requirements, to ensure storm water samples are properly collected, stored, and
8 submitted to a certified laboratory.

9 60. The Training Program shall be provided by a private consultant or a
10 representative of Defendants who is familiar with the requirements of this Consent
11 Decree and the Storm Water Permit. The training shall be repeated annually, or as
12 necessary to ensure that all employees are familiar with the requirements of this Consent
13 Decree, the Storm Water Permit, and the MCA Facility's SWPPP. All new staff will
14 receive this training before assuming responsibilities for implementing the SWPPP.

15 61. Defendants shall maintain records of the subject matter and attendance to
16 document compliance with this section, and shall provide Plaintiffs with a copy of these
17 records within fourteen (14) days of receipt of a written request.

18 **H. Site Inspections, Compliance Monitoring and Reporting**

19 62. Site Inspections. Every year during the life of this Consent Decree, Plaintiffs
20 and their representatives may conduct one (1) Wet Season (October 1 – May 30) site
21 inspection and one (1) Dry Season (June 1 – September 30) site inspection at the MCA
22 Facility. The site inspections shall occur during normal business hours. Defendants
23 and/or their representatives shall have the right to accompany any site inspection.
24 Plaintiffs shall provide Defendants with twenty-four (24) hours' notice (weekends and
25 holidays excluded) prior to each Wet Season site inspection, and forty-eight (48) hours'
26 notice (weekends and holidays excluded) prior to each Dry Season site inspection. Notice
27 shall be provided by telephone or electronic mail.

28 63. Scope of Inspections. During the site inspections, Plaintiffs and/or their

1 representatives up to a limit of three individuals shall be allowed access to the MCA
2 Facility's SWPPP, M&RP, plus all other monitoring records, reports, and sampling data
3 related to compliance with the Storm Water Permit and/or this Consent Decree.

4 64. During the site inspections, Plaintiffs and/or their representatives may
5 collect storm water samples from the MCA Facility. At Plaintiffs' expense, a certified
6 California laboratory shall analyze samples collected by Plaintiffs and copies of the
7 laboratory reports shall be provided to Defendants within five (5) business days of
8 receipt. At the request of Defendants, the samples shall be split and one half provided to
9 Defendants so as to allow Defendants to have their own certified California laboratory
10 analyze the samples, in accordance with the sample analyses requirements in paragraphs
11 46-49.

12 65. During the site inspections, Plaintiffs may take photographs or video
13 recording of the MCA Facility. If Plaintiffs take any photographs and/or video recording,
14 Plaintiffs shall provide Defendants with the photographs and/or video within fourteen
15 (14) days after any written request by Defendants for such photographs and/or videos.

16 66. Reporting and Document Provision. During the life of this Consent Decree,
17 Defendants shall copy Plaintiffs on all documents related to water quality at the MCA
18 Facility that are submitted to the EPA, the Regional Board, the State Board, and/or any
19 state or local agency, county, or municipality. Such reports and documents shall be
20 provided to Plaintiffs on the date they are sent to the agencies, counties, and/or
21 municipalities. Any correspondence related to Defendants' compliance with the Storm
22 Water Permit or water quality received by Defendants from any regulatory agency,
23 and/or any state or local agency, county, or municipality shall be provided to Plaintiffs
24 within ten (10) days of receipt by Defendants.

25 67. Compliance Monitoring and Oversight. Defendants agree to contribute to
26 Waterkeeper's review of information and monitoring of compliance with this Consent
27 Decree in the amount of Five Thousand Dollars (\$5,000) per year, for the term of this
28 Consent Decree, for a total of Ten Thousand Dollars (\$10,000). The payment shall be

1 made within thirty (30) days of the Effective Date, made payable to: “Orange County
2 Coastkeeper,” and delivered by certified mail, overnight delivery, or wire to: Orange
3 County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.

4 **I. Environmental Mitigation Project, Reimbursement of Litigation Fees**
5 **and Costs, and Stipulated Payments**

6 68. Environmental Project. Defendants agree to make a payment of Seventeen
7 Thousand Five Hundred Dollars (\$17,500) to the Rose Foundation for Communities and
8 the Environment to fund environmental project activities that will benefit the Southern
9 California Bight and its tributaries. Payment shall be made within thirty (30) days of the
10 Effective Date, payable to the “Rose Foundation for Communities and the Environment”
11 and delivered by certified mail, overnight delivery, or wire transfer to the Rose
12 Foundation for Communities and the Environment, Attention: Tim Little, 1970
13 Broadway, Suite 600, Oakland, California 94612-2218 . A confirmation copy of the
14 payment shall be sent to Waterkeeper.

15 69. Reimbursement of Plaintiffs’ Fees and Costs. Defendants shall pay a total of
16 Forty Five Thousand Dollars (\$45,000) to Plaintiffs to partially reimburse Plaintiffs for
17 their investigation fees, expert/consultant fees and costs, and reasonable attorneys’ fees
18 incurred as a result of investigating and preparing the lawsuit and negotiating this
19 Consent Decree. Payment shall be made within ten (10) days of the Effective Date
20 payable to “Orange County Coastkeeper” and delivered via wire transfer to: Orange
21 County Coastkeeper, 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626.

22 70. Stipulated Payment. For each missed deadline included in this Consent
23 Decree, Defendants shall make a remediation payment of One Thousand Dollars (\$1,000)
24 to the Rose Foundation for Communities and the Environment to fund environmental
25 project activities that will benefit the Southern California Bight and its tributaries.
26 Payment shall be made within thirty (30) days of the missed deadline, payable to the
27 “Rose Foundation for Communities and the Environment” and shall be delivered by
28 certified mail, overnight delivery, or wire transfer to: Rose Foundation for Communities

1 and the Environment, Attention: Tim Little, 1970 Broadway, Suite 600, Oakland,
2 California 94612-2218. Defendants shall provide Coastkeeper with a copy of each such
3 payment and all related correspondences at the time the payment is made.

4 **III. DISPUTE RESOLUTION**

5 71. This Court shall retain jurisdiction over this matter until the final termination
6 date defined in paragraph 7 above for the purposes of implementing and enforcing the
7 terms and conditions of this Consent Decree, and adjudicating all disputes among the
8 Settling Parties that may arise under the provisions of this Consent Decree. The Court
9 shall have the power to enforce this Consent Decree with all available legal and equitable
10 remedies, including contempt.

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

17 73. If the Settling Parties cannot resolve a dispute by the end of meet and confer
18 informal negotiations, the party initiating the dispute resolution provision may invoke
19 formal dispute resolution by filing a motion before the United States District Court for
20 the Central District of California. The Settling Parties agree to request an expedited
21 hearing schedule on the motion.

22 74. Enforcement Fees and Costs. Litigation costs and fees incurred in
23 conducting a meet and confer session(s) or otherwise addressing and/or resolving any
24 dispute, including an alleged breach of this Consent Decree, shall be awarded in
25 accordance with the standard established by Section 505 of the Clean Water Act, 33
26 U.S.C. §§ 1365 and 1319, and case law interpreting that standard.

27 **IV. MUTUAL RELEASE OF LIABILITY**

28 75. Plaintiffs' Release. Upon the Effective Date of this Consent Decree,

1 Plaintiffs, on their own behalf and on behalf of their current and former officers,
2 directors, employees, and each of their successors and assigns, and its agents, attorneys,
3 and other representatives release all persons including, without limitation, Defendants
4 (each of their direct and indirect parent and subsidiary companies and affiliates, and their
5 respective current and former officers, directors, members, employees, and shareholders,
6 and each of their contractors, partners, joint venturers, landlords, predecessors,
7 successors, and assigns, and each of their agents, attorneys, consultants, and other
8 representatives) from and waives all claims alleged in the Notice Letter and/or Complaint
9 up to the Termination Date of this Consent Decree.

10 76. Defendants' Release. Upon the Effective Date of this Consent Decree,
11 Defendants, on their own behalf and on behalf of their current and former officers,
12 directors, employees, members, and each of their successors and assigns, and their
13 agents, attorneys, and other representatives release all persons including, without
14 limitation, Plaintiffs (and their current and former officers, directors, employees,
15 members, parents, subsidiaries, and affiliates, and each of their successors and assigns,
16 and its agents, attorneys, and other representatives) from and waives all claims which
17 arise from or pertain to this action, including all claims for fees (including fees of
18 attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed for
19 matters related to Plaintiffs' Notice Letter and Complaint up to entry of this Consent
20 Decree by the Court.

21 77. Nothing in this Consent Decree limits or otherwise affects Plaintiffs' right to
22 address or take any position that they deem necessary or appropriate in any formal or
23 informal proceeding before the State Board, Regional Board, EPA, or any other judicial
24 or administrative body on any other matter relating to Defendants' compliance with the
25 Storm Water Permit or the Clean Water Act occurring or arising after entry of this
26 Consent Decree by the Court but specifically excluding the discharges and all other
27 matters addressed by this Consent Decree.

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1 **V. MISCELLANEOUS PROVISIONS**

2 78. No Admission of Liability. Neither this Consent Decree, the implementation
3 of additional BMPs, nor any payment pursuant to the Consent Decree shall constitute or
4 be construed as a finding, adjudication, admission, or acknowledgment of any fact, law,
5 or liability, nor shall it be construed as an admission of violation of any law, rule, or
6 regulation. Defendants maintain and reserve all defenses they may have to any alleged
7 violations that may be raised in the future.

8 79. Force Majeure. No Settling Party shall be considered to be in default in the
9 performance of any of its obligations under this Consent Decree when performance
10 becomes impossible due to circumstances beyond the Settling Party's control, including
11 Force Majeure, which includes any act of God, war, fire, earthquake, windstorm, flood,
12 or natural catastrophe; civil disturbance, vandalism, sabotage, or terrorism; restraint by
13 court order or public authority or agency; or action or non-action by, or inability to obtain
14 the necessary authorizations or approvals from, any governmental agency. Impossibility
15 and/or Force Majeure shall not include normal inclement weather, economic hardship, or
16 inability to pay. Any party seeking to rely upon this paragraph to excuse or postpone
17 performance shall have the burden of establishing that it could not reasonably have been
18 expected to avoid the impossibility or Force Majeure event and which by exercise of due
19 diligence has been unable to overcome the failure of performance. Delay in compliance
20 with a specific obligation under this Consent Decree due to impossibility and/or Force
21 Majeure as defined in this paragraph shall not excuse or delay compliance with any or all
22 other obligations required under this Consent Decree.

23 a. If Defendants claim compliance was or is impossible, they shall notify
24 Plaintiffs in writing within thirty (30) days of the date that Defendants first knew of the
25 event or circumstance that caused or would cause a violation of this Consent Decree, or
26 the date Defendants should have known of the event or circumstance by the exercise of
27 reasonable diligence. If the deadline for compliance that Defendants will miss is within
28 the thirty (30) day window that Defendants have to notify Plaintiffs of their

1 noncompliance, Defendants shall notify Plaintiffs within three (3) days of the date that
2 Defendants first knew of the event or circumstance that caused or would cause a violation
3 of this Consent Decree, or the date Defendants should have known of the event or
4 circumstance by the exercise of reasonable diligence, such that Defendants shall not
5 notify Plaintiffs of the impossibility and/or Force Majeure after the Consent Decree
6 deadline has already passed.

7 b. The notice described in paragraph 77.a shall describe the reason for the
8 nonperformance and the specific obligations under the Consent Decree that are or have
9 been affected by the Force Majeure. It shall describe the anticipated length of time the
10 delay may persist, the cause or causes of the delay, the measures taken or to be taken by
11 Defendants to prevent or minimize the delay, the schedule by which the measures shall
12 be implemented, and the anticipated date of compliance. Defendants shall adopt all
13 reasonable measures to avoid and minimize such delays.

14 c. The Settling Parties shall meet and confer in good faith concerning the non-
15 performance and, where the Settling Parties concur that performance was or is impossible
16 due to an event or issue in paragraph 67.a, despite the timely good faith efforts of
17 Defendants, new deadlines shall be established.

18 d. If Plaintiffs disagree with Defendants' notice of impossibility and/or Force
19 Majeure, or in the event that the Settling Parties cannot timely agree on the terms of new
20 performance deadlines or requirements, either party shall have the right to invoke the
21 dispute resolution procedure pursuant to Section III. In such proceeding, Defendants shall
22 bear the burden of proving that any delay in performance of any requirement of this
23 Consent Decree was caused or will be caused by impossibility and/or Force Majeure and
24 the extent of any delay attributable to such circumstances

25 80. Construction. The language in all parts of this Consent Decree shall be
26 construed according to its plain and ordinary meaning, except as to those terms defined in
27 the Storm Water Permit, the Clean Water Act, or specifically herein.

28 81. The Settling Parties have participated jointly in the negotiation and drafting

1 of this Consent Decree. In the event that an ambiguity or question of intent or
2 interpretation arises, this Consent Decree shall be construed as if drafted jointly by the
3 Settling Parties and no presumption or burden of proof shall arise favoring or disfavoring
4 any Settling Party by virtue of the authorship of any of the provisions of this Consent
5 Decree.

6 82. Choice of Law. The laws of the State of California shall govern this Consent
7 Decree, except to the extent inconsistent with any laws of the United States, in which
8 case the laws of the United States shall govern.

9 83. 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 84. Correspondence. All notices required herein or any other correspondence
13 pertaining to this Consent Decree shall be sent by U.S. mail or electronic mail as follows:

14 If to Plaintiff:

15 Orange County Coastkeeper
16 Garry Brown, Executive Director
17 garry@coastkeeper.org
18 Colin Kelly, Staff Attorney
19 colin@coastkeeper.org
20 3151 Airway Avenue, Suite F-110
21 Costa Mesa, California 92626

22 If to Defendants:

23 Gresham Savage Nolan & Tilden
24 550 E. Hospitality Lane, Suite 300
25 San Bernardino, CA 92408

26 With copies to:

27 Maruhachi Ceramics of America, Inc.
28 Attn: Yoshihiro Suzuki
1985 Sampson Avenue
Corona, California 92879

1 Delilah Properties, Inc.
2 Attn: Yoshihiro Suzuki
3 1985 Sampson Avenue
4 Corona, California 92879

5 Notifications of communications shall be deemed submitted three (3) business days
6 after having been sent via U.S. mail or the day of sending the notification or
7 communication by electronic mail. Any change of address or addresses shall be
8 communicated in the manner described above for giving notices.

9 85. Effect of Consent Decree. Except as provided herein, Plaintiffs do not, by
10 their consent to this Consent Decree, warrant or aver in any manner that Defendants'
11 compliance with this Consent Decree will constitute or result in compliance with any
12 federal or state law or regulation. Nothing in this Consent Decree shall be construed to
13 affect or limit in any way the obligation of Defendants to comply with all federal, state,
14 and local laws and regulations governing any activity required by this Consent Decree.

15 86. Counterparts. This Consent Decree may be executed in any number of
16 counterparts, all of which together shall constitute one (1) original document. Telecopy,
17 email of a .pdf signature, and/or facsimile copies of original signature shall be deemed to
18 be originally executed counterparts of this Consent Decree.

19 87. Modification of the Consent Decree. This Consent Decree, and any
20 provisions herein, may not be changed, waived, discharged, or terminated unless by a
21 written instrument, signed by the Settling Parties. If any Settling Party wishes to modify
22 any provision of this Consent Decree, the Settling Party must notify the other Settling
23 Party in writing at least twenty-one (21) days prior to taking any step to implement the
24 proposed change.

25 88. Full Settlement. This Consent Decree constitutes a full and final settlement
26 of this matter.

27 89. Integration Clause. This is an integrated Consent Decree. This Consent
28 Decree is intended to be a full and complete statement of the terms of the agreement

1 between the Settling Parties and expressly supersedes any and all prior oral or written
2 agreements, covenants, representations, and warranties (express or implied) concerning
3 the subject matter of this Consent Decree.

4 90. Authority. The representatives for Plaintiffs and Defendants each certify that
5 he/she is fully authorized by the party whom he/she represents to enter into the terms and
6 conditions of this Consent Decree.

7 91. Successor and Assigns. The provisions of this Consent Decree apply to and
8 bind the Settling Parties, including any successors or assigns. The Settling Parties certify
9 that their representatives are fully authorized to enter into this Consent Decree, to execute
10 it on behalf of the Settling Parties, and to legally bind the Settling Parties to its terms.

11 92. Binding Effect. The Settling Parties agree to be bound by this Consent
12 Decree and not to contest its validity in any subsequent proceeding to implement or
13 enforce its terms. By entering into this Consent Decree, Defendants do not admit liability
14 for any purpose as to any allegation or matter arising out of the Notice Letter or the
15 Complaint.

16 **IT IS SO ORDERED.**

17 January 7, 2015

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20 **OTIS D. WRIGHT, II**
21 **UNITED STATES DISTRICT JUDGE**