

1 Christopher Sproul (State Bar No. 126398)  
 Jodene Isaacs (State Bar No. 226895)  
 2 ENVIRONMENTAL ADVOCATES  
 5135 Anza Street  
 3 San Francisco, California 94129  
 Telephone: (415) 533-3376  
 4 Facsimile: (415) 358-5695  
 E-mail: csproul@enviroadvocates.com  
 5 jisaacs@enviroadvocates.com

6 Attorneys for Plaintiff  
 BAYKEEPER

7  
 8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BAYKEEPER,	) Civil No. CV-05-00398-MMC
	)
11 Plaintiff,	) <del>Proposed</del> ORDER ENTERING
	) AMENDED CONSENT DECREE
12 v.	)
	) (Federal Water Pollution Control Act,
13 ALCO IRON AND METAL COMPANY, a	) 33 U.S.C. §§ 1251 et. seq.)
14 corporation, and KEM KANTOR, an individual,	)
	)
15 Defendants.	)
	)
16 _____	)

17  
 18  
 19  
 20 WHEREAS this case closed in 2005 but the Court expressly retained continuing  
 21 jurisdiction over the Consent Decree filed in this case on September 7, 2005. and entered by the  
 22 Court on November 3, 2005;

23 WHEREAS, Baykeeper notified Alco on June 5, 2008 that Alco had failed to comply  
 24 with numerous requirements of the 2005 Consent Decree and that Alco was in violation of the  
 25 Clean Water Act;

26 WHEREAS the parties have jointly agreed to amend the storm water compliance  
 27 measures in existing consent decree and extend its term by two years in a cooperative effort to  
 28 avoid further litigation;

1           WHEREAS, Baykeeper and Alco, by their authorized representatives, consent to the  
2 entry of the Amended Consent Decree; and

3           WHEREAS, Baykeeper and Alco agree that settlement of this matter and entry of this  
4 Amended Consent Decree are in the public interest and made in good faith in an effort to avoid  
5 expensive and protracted litigation to enforce the 2005 Consent Decree.

6           It is HEREBY ORDERED that the existing Consent Decree entered November 3, 2005.  
7 on is hereby superceded by the attached Amended Consent Decree attached to this Order.

8  
9 APPROVED AND SO ORDERED, this 4th day of November \_\_, 2008.

10  
11 by:  \_\_\_\_\_

12           MAXINE M. CHESNEY

13           United States District Judge

1 Jodene Isaacs (State Bar No. 226895)  
2 Christopher Sproul (State Bar No. 126398)  
3 ENVIRONMENTAL ADVOCATES  
4 5135 Anza Street  
5 San Francisco, California 94121  
6 Telephone: (415) 533-3376  
7 Facsimile: (415) 358-5695  
8  
9 Attorney for Plaintiff  
10 Baykeeper

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 BAYKEEPER,

14 Plaintiff,

15 v.

16 ALCO IRON AND METAL COMPANY, a  
17 corporation, and KEM KANTOR, an individual,

18 Defendants.

Civil No. CV-00398-MMC

AMENDED CONSENT DECREE

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

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1           WHEREAS, Baykeeper is a non-profit public benefit corporation dedicated to the  
2 preservation, protection, and defense of the environment, wildlife, and natural resources of the San  
3 Francisco Bay and other area waters;

4           WHEREAS, Alco Iron and Metal Company is a family-owned California business engaged  
5 in the collection and recycling of scrap metal with a facility at 321 Azuar Avenue, Vallejo,  
6 California (the "Mare Island Facility") and at 1091 Doolittle Drive, San Leandro, California (the  
7 "San Leandro Facility"). Alco Iron and Metal Company shall hereinafter be referred to as "Alco."

8           WHEREAS, storm water discharges associated with industrial activity are regulated  
9 pursuant to the National Pollutant Discharge Elimination System ("NPDES"), General Permit No.  
10 CAS000001 [State Water Resources Control Board], Water Quality Order No. 91-13-DWQ (as  
11 amended by Water Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of  
12 the Federal Water Pollution Control Act, 33 U.S.C. §1342 (hereinafter "General Permit");

13           WHEREAS, on November 15, 2004, Baykeeper served Alco, the United States  
14 Environmental Protection Agency, the State Water Resources Control Board, the California  
15 Regional Water Quality Control Board, and the United States Attorney General with a notice of  
16 intent to file suit ("60-Day Notice") under Sections 505(a)(1) and (f) of the Federal Water Pollution  
17 Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(b)(1)(A), for violations of the Act  
18 and the General Permit at the Facility;

19           WHEREAS, Alco alleges to have remedied the conditions leading to allegations of the 60-  
20 Day Notice prior to the filing of the Complaint and Baykeeper disputes these allegations;

21           WHEREAS, Baykeeper filed a complaint ("Complaint") against Alco in the United States  
22 District Court, Northern District Court of California on January 28, 2005;

23           WHEREAS, this Consent Decree shall be submitted to the United States Department of  
24 Justice for the statutory review period pursuant to 33 U.S.C. §1365(c);

25           WHEREAS, all actions taken by Alco pursuant to this Consent Decree shall be made in  
26 compliance with all applicable federal, state, and local rules and regulations;

27           WHEREAS, the Parties agree that it is in their mutual interest to resolve this matter without  
28 further litigation;

1 WHEREAS, the Parties agree this Consent Decree is not intended in any way to prevent  
2 future lawful expansion or reorganization of Alco operations provided such expansion or  
3 reorganization is consistent and in compliance with the terms of this Consent Decree;

4 NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES,  
5 AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

#### 6 I. COMMITMENT OF ALCO

- 7 1. **Commencement of Compliance Measures:** Beginning immediately, Alco shall commence  
8 all measures needed to operate the Mare Island and San Leandro Facilities in full compliance  
9 with the requirements of the General Permit and applicable sections of the Clean Water Act.
- 10 2. **BMP Implementation:** To prevent storm water from coming into contact with contaminants  
11 at the Mare Island and San Leandro Facilities and/or to prevent the discharge of contaminated  
12 storm water and non-storm water from the Mare Island and San Leandro Facilities into the  
13 waters of the State and of the United States, Alco shall implement appropriate structural and  
14 non-structural Best Management Practices ("BMPs") as defined in the General Permit and as  
15 described more fully below.
- 16 3. **Designated Discharge Points:** Within 30 days of execution of this Consent Decree, Alco  
17 shall identify every point at the Mare Island and San Leandro Facilities at which storm water is  
18 discharged ("Designated Discharge Point"). Each Designated Discharge Point shall be  
19 numbered and clearly labeled on the Facilities' respective Site Maps.

#### 20 II. MARE ISLAND FACILITY COMPLIANCE MEASURES

- 21 4. **Designation of Process Area:** The outdoor sorting, shredding, and bailing processing areas  
22 located at the southwestern side of the Mare Island Facility will hereinafter be referred to, and  
23 are designated on the Facility Site Map, as the "Process Area." Alco shall operate the Mare  
24 Island Facility such that operational activities that generate finely divided metals, dust, shavings,  
25 or other pollutants that can be tracked or entrained in storm water, including but not limited to,  
26 crushing, bailing, grinding, and torch cutting, are principally conducted within the Process Area  
27 until such time that facility improvements in other areas facilitate appropriate BMPs and such  
28 BMPs are in place to prevent tracking or entraining of finely divided materials into storm water.

1 5. **Designation of Storage Area:** The outdoor sorting and storage area located to the north of the  
2 warehouse at the Mare Island Facility will hereinafter be referred to as the "Storage Area," and  
3 shall be designated on the Site Map as such. Alco shall not conduct operational activities that  
4 generate finely divided metals, dust, shavings, or other pollutants that can be tracked or  
5 entrained in storm water, including but not limited to, crushing, bailing, grinding, and torch  
6 cutting ("operational activities") in the Storage Area until Alco completes paving and other site  
7 improvements in this area and institutes similar storm water BMPs in the Storage Area as Alco  
8 must implement for the Process Area under this Decree.

9 (a) **Designation of Driveway Areas:** The roadway located to the south of the warehouse that  
10 extends from Azuar Drive to Alco's truck scale shall be referred to as the "Southern  
11 Driveway Area" and shall be designated on the Site Map as such. The driveway in front  
12 of the warehouse where customer vehicles park and truck traffic enters and exits shall be  
13 referred to as the "Front Driveway" and shall be designated as such. All of the drop inlets  
14 along the Southern Driveway shall be designated on the Site Map, and shall be included in  
15 the activities described under Paragraphs 9, 10, 11, 13, and 50.

16 (b) **Sampling of Drop Inlets along Southern Driveway:** By September 30, 2008, Alco shall  
17 update its Site Map and designate the location of all drop inlets located between and in  
18 front of Buildings 627 and 629 on Azuar Drive. During the 2008-2009 wet season, Alco  
19 shall treat each of the drop inlets as Discharge Points and sample them according to the  
20 procedures set forth in Paragraph 50. If two consecutive samples from each of the  
21 Discharge Points results in pollutant levels below the Target levels set forth in the  
22 Sampling Chart for any parameter sampled, Alco need not conduct additional sampling  
23 during that Wet Season from that discharge point. In the 2009-2010 wet season, Alco shall  
24 only sample the two drop inlets with consistently highest concentrations of metals and  
25 solids as determined by the samples taken in the 2008-2009 wet season.

26 6. **Hydraulic Controls:** By September 30, 2005, Alco shall design and install berms or  
27 equivalent structural controls necessary to prevent storm water from flowing into, through, or  
28 out of the Process Area other than through the engineered storm water conveyance system. Alco

1 shall operate the Mare Island Facility such that water, including non-storm water and storm  
2 water discharges, are otherwise directed away from the Process Area. Alco shall implement  
3 similar hydraulic controls which prevent storm water from flowing into, through, or out of the  
4 Storage Area other than through the engineered storm water conveyance system before  
5 commencing any operational activities in the Storage Area. Thereafter, Alco shall operate the  
6 Mare Island Facility such that water, including non-storm water and storm water discharges, are  
7 otherwise directed away from the Storage Area.

8 7. **Sealing of Storm Drain Inlet/Catch Basin:** By September 30, 2005, Alco shall permanently  
9 seal the southwestern most storm drain inlet/catch basin within the Process Area adjacent to the  
10 Shear/Baler to prevent the discharge of any storm water or process water, or solid wastes, or  
11 liquid wastes into this storm drain inlet/catch basin. The permanent seal shall fully prevent any  
12 dust, debris, or water from entering the storm drain inlet/catch basin and shall be fixed in place  
13 so that it cannot be displaced or moved.

14 8. **Paving and Improving Storage Area:** By September 30, 2005, Alco shall pave the Storage  
15 Area and complete storm drain inlet/catch basin and storm water filter system designed to  
16 capture and treat all storm water runoff from the Storage Area, except for a 200' wide by 500'  
17 long strip at northeast corner of the Storage Area which will be graveled (not paved).

18 9. **Initial Storm Water Treatment System:** By September 30, 2005, Alco shall collect and treat  
19 storm water from the Process Area, Storage Area, and Southern Driveway prior to discharge.  
20 Initially, treatment shall consist of filters in each storm drain inlet or catch basin receiving storm  
21 water from the Process Area and Storage Area and well-maintained sand/oil interceptors, or  
22 other means of Alco's choosing designed to achieve, or at least advance, compliance with Target  
23 and Benchmark levels in the attached Exhibit 1. Alco shall inspect the storm drain inlets/catch  
24 basins on a daily basis during the rainy season (October 1 to May 31) to ensure that the filtering  
25 devices are not torn, clogged or otherwise in a condition that would impair their efficacy. Filter  
26 device installation shall include support by a rigid frame or other equivalent method to prevent  
27 short-circuited flows. Alco shall clean out filters to all storm drain inlets or catch basins  
28 following each storm event and shall properly dispose of any sediments or other pollutants

1 removed from storm drain inlets or catch basins. Filters shall be changed or replaced as often as  
2 necessary to retain optimal removal of pollutants. During the dry season (June 1 to September  
3 30), Alco shall seal, cap, or cover all of the storm drain inlets/catch basins in the Process Area  
4 and Storage Area to prevent oil and grease, sediments, and other pollutants from building up in  
5 and around the filtering devices and storm drain inlets/catch basins.

6 **10. Storm Drain Inlet/Catch Basin Inspection:** Alco shall inspect all storm drain inlets/catch  
7 basins on or around the Mare Island Facility into which storm water from the Facility may flow  
8 prior to the beginning of each wet season, within seven (7) days of the first anticipated storm  
9 event or September 15 of each year, which ever is earlier. During this inspection, Alco shall  
10 clean each storm drain inlet/catch basin and associated filter device with a vacuum or other  
11 effective cleaning device/method to remove fugitive dusts or solids that might have entered the  
12 storm drain inlet/catch basins despite the placement of coverings over the storm drain inlet/catch  
13 basins. The filter devices within each storm drain inlet/catch basin shall also be checked for  
14 integrity and replaced as necessary.

15 **11. Storm Drain Inlet/Catch Basin Log:** Alco shall prepare and maintain a Log of all Storm  
16 Drain Inlet/Catch Basin Inspections, Maintenance and Cleaning at the Facility. The Log shall  
17 identify the person who conducted the inspections, the date of inspection, the date of cleaning or  
18 maintenance, the date of filtration system replacement, and any other relevant information. Alco  
19 shall forward the Log to its in-house counsel on a monthly basis. Alco shall make the Log  
20 available to Baykeeper upon request.

21 **12. Additional Management/Treatment of Storm Water:** By March 1, 2006, Alco shall  
22 complete a further comprehensive study of the following additional treatment/source reduction  
23 measures for reducing the level of pollutants in storm water discharge from the Facility: (a)  
24 construction and operation of a retention pond and/or perimeter trench to retain storm water  
25 from the Process Area and/or Storage Area for sufficient retention times prior to discharge such  
26 that levels of pollutants in discharge meet Target and Benchmark levels in the attached Exhibit  
27 1, (b), installation of a hook-up to the local publicly owned treatment works sanitary sewage  
28 collection system and the discharge of all storm water from the Process Area and/or Storage

1 Area to this collection system, and (c) installation of a roof/canopy structure over some or all of  
2 the Process Area and/or Storage Area to eliminate or reduce storm water contact with potential  
3 sources of pollution in these areas, (d) identification and segregation of pollutant generating  
4 materials to areas where they can be covered and isolated from rainfall and storm water flow  
5 and/or to areas where storm water can be routed to the sanitary sewer or effectively filtered and  
6 treated on-site, and (e) such other measures as Alco deems appropriate for study. By March 15,  
7 2006, Alco shall submit a report to Baykeeper analyzing: (a) the expected storm water pollutant  
8 reduction benefits of the measures, (b) the costs of the measures, (c) the public agency approvals  
9 and permits needed to implement the measures, (d), the time reasonably needed to implement  
10 the measures, (e), the year storm event for which the measures would be designed to be  
11 effective, (f) and all factors specified in CWA section 304(b) for determining whether the  
12 measures constitute best available technology economically achievable ("BAT") and best  
13 conventional pollutant control technology ("BCT"). The report shall include Alco's  
14 recommendations for one or more additional treatment or management measures ("Treatment  
15 Measures") reasonably likely to achieve compliance with Target and Benchmark levels and  
16 timelines for reasonably expeditious implementation of the Treatment Measures. Baykeeper  
17 shall have thirty days to review and suggest revisions to the Report, including the Treatment  
18 Measures Recommendations. Within thirty days of receiving Baykeeper's comments on Alco's  
19 report, Alco shall revise the Report in accord with Baykeeper's suggestions or explain in writing  
20 why it is rejecting these suggestions. Any party may thereafter seek Dispute Resolution in  
21 accord with paragraph 69 of this Decree if the parties remain in dispute over the Report or the  
22 Treatment Measures Recommendations. After the parties reach agreement on the Treatment  
23 Measures Recommendations, or after Dispute Resolution resolves any dispute concerning such  
24 Recommendations, Alco implement the Treatment Plan Recommendations as an obligation of  
25 this Decree, according to the timelines set in the Report.

- 26 **13. Site Sweeping and Cleaning:** Immediately upon execution of this Consent Decree, Alco shall  
27 sweep the Process Area, Southern Driveway Area, and Front Driveway Area (collectively  
28 "driveways") not less than one time per day and more often as necessary to prevent the tracking

of metal shavings and other pollutants outside the Process and Driveway Areas and to minimize the area that metal shavings and other pollutants are dispersed. Alco may employ mechanical sweepers until August 31, 2009. At which point, Alco shall either retain an outside commercial sweeping vendor who services are required to be used 3 days a week and that uses a regenerative sweeper to reach all areas where truck sweepers can effectively reach or Alco can obtain its own regenerative sweeper for daily use. If Alco retains an outside service to provide regenerative sweeping, Alco shall have the entire facility swept with the regenerative sweeper at least once week during dry season and at least three times a week during the wet season and continue to sweep daily with its mechanical sweeper and as needed to prevent accumulation of pollution generating materials. Alco shall purchase a push type outdoor vacuum and conduct manual sweeping with the push vacuum in areas unreachable by mechanical sweeping. The push type outdoor vacuum shall be used in conjunction with manual push brooms such that the push brooms dislodge materials from the cracks in the pavement which can be collected by the vacuum. Alco may initially employ its recently acquired mechanical sweeper for this sweeping and shall evaluate the effectiveness of this sweeper. Should Alco continue to exceed Benchmarks and Target Levels, then Alco shall analyze whether employing a regenerative sweeper should be included in an Action Plan adopted pursuant to paragraph 57. For purposes of this Consent Decree, a regenerative sweeper is a mechanized sweeper that uses a blast of air in front of the brushes to raise tiny particles and improve sweeping performance. At least annually, Alco shall conduct a thorough inspection of the Facility to determine whether an additional comprehensive site cleaning is warranted with power wash or similar effective techniques. Alco shall not discharge any waste fluids or solid wastes generated in site cleaning to storm drain inlets or waterways. Alco shall store and dispose of all wastes generated in Facility cleaning and sweeping in a manner that complies with all local, state, and federal laws. Alco shall institute these sweeping and cleaning measures for the Storage Area after completing paving of this area and before commencing operational activities in this area. Alco shall acquire a handheld Global Positioning System (“GPS”) tracker for use with the truck sweeper. The Sweeper operator shall use the GPS as an aid to ensure that all designated areas have actually

1 been swept daily.

2 (a) Alco shall remove any storm water that ponds around the discharge point located the Front  
3 Driveway around Discharge Point 3. The ponded storm water shall be removed at the start  
4 of business (if present), at the close of business (if present), and as needed during operating  
5 hours to prevent any tracking of the water onto Azuar Drive.

6 14. **Site Sweeping and Cleaning Log:** Alco shall keep a log of the sweeping and any other site  
7 cleaning activity performed at the Mare Island Facility. The person carrying out the sweeping  
8 or cleaning shall record his or her name, the locations that were swept or cleaned, the date and  
9 time that sweeping or cleaning was completed, and any other relevant information. Alco shall  
10 forward the Sweeping and Cleaning Log to its in-house counsel on a monthly basis. Alco shall  
11 make the sweeping and cleaning log available to Baykeeper upon request.

12 15. **Prevention of Pollutant Discharge to Azuar Drive:** Immediately upon execution of this  
13 Consent Decree, Alco shall implement BMPs necessary to ensure that industrial pollutants from  
14 operational activities are not discharged from the Facility onto Azuar Drive. Prevention  
15 measures shall include ensuring that materials or equipment are not stored in a manner that  
16 allows spillage or tracking onto the parking lots or driveways surrounding the Mare Island  
17 Facility. Alco may use truck mounted sweepers (mechanical sweepers no later than August 31,  
18 2009 and must start to use a regenerative type sweeper after August 31, 2009) to sweep Azuar  
19 Drive at least 500 feet from the Front Driveway Area on a daily basis. If Alco elects to retain an  
20 outside sweeping service the regenerative sweeper must be used at least three days a week to  
21 sweep Azuar Drive during the wet season and once a week during the dry season, but Alco will  
22 sweep with its mechanical sweeper on those days which are not swept by the regenerative  
23 sweeper. If Alco obtains its own regenerative sweeper daily sweeping will be required.

24 16. **Tracking:** Alco shall implement BMPs to prevent tracking of pollutants from the Mare Island  
25 Facility. Immediately upon execution of this Consent Decree for existing paved areas and upon  
26 completion of improvements to the Facility for unpaved areas, Alco shall undertake enhanced  
27 BMP measures to prevent tracking of pollutants from the Facility, such as sweeping of the  
28 Process Area, Storage Area, Southern Driveway Area, and Front Driveway Area as described

1 above. Sweeping and other appropriate BMPs shall be sufficient to prevent contaminants from  
2 being moved around the Mare Island Facility, to reduce the entrainment of pollutants into storm  
3 water flows, to prevent pollutants from being blown off the Facility into the adjacent wetlands,  
4 and to prevent pollutants from being tracked off the Facility onto surface streets.

5 **17. Waste, Hazardous Materials Storage Area:** On and after the date of execution of this  
6 Consent Decree, Alco shall implement a system: (1) for identifying all toxic and hazardous  
7 materials, including batteries, oil, solvents and hazardous or potentially hazardous waste  
8 materials such as waste oil and used absorbent materials that are delivered to or generated at the  
9 Mare Island Facility and (2) for segregating such identified materials from other materials at the  
10 Facility. By September 30, 2005, Alco shall complete a thorough site inspection to identify all  
11 toxic and hazardous materials, including batteries, oil, solvents and hazardous or potentially  
12 hazardous waste materials such as waste oil and used absorbent materials stored or kept at the  
13 Mare Island Facility. Thereafter, Alco shall store all such materials in a single area, under cover  
14 and on an impermeable surface, out of potential contact with flooding associated with storm  
15 water.

16 **18. Loading/Unloading Areas:** Immediately upon execution of this Consent Decree, loading and  
17 unloading of scrap materials shall take place only within the Process Area. Loading/Unloading  
18 of scrap materials also may be conducted in the Storage Area, providing structural and treatment  
19 controls are in place to prevent storm water contamination as described above. Alco shall sweep  
20 all loading and unloading areas as necessary to remove contaminants. If a spill occurs from  
21 materials awaiting processing, Alco shall immediately isolate and clean the loading area.

22 **19. Vehicle and Equipment Management:** Within 45 days of the execution of this Consent  
23 Decree, Alco shall implement BMPs to minimize pollutant release from stored or parked  
24 equipment such as forklifts, hydraulic lifts, and other heavy equipment. Such BMPs shall  
25 include parking all mobile heavy equipment in a consolidated parking area behind Building 629  
26 overnight and during other prolonged hours of non-operation of such equipment, placing drip  
27 pans under stored or parked equipment with the potential to leak pollutant-containing fluids,  
28 weekly inspections for evidence of leaks from such equipment, and immediate cleaning up of

1 any spills, drips, or leaks from such equipment. Alco shall dispose of any spilled substances and  
2 absorbent materials used in cleaning up spills in accordance with all local, state, and federal  
3 laws and regulations.

4 20. **Vehicle and Equipment Maintenance:** Alco shall not conduct vehicle or movable equipment  
5 maintenance or repair in outdoor, uncovered areas at the Mare Island Facility during rainfall.  
6 Alco shall further not conduct vehicle or movable equipment maintenance or repair in outdoor,  
7 uncovered areas at the Facility if Alco could feasibly conduct the maintenance or repair in a  
8 covered area. Whenever Alco conducts maintenance or repair activities in non-covered areas,  
9 Alco shall inspect the area where the maintenance or repair occurred and clean-up any waste  
10 products, including pollutant containing fluids, deposited or spilled on the ground as a result of  
11 the maintenance or repair.

12 21. **Maintenance of BMP Structural Controls:** Immediately upon execution of the Consent  
13 Decree, Alco shall maintain structural BMPs at the site in good operating condition at all times.

14 22. **Fueling Activities:** Alco shall utilize a containment system with an impermeable surface for  
15 the fuel storage tanks at the Mare Island Facility in accordance with applicable laws and  
16 regulations. The containment system shall be designed and constructed to hold the entire  
17 capacity of the largest single container and sufficient freeboard to contain precipitation. Alco  
18 shall conduct fueling activities only on an impervious surface, in areas designated in its SWPPP.  
19 Alco shall require that its fuel supplier or employees immediately remove and dispose of any  
20 fuel spills in accordance with all applicable local, state, and federal laws and regulations.

21 23. **Storage of Waste and Received Material Bins:** By September 30, 2005, Alco shall store all  
22 waste storage bins at the Mare Island Facility indoors, or if stored outdoors, shall cover such  
23 waste storage bins, except when bins are being dumped, to prevent dust and other materials from  
24 being blown outside the waste storage bins and to minimize storm water runoff from such bins.  
25 Alco shall unload all drop boxes containing received materials by the end of each work day in  
26 which they are received or the following workday for night time deliveries or shall cover such  
27 drop boxes with a secured tarp or similar device if boxes are to be stored overnight with  
28 materials still in them.

1 24. **Amendment of SWPPP:** By September 30, 2008, Alco shall amend the Mare Island Facility  
2 SWPPP to incorporate all improvements and best management practices set forth in this Consent  
3 Decree. Alco shall also update the SWPPP as needed to make the document consistent with the  
4 requirements of the General Permit and reflect the current stormwater BMPs at the Facility.  
5 Alco shall provide a copy of the Amended SWPPP to Baykeeper within seven (7) days of  
6 completion. Within fourteen (14) days of notification by Baykeeper, Alco shall make all  
7 reasonable changes to the Amended Facility SWPPP that are requested by Baykeeper unless  
8 Alco invokes Dispute Resolution.

9 25. **Amendment of the Site Map:** By September 30, 2008, Alco shall amend the Facility Site  
10 Map to include all components set forth in the General Permit and this Consent Decree. A copy  
11 of the Amended Site Map shall be provided to Baykeeper within seven (7) days of completion.  
12 Within fourteen (14) days of notification by Baykeeper, Alco shall make all reasonable changes  
13 to the Facility Site Map that are requested by Baykeeper unless Alco invokes Dispute  
14 Resolution.

### 15 III. SAN LEANDRO FACILITY COMPLIANCE MEASURES

16 26. **Designation of Southern Processing Area:** The uncovered sorting, shredding, and bailing  
17 processing areas of the San Leandro Facility that drain storm water to the city of San Leandro  
18 sanitary sewer system will hereinafter be referred to and designated on the Facility Site Map as  
19 the "Southern Processing Area." Alco shall not discharge storm water or non-storm water from  
20 the Southern Processing Area to any storm drain or off-site ground location. Alco shall not  
21 intermingle water that is collected or contained within the Southern Processing Area with storm  
22 water discharged from the other areas of the San Leandro Facility.

23 27. **Designation of the Davis Street Receiving Area:** The outdoor customer unloading area  
24 on and adjacent to Davis Street will hereinafter be referred to and designated on the Facility Site  
25 Map as the "Davis Street Receiving Area." This includes the entire area Alco and/or its  
26 customers use to unload scrap metal. This Area will be designated on the San Leandro Facility  
27 Site Map.

28 28. **Designation of the Yard Process Area:** The outdoor loading, sorting, and storage area

1 immediately south of Eden Road at the San Leandro Facility will hereinafter be referred as the  
2 "Yard Process Area" and shall be designated as such on the Site map.

3 29. **Loading and Unloading of Scrap Materials:** Immediately upon execution of this Consent  
4 Decree, Alco shall load and unload scrap materials only within designated loading areas at the  
5 San Leandro Facility. Such loading areas shall be on the identified and defined on the Site Map.  
6 If a spill of pollutant containing fluid occurs from recycled materials awaiting processing, Alco  
7 shall immediately isolate the area where the spill occurs and clean up the spill appropriately,  
8 including using absorbent materials as appropriate. Alco shall dispose of all cleaned-up fluids  
9 and used absorbent materials in accord with all applicable laws. Alco shall amend its SWPPP  
10 for the San Leandro Facility to designate all loading areas for the Facility.

11 30. **Hydraulic Control:** By September 30, 2005, Alco shall design and install or maintain berms  
12 or equivalent structural controls to prevent the discharge of storm water from the Facility to  
13 Davis Street. Such flows shall be directed to areas that drain into Alco's sanitary sewer  
14 discharge.

15 (a) Prior to the start of the 2008-2009 wet season, Alco shall purchase a push type outdoor  
16 vacuum and sweep the entire Davis Street frontage at least once a day with the vacuum. The  
17 push type outdoor vacuum shall be used in conjunction with manual push brooms such that the  
18 push brooms dislodge materials from the cracks in the pavement which can be collected by the  
19 vacuum. Alco shall continue to utilize manual push brooms along the entire Davis Street  
20 frontage and driveways during operating hours to prevent pollutants from collecting and/or  
21 being tracked into Davis Street.

22 31. **Eden Road Access Point BMPs:** By September 30, 2005, Alco shall implement BMPs to  
23 ensure that industrial pollutants are not discharged from the San Leandro Facility driveways  
24 leading to Eden Road. BMP measures shall include installation and maintenance of site  
25 contouring/hydraulic barriers to prevent water flow from the San Leandro Facility out the Eden  
26 Road driveway to Eden Road. Until such time as Eden Road is paved or lined with gravel, BMP  
27 measures shall further include minimizing the use of the Eden Road driveway for vehicle ingress  
28 to the San Leandro Facility to the maximum extent practicable, including not using the Eden

1 Road driveway for vehicle ingress on any day following measurable rainfall at the San Leandro  
2 Facility site. In addition, Alco shall at the close of every business day or before accumulation  
3 of significant rainfall (whichever is sooner) cleanup and remove any mud, dust or sediment  
4 tracked onto the San Leandro Facility as a result of using the Eden Road driveway for vehicle  
5 ingress. Alco shall include in its comprehensive study of additional treatment/source reduction  
6 measures feasibility analysis required pursuant to paragraph 37 paving of Eden Road or lining  
7 Eden Road with gravel as a more effective potential BMP.

8 **32. Davis Street Pollution Prevention:** Beginning immediately, Alco shall implement BMPs to  
9 ensure that industrial pollutants from activities within the Davis Street Receiving Area are not  
10 tracked, spilled, blown, or conveyed by surface water flow onto Davis Street. Such BMPs shall  
11 include: (a) ensuring that Alco or Alco's customers' materials or equipment are not unloaded or  
12 stored in a manner that allows spillage of pollutant materials onto Davis Street or the driveway  
13 or sidewalks fronting Davis Street, (b) immediate sweeping up of dust, sediment, or other dry  
14 pollutant materials spilled or deposited in the Davis Street Receiving Area, the driveways or  
15 sidewalks fronting Davis Street and the San Leandro Facility, or Davis Street to prevent  
16 movement of such pollutants onto surrounding sidewalks and streets (provided such dust,  
17 sediment, or pollutant materials are present due to Alco's operations or customer unloading of  
18 materials at the San Leandro Facility), (c) daily sweeping of the Davis Street Receiving Area  
19 and fronting sidewalk at close of business following any unloading in this area to ensure that  
20 any accumulated pollutants in this area are not washed or blown into storm drains or Davis  
21 Street overnight, (d) sweeping of the Davis Street Receiving Area twice a day (once by noon  
22 and again at closing time) on any day of rainfall during which customers unload materials at the  
23 Davis Street Receiving Area, (e) immediate cleaning up of any spills of pollutant containing  
24 fluids with absorbent materials or other effective technique, (f) inspecting all equipment,  
25 including hydraulic lifts, used in the Davis Street Receiving Area prior to use to ensure that no  
26 leaking or dripping of oils or fluids are occurring from such equipment and not using any  
27 leaking equipment in this area, and (g) powerwashing the Davis Street Receiving Area annually.  
28 The powerwash shall utilize the appropriate controls necessary to prevent any discharges to

1 Davis Street or any storm drains. Alco shall dispose of any spilled materials in this area and any  
2 absorbent materials used for cleaning up spills in this area in accordance with all local, state and  
3 federal laws and regulations.

4 (a) Should Alco move their sales and bin storage operations from their current location, all  
5 BMPs and other requirements described in paragraphs 37 through 65 of this consent decree  
6 shall apply to the new location as appropriate. Alco shall inform the Regional Water  
7 Quality Control Board of the change in operations and apply for coverage under General  
8 Permit for the new facility if separate coverage is required.

9 33. **Storm Water Treatment:** By September 30, 2005, Alco shall design and implement an initial  
10 treatment system for storm water collected by all storm drain inlets/catch basins at the San  
11 Leandro Facility.

12 34. **Initial Storm Water Treatment System:** By September 30, 2005, Alco shall treat all storm  
13 water discharged from the San Leandro Facility, other than storm water discharged to the  
14 sanitary sewer, prior to discharge. Initially, treatment shall consist of filters in each storm drain  
15 inlet or catch basin receiving storm water or other means of Alco's choosing designed to  
16 achieve, or at least advance, compliance with Target and Benchmark levels in the attached  
17 Exhibit 1. Alco shall inspect the storm drain inlets/catch basins on a daily basis during the rainy  
18 season (October 1 to May 31) to ensure that the filtering devices are not torn, clogged or  
19 otherwise in a condition that would impair their efficacy. Filter device installation shall include  
20 support by a rigid frame or other equivalent method to prevent short-circuited flows. Alco shall  
21 clean out filters to all storm drain inlets or catch basins following each storm event and shall  
22 properly dispose of any sediments or other pollutants removed from storm drain inlets or catch  
23 basins. Filters shall be changed or replaced as often as necessary to retain optimal removal of  
24 pollutants. During the dry season (June 1 to September 30), Alco shall seal or cap cover all  
25 Facility storm drain inlets/catch basins to prevent oil and grease, sediments, and other pollutants  
26 from building up in and around the filtering devices and storm drain inlets/catch basins.

27 35. **Storm Drain Inlet/Catch Basin Inspection:** Alco shall inspect all storm drain inlets/catch  
28 basins on or around the San Leandro Facility into which storm water from the Facility may flow

1 prior to the beginning of each wet season, within seven (7) days of the first anticipated storm  
2 event or September 15 of each year, which ever is earlier. During this inspection, Alco shall  
3 clean each storm drain inlet/catch basin and associated filter device with a vacuum or other  
4 effective cleaning device/method to remove fugitive dusts or solids that might have entered the  
5 storm drain inlet/catch basins despite the placement of coverings over the storm drain inlet/catch  
6 basins. Alco shall also check the filter devices within each storm drain inlet/catch basin for  
7 integrity and shall replaced the devices as necessary.

8 **36. Storm Drain Inlet/Catch Basin Log:** Alco shall prepare and maintain a Log of all Storm  
9 Drain Inlet/Catch Basin Inspections, Maintenance and Cleaning at the Facility. The Log shall  
10 identify the person who conducted the inspections, the date of inspection, the date of cleaning or  
11 maintenance, the date of filtration system replacement, and any other relevant information. Alco  
12 shall make the Log available to Baykeeper upon request.

13 **37. Additional Management/Treatment of Storm Water:** By March 1, 2006, Alco shall  
14 complete a further comprehensive study of the following additional treatment/source reduction  
15 measures for reducing the level of pollutants in storm water discharge from the San Leandro  
16 Facility: (a) installation of measures to route a greater percentage of storm water flow from the  
17 Facility into the local publicly owned treatment works sanitary sewage collection system, (b)  
18 installation of a roof/canopy structure over some or all of the areas of the Facility that are  
19 currently uncovered, (c) installation of additional storm water treatment measures, such as  
20 improved pollutant filters, (d) identification and segregation of pollutant generating materials to  
21 areas where they can be covered and isolated from rainfall and storm water flow and/or to areas  
22 where storm water can be routed to the sanitary sewer or effectively filtered and treated on-site,  
23 (e) paving Eden Road or lining Eden Road with gravel, (f) repairing any leaking water  
24 conveyances that are a source of non-storm water inundation of Eden Road, and (g) such other  
25 measures as Alco deems appropriate for study. By March 15, 2006, Alco shall submit a report  
26 to Baykeeper analyzing: (a) the expected storm water pollutant reduction benefits of the  
27 measures, (b) the costs of the measures, (c) the public agency approvals and permits needed to  
28 implement the measures, (d), the time reasonably needed to implement the measures, (e), the

1 year storm event for which the measures would be designed to be effective, (f) and all factors  
2 specified in CWA section 304(b) for determining whether the measures constitute best available  
3 technology economically achievable ("BAT") and best conventional pollutant control  
4 technology ("BCT"). The report shall include Alco's recommendations for one or more  
5 additional treatment or management measures ("Treatment Measures") reasonably likely to  
6 achieve compliance with Target and Benchmark levels and timelines for reasonably expeditious  
7 implementation of the Treatment Measures. Baykeeper shall have thirty days to review and  
8 suggest revisions to the Report, including the Treatment Measures Recommendations. Within  
9 thirty days of receiving Baykeeper's comments on Alco's report, Alco shall revise the Report in  
10 accord with Baykeeper's suggestions or explain in writing why it is rejecting these suggestions.  
11 Any party may thereafter seek Dispute Resolution in accord with paragraph 69 of this Decree if  
12 the parties remain in dispute over the Report or the Treatment Measures Recommendations.  
13 After the parties reach agreement on the Treatment Measures Recommendations, or after  
14 Dispute Resolution resolves any dispute concerning such Recommendations, Alco shall  
15 implement the agreed upon or resolved Treatment Plan Recommendations as an obligation of  
16 this Decree, according to the timelines set in the Report.

17 (a) Alco to install additional treatment system to be implemented by January 1, 2009 which will  
18 treat all storm water from the facility (excluding area that currently discharges to the City of  
19 San Leandro's sanitary sewer system and Davis Street Receiving Area frontage) prior to  
20 discharge.

21 (b) Prior to designing and installing the treatment system, Alco shall provide the results of any  
22 pilot tests as well as the conceptual proposal for the facility system. After the conceptual  
23 proposal is approved by Baykeeper, Alco will design the treatment system such that it is  
24 capable of capturing the runoff associated with a 25 year/ 24 hour storm event. If the  
25 treatment system is not designed to capture a 25 year/ 24 hour storm event, Alco may  
26 propose an alternative capture capacity that Alco provides an explanation as to why the  
27 alternative capacity is adequately protective. Alco will provide the following information  
28 pertaining to the design of the treatment system to Baykeeper:

- 1 i. Facility flow pattern: Alco will provide Baykeeper with a contour map which  
2 denotes where storm water runoff flows throughout the facility, where it will be  
3 captured, and where it will be diverted to the treatment system. Any flow that is  
4 not captured and treated by the system will also be indicated on the contour map.
- 5 ii. Collection system storage and detention volumes: Alco will provide Baykeeper  
6 with information as to the location of any collection sumps (such as drop inlets,  
7 manholes or other such conveyance devices), plumbing (such as trenches, pipes,  
8 flumes), storage vessels (such as tanks, sumps, ponds), and the capacity of any  
9 storage vessels that are part of the treatment system.
- 10 iii. Collection and transfer system flow rate: Alco will provide Baykeeper with  
11 information as to the limiting flow rate (i.e. gallons per minute) for each  
12 component of the collection system.
- 13 iv. Treatment system flow rate: Alco will provide Baykeeper with information as to  
14 the treatment flow rate (i.e. gallons per minute) for each component of the  
15 collection system.
- 16 v. Maintenance cycle: If available, Alco will provide Baykeeper with an estimated  
17 maintenance cycle represented as either the volume of water, timeframe, or a  
18 mechanical function of the system that signifies when regular maintenance is  
19 expected to be needed.

20 (c) Once Alco has provided Baykeeper with the above information, Baykeeper shall have  
21 fourteen days to comment on and suggest revisions to the treatment system design. Alco  
22 shall adopt Baykeeper's suggested revisions unless Alco invokes Dispute Resolution.

23 (d) Alco may petition Baykeeper for an extension of time to install the additional treatment  
24 system discussed above. Based on a showing that the timeframe is infeasible despite Alco's  
25 best efforts, Baykeeper shall grant a three month extension for the installation of the  
26 treatment system.

27 38. **Site Sweeping and Cleaning:** Within 45 days of executing this Consent Decree, Alco shall  
28 complete a thorough cleaning of the San Leandro Facility using mechanical sweeping. Alco

1 shall acquire a push-type outdoor vacuum and conduct manual sweeping with the push vacuum  
2 in areas unreachable by mechanical sweeping. Alco shall powerwash the Yard Process Area at  
3 least annually or more frequently as necessary to remove shavings, particulates, oil and grease  
4 and other pollutants from the Facility grounds. The powerwash shall utilize all appropriate  
5 controls to prevent any discharges to Doolittle Drive or any storm drains. Immediately upon  
6 execution of this Consent Decree, Alco shall sweep the Facility not less than one time per day  
7 and more often as necessary to prevent the tracking of metal shavings and other pollutants  
8 outside the Facility and to minimize the area within the Facility where metal shavings and other  
9 pollutants are disbursed. Alco shall employ mechanical sweepers to reach all areas where  
10 mechanical sweepers can effectively reach and push vacuum sweeping in areas unreachable by  
11 mechanical sweeping. At least annually, Alco shall conduct a thorough inspection of the  
12 Facility to determine whether an additional comprehensive site cleaning is warranted with  
13 power wash or similar effective techniques. Alco shall not discharge any waste fluids or solid  
14 wastes generated in site cleaning to storm drain inlets or waterways. Alco shall store and  
15 dispose of all wastes generated in Facility cleaning and sweeping in a manner that complies with  
16 all local, state, and federal laws. By October 1, 2008, Alco shall either retain an outside  
17 commercial sweeping vendor that uses a regenerative sweeper or obtain its own regenerative  
18 sweeper and sweep Doolittle Drive and Davis Street within 500 feet of the Facility's entrances  
19 every two weeks in the dry season (June 1 to September 30) and on a weekly basis during the  
20 wet season (October 1 to May 31).

21 **39. Site Sweeping and Cleaning Log:** Alco shall keep a Log of the sweeping and any other site  
22 cleaning activity performed at the San Leandro Facility. The Log shall identify the person  
23 carrying out the sweeping or cleaning, the locations that were swept or cleaned, the date and  
24 time that sweeping or cleaning was completed, and any other relevant information. Alco shall  
25 make the sweeping and cleaning log available to Baykeeper upon request.

26 **40. Covering of Storage Areas:** At the end of every business day and during any rainfall, Alco  
27 shall store all collected loose and finely divided metal materials, fragments, or debris that have  
28 been processed with lubricating oils in the course of grinding, cutting, or shredding in an

1 enclosed building or roofed area or in bins covered with secured tarps or other rain-impermeable  
2 cover.

3 41. **Waste, Hazardous Materials Storage Area:** On and after the date of execution of this  
4 Consent Decree, Alco shall implement a system: (1) for identifying all toxic and hazardous  
5 materials, including batteries, oil, solvents and hazardous or potentially hazardous waste  
6 materials such as waste oil and used absorbent materials that are delivered to or generated at the  
7 San Leandro Facility and (2) for segregating such identified materials from other materials at the  
8 Facility. By September 30, 2005, Alco shall complete a thorough site inspection to identify all  
9 toxic and hazardous materials, including batteries, oil, solvents and hazardous or potentially  
10 hazardous waste materials such as waste oil and used absorbent materials stored or kept at the  
11 San Leandro Facility. Thereafter, Alco shall store all such materials in a single area, under  
12 cover and on an impermeable surface, out of potential contact with flooding associated with  
13 storm water.

14 42. **Storage of Materials Outside the Facility:** Immediately upon execution of this Consent  
15 Decree, Alco shall not store scrap metal or waste outside of the Facility boundary. Alco shall  
16 prevent stored scrap metal or wastes from spilling over Facility fencing onto areas outside of  
17 such fencing.

18 43. **Vehicle and Equipment Management:** Within 45 days of the execution of this Consent  
19 Decree, Alco shall implement BMPs to minimize pollutant release from stored or parked  
20 equipment such as forklifts, hydraulic lifts, and other heavy equipment. Such BMPs shall  
21 include parking all mobile heavy equipment in one or more consolidated paved parking areas  
22 overnight and during other prolonged hours of non-operation of such equipment, placing drip  
23 pans under stored or parked equipment found to be leaking pollutant-containing fluids until such  
24 time as the leak is repaired, weekly inspections for evidence of leaks from such equipment, and  
25 immediate cleaning up of any spills, drips, or leaks from such equipment (with absorbent  
26 materials or similar effective technique). Alco shall dispose of spilled substances and used  
27 absorbent materials in accordance with all local, state, and federal laws and regulations. Alco  
28 shall not store or park heavy equipment such as forklifts and hydraulic lifts outside of the

1 Facility boundary that have the potential to release oil and other contaminants on public Streets,  
2 including Eden Road, or sidewalks surrounding the San Leandro Facility for time increments  
3 greater than two hours. Alco shall minimize the storing or parking of any other Alco vehicles  
4 (such as trucks and trailers) or Facility vehicles on public Streets, including Eden Road, or  
5 sidewalks surrounding the San Leandro Facility to the extent practicable. Such stored or parked  
6 vehicles shall either be empty or shall store only covered materials, and Alco shall inspect such  
7 vehicles daily to ensure that parked or stored vehicles are not leaking oil, fuel or other  
8 contaminants.

9 **44. Vehicle and Equipment Maintenance:** Alco shall not conduct vehicle or movable equipment  
10 maintenance or repair in outdoor, uncovered areas at the San Leandro Facility during rainfall.  
11 Alco shall conduct vehicle and movable equipment maintenance and repair indoors or under  
12 cover, and begin to utilize the warehouse to the south of the Yard Process Area for all vehicle  
13 and movable equipment maintenance by January 1, 2009. Whenever Alco conducts  
14 maintenance or repair activities Alco shall inspect the area where the maintenance or repair  
15 occurred and clean-up any waste products, including pollutant containing fluids, deposited or  
16 spilled on the ground as a result of the maintenance or repair.

17 **45. BMP Maintenance:** Beginning immediately, Alco shall maintain structural BMPs at the site  
18 in good operating condition at all times.

19 **46. Fueling Activities:** Alco and/or Alco's contractors shall conduct fueling activities only in  
20 designated areas on an impervious surface where storm water runoff is collected and treated  
21 prior to discharge. Alco shall require that its fuel supplier or employees place drip pans  
22 underneath vehicles being fueled, immediately control and cleanup any fuel spills and remove  
23 and dispose of all associated wastes in accordance with all applicable local, state, and federal  
24 laws and regulations. Alco shall ensure that any fueling contractor is informed about and  
25 adheres to these requirements.

26 **47. Storage of Waste and Received Material Bins:** By September 30, 2005, Alco shall store all  
27 waste storage bins at the San Leandro Facility indoors, or if stored outdoors, shall cover such  
28 waste storage bins, except when bins are being dumped, to prevent dust and other materials from

1 being blown outside the waste storage bins and to minimize storm water runoff from such bins.  
2 Alco shall unload all drop boxes containing received materials by the end of each work day in  
3 which they are received or the following workday for night time deliveries or shall cover such  
4 drop boxes with a secured tarp or similar device if boxes are to be stored overnight with  
5 materials still in them.

6 **48. Amendment of SWPPP:** By January 1, 2009, Alco shall amend the Facility SWPPP to  
7 incorporate all improvements and BMPs set forth in this Consent Decree. Alco shall also update  
8 the SWPPP as needed to make the document consistent with the requirements of the General  
9 Permit and reflect the current stormwater BMPs at the Facility. A copy of the Amended SWPPP  
10 shall be provided to Baykeeper within seven (7) days of completion. Within fourteen (14) days  
11 of notification by Baykeeper, Alco shall make all reasonable changes to the Amended Facility  
12 SWPPP that are requested by Baykeeper unless Alco seeks Dispute Resolution.

13 **49. Amendment of the Site Map:** By January 1, 2009, Alco shall amend the Facility Site Map to  
14 include all components set forth in the General Permit and this Consent Decree. A copy of the  
15 Amended Site Map shall be provided to Baykeeper within seven (7) days of completion. Within  
16 fourteen (14) days of notification by Baykeeper, Alco shall make all reasonable changes to the  
17 Facility Site Map that are requested by Baykeeper unless Alco seeks Dispute Resolution.

#### 18 **IV. SAMPLING, MONITORING, INSPECTION & REPORTING**

19 **50. Sampling Program:** Subject to the limitations set forth in Paragraphs 51 to 53, Alco shall  
20 collect samples from each Discharge Point at the Mare Island and San Leandro Facilities  
21 according to the following sampling schedule:

- 22 (a) During the first year of this Consent Decree, and except as set forth below in  
23 this paragraph, Alco shall collect five storm water samples per year from each  
24 Discharge Point at the Mare Island and San Leandro Facilities. If two  
25 consecutive samples from each of the Discharge Points results in pollutant  
26 levels below the Target levels set forth in the Sampling Chart for any parameter  
27 sampled, Alco need not conduct additional sampling during that Wet Season  
28 for such parameter.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(b) During the second year of this Consent Decree, and except as set forth below in this paragraph, Alco shall collect four storm water samples from each Discharge Point at the Mare Island and San Leandro Facilities.

(c) During the third year of this Consent Decree, Alco shall collect three storm water samples from each of the Discharge Points at the Mare Island and San Leandro Facilities.

(d) During the fourth and fifth year of this Consent Decree, Alco shall collect four storm water samples from each Discharge Point at the Mare Island and San Leandro Facilities. Alco may take samples from non-qualifying events for the purposes of acquiring four samples. When providing the sample results to Baykeeper, Alco shall note how long it was raining prior to sample collection and how much rainfall occurred on any of the preceding days, if any.

(e) Alco shall analyze each storm water sample collected for each of the parameters listed on the Sampling Chart attached hereto as Exhibit 1. Should operations change at the either the Mare Island and San Leandro Facilities, Alco shall conduct sampling for any additional priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in Alco's storm water discharges as a result of the changed operations.

(f) Where Alco discharges storm water into a storm drain inlet or catch basin, Alco may choose to collect a sample below any insert or treatment system. If Alco chooses not to collect a post-filtration or post-treatment sample, the chemical quality of storm water samples entering a storm drain inlet or catch basin containing a fabric insert shall be considered the same as a sample collected below the insert.

51. **Timing of Samples:** While this Consent Decree is in effect, Alco shall take all storm water samples within the first two hours that flow is observed at the Discharge Points for each storm event.

52. **Lack of Qualifying Storms:** Although Alco is required to take samples from qualifying storm

1 events to meet the requirements of the General Permit, Alco may sample any storm event,  
2 including non-qualifying events, for the purposes of Paragraph 50 provided that the sampled  
3 event is submitted with data from the on-site weather station, i.e. hourly rainfall totals for the  
4 preceding three days. If samples are not collected from the designated sampling locations for  
5 the above referenced storm event due to lack of discharge, Alco shall document such fact in a  
6 Storm Water Sampling Log. Alco shall provide such Log to Baykeeper upon request.

7 53. **Qualified Laboratory Analysis:** Alco shall have all storm water samples collected pursuant  
8 to this Decree delivered to a California state certified environmental laboratory for analysis  
9 within the time needed for analysis within laboratory method allowable hold times. The  
10 laboratory shall thereafter conduct analysis sufficient to detect individual constituents at or  
11 below the Target levels set forth in the attached Exhibit 1.

12 54. **Presentation of Sample Results:** Alco shall provide complete results from Alco's sampling  
13 and analysis to Baykeeper within fourteen (14) days of receipt of the laboratory report from each  
14 sampling event. Each time Alco receives sampling results, Alco shall provide a chart in digital  
15 or hardcopy form that summarizes the results of all the samples and includes the Target and  
16 Benchmark levels for comparison. The summary chart shall consistently present the sample  
17 summaries in micrograms per liter for all of the metal parameters tested. Target and Benchmark  
18 levels included for comparison shall also be presented in micrograms per liter for reference.

19 55. **Compliance with Best Available Technology Economically Achievable and Best**  
20 **Conventional Pollutant Control Technology:** Effluent Limitation B(3) of the General Permit  
21 requires that BMPs be developed and implemented to achieve Best Available Technology  
22 Economically Achievable ("BAT") and Best Conventional Pollutant Control technology  
23 ("BCT"). Alco agrees to develop and implement BMPs necessary to comply with the BAT/BCT  
24 standard in the General Permit. These BMPs shall include, but are not limited to, the measures  
25 identified in this Consent Decree. Alco will compare analytical results of storm water samples  
26 with the Benchmark levels in Exhibit 1 to evaluate the effectiveness of BMPs. If Alco's storm  
27 water results exceed a Benchmark level in Exhibit 1, Alco agrees to comply with the assessment  
28 and action plan requirements specified below.

1 56. **Compliance with Applicable Water Quality Standards:** Receiving Water Limitation C(2)  
2 in the General Permit requires that Alco "not cause or contribute to the exceedance of any  
3 applicable water quality standards." Target levels in Exhibit 1 are taken from the California  
4 Toxics Rule, codified at 40 C.F.R. § 131.38 ("CTR"), and the San Francisco Bay Regional  
5 Water Quality Control Board's Water Quality Control Plan ("Basin Plan"). The Parties agree  
6 that if the water quality standard in the CTR or the Basin Plan that apply to the constituents in  
7 Exhibit 1 change during the life of this Consent Decree, then the Target Levels will be deemed  
8 revised to reflect the current, applicable water quality standards. Alco agrees to develop and  
9 implement BMPs designed to achieve the Target levels in Exhibit 1. Alco shall compare  
10 analytical results of storm water samples with the Target Levels to evaluate the effectiveness of  
11 its BMPs. Alco agrees to comply with the assessment and action plan requirements specified  
12 below if any of Alco's storm water result exceed the Target levels.

13 57. **Action Plan:** Within 45 days of receiving any sample results showing that pollutant  
14 concentrations in Alco's storm water discharges have exceeded an Exhibit 1 Target or  
15 Benchmark level during the life of this Consent Decree, Alco shall prepare and send to  
16 Baykeeper an action plan or revised action plan designed to make progress toward eventual  
17 compliance with Exhibit 1 Target and Benchmark levels ("Action Plan"). Each Action Plan will  
18 set or set forth the sample results showing the exceedance, the possible cause and/or the source  
19 of the exceedance, measures that Alco will take to reduce the level of pollutants associated with  
20 the exceedances in future storm water discharges to or below the Target and Benchmark levels  
21 in Exhibit 1, and a schedule to implement the proposed BMPs by the earliest practicable time,  
22 generally not to exceed thirty days. Should Alco decide that structural measures are necessary  
23 to resolve pollutant problems, and such structural measures will require more than 30 days to  
24 design and install, Alco shall contact and provide Baykeeper with the reason for the additional  
25 time required and the expected date of implementation. Alco shall not unreasonably delay in  
26 implementing additional structural measures. In preparing any Action Plan, Alco shall consider  
27 specifying comprehensive, site specific storm water testing within the Facility to identify areas  
28 within the Facility that are responsible for storm water pollutant generation and the adoption of

BMPs specifically tailored for such areas. Baykeeper shall have thirty days to comment on and suggest revisions to the Action Plan. Alco shall adopt Baykeeper's suggested revisions unless Alco invokes Dispute Resolution.

4 (a). In years four and five of this Consent Decree, Alco shall provide Action Plans for each  
5 Facility on February 1<sup>st</sup> and June 15<sup>th</sup>. The February 1<sup>st</sup> Action Plan shall include all storm  
6 water samples taken prior to January 16 of that storm water year that exceed an Exhibit 1  
7 Target or Benchmark levels. The June 15<sup>th</sup> Action Plan shall include all storm water  
8 samples taken between January 15<sup>th</sup> and May 31<sup>st</sup> of that storm water year that exceed an  
9 Exhibit 1 Target or Benchmark levels. The February 1<sup>st</sup> and June 15<sup>th</sup> Action Plans for each  
10 Facility shall include all of the components of the Action Plan as described above in  
11 Paragraph 57.

12 58. **SWPPP Amendment:** At the conclusion of the rainy season, by the due date for Annual  
13 Reports pursuant to this Consent Decree, Alco shall amend its SWPPP to include all additional  
14 BMP measures designated in each Action Plan. Alco shall submit its revised SWPPP to  
15 Baykeeper within ten days of completing any SWPPP revisions.

16 59. **Liquidated Mitigation Payments:** If any storm water sample from the Mare Island or San  
17 Leandro Facility exceeds Benchmark pollutant levels as set forth in Exhibit 1 after October 1,  
18 2006, Alco shall pay liquidated mitigation of \$500 for each exceedance of any Benchmark level  
19 for any one pollutant parameter in any given sampling event, subject to a cap of the lesser of (1)  
20 \$10,000 per storm event per Alco facility, or (2) total annual liquidated mitigation payment  
21 liability of no more than \$35,000. Notwithstanding the foregoing, any storm water samples that  
22 Alco takes within either the Mare Island or San Leandro Facility for the purpose of identifying  
23 site specific areas of pollutant generation as part of designing remedial measures pursuant to  
24 paragraphs 12 or 37 shall not be subject to the payment requirement of this paragraph. In years  
25 four and five of this Consent Decree, Alco may choose among all the storm water samples  
26 taken, the four samples that will be used for the purposes of calculating liquidated penalty  
27 payments that may be due, provided that Alco includes all qualifying events that may occur in  
28 that storm water year.

1 60. **Reduction in Liquidated Mitigation Payments:** Alco shall be allowed a 50% reduction in  
2 any stipulated mitigation payments due pursuant to the preceding paragraph if Alco tenders the  
3 reduced payment to Baykeeper along with a certification signed under penalty of perjury stating  
4 that Alco will, within one year, spend or be under contract to spend the balance of the sum that  
5 would otherwise be due as stipulated mitigation payments on alternative environmental  
6 enhancements. Alternative environmental enhancements shall include: (a) completing indoor or  
7 covered recycling facilities at the Mare Island or San Leandro Facilities, including the  
8 construction of canopies over processing or equipment parking areas; (b) the acquisition of a  
9 new state of the art storm water filtration system designed for metal recycling facilities approved  
10 by Baykeeper (including any storm water retention capacity integrated with the filtration  
11 system), or (c) construction and operation of the appurtenances needed to discharge storm water  
12 runoff from the Mare Island or San Leandro Facilities through a publicly owned treatment works  
13 sanitary sewer system provided that Alco includes as part of this sewer connection project the  
14 construction and operation of storm water retention devices (such as retention ponds, basins, or  
15 tanks) to allow storage of storm water for disposal after peak rainfall-related sewer collection  
16 system flows have subsided. Alco must further submit within thirty days of completing the  
17 foregoing alternative environmental enhancement project a subsequent notice to Baykeeper  
18 explaining how Alco expended the funds and how this expenditure met the required terms. If  
19 Alco fails to meet all conditions of this paragraph, then it must pay the balance of the stipulated  
20 mitigation payment sum not yet paid within 13 months from the date the payment was originally  
21 due. Alco must further pay 5% per annum interest on such liquidated mitigation payment sums  
22 Alco has deferred paying pursuant to this paragraph. This paragraph does not apply to  
23 stipulated mitigation payments incurred during the fourth and fifth years of this Consent Decree.

24 61. **Tendering of Liquidated Mitigation Payments:** Alco shall pay any liquidated mitigation  
25 payments due pursuant to this Consent Decree within thirty (30) days of receiving relevant  
26 laboratory results. In years four and five of this consent decree, Alco shall pay any liquidated  
27 payments due pursuant to Paragraph 59 on June 1<sup>st</sup> following the wet season in which the  
28 samples were taken. Alco shall tender payment to Environmental Advocates for deposit in the

1 Environmental Advocates Client Trust Fund account for Environmental Advocates' tendering to  
2 the Rose Foundation for the Environment. Environmental Advocates shall tender such  
3 payments to Rose Foundation for the Environment within thirty days of receipt. The liquidated  
4 mitigation shall be used for projects relating to the reduction, prevention, or mitigation of, or  
5 research on, the effects of discharges of pollutants to the San Francisco Bay or other area waters.

6 **62. Site Inspections and Sampling:** Baykeeper may have access to either the Mare Island or San  
7 Leandro Facility to take its own samples of Alco's storm water discharge and/or inspect  
8 compliance with the Consent Decree during normal business hours with three hours notice,  
9 except that Alco shall have the right to deny access if extraordinary circumstances would make  
10 the inspection unduly burdensome and pose significant interference with business operational  
11 necessities. In such case, Alco shall specify at least three days within the next four weeks upon  
12 which a Baykeeper inspection may proceed, with three hours notice, during normal business  
13 hours.

14 **63. Facility Monitoring:** Within 30 days of execution of this Consent Decree, Alco shall conduct  
15 daily inspections of the Mare Island and San Leandro Facilities on the days that the facilities are  
16 operating. Such inspections shall include driveways, equipment storage areas, material sorting  
17 and storage areas, hazardous material areas, and all process areas. All discharge locations shall  
18 also be inspected for contamination and accumulation of wastes such as shredded metals, fines,  
19 metallic sediment, sand, grit, oily substances, oily sheens upon any standing water, and other  
20 contaminants associated with operations at the Facilities. Alco shall clean or remove such  
21 contaminants immediately. Where spills and leaks of oil, mechanical fluids, or other liquid  
22 wastes have occurred, Alco shall treat such areas immediately with dry adsorbent materials.  
23 Alco shall sweep up or remove and place such adsorbent materials in a proper disposal container  
24 within twenty-four (24) hours in compliance with all applicable local, state, and federal laws and  
25 regulations.

26 **64. Training:** Upon entry of this Consent Decree and annually thereafter, Alco shall conduct  
27 training for all of its workers to explain the requirements of this Consent Decree, the Facility  
28 SWPPP, and the General Permit to the extent applicable to such worker. Additionally, within

1 one week of hiring new employees other than office or clerical personnel, Alco shall conduct  
2 training for such new employee to explain the requirements of this Consent Decree, the SWPPP  
3 and the General Permit. The training shall focus on the worker's role in implementing various  
4 Consent Decree measures including, for example, implementation of BMPs, daily sweeping,  
5 daily Facility inspections, etc. All training shall be conducted bilingually (i.e., Spanish/English  
6 or other pertinent language) if Alco employs any persons whose primary language is other than  
7 English. Alco shall integrate any new training requirements resulting from this Consent Decree  
8 in its SWPPP. If Alco purchases a regenerative sweeper, Alco shall ensure that (1) the staff  
9 operating the sweeper have been trained in the proper use and maintenance of the regenerative  
10 sweeper and (2) that the sweeper will be maintained according to the manufacturer's  
11 instructions.

12 65. **Reports:** During the life of this Consent Decree, Alco shall provide Baykeeper with a copy of  
13 all documents pertaining to the General Permit submitted to the Regional Water Quality Control  
14 Board or the State Water Resources Control Board concerning the Mare Island and San Leandro  
15 Facilities, including all documents and reports submitted to the Regional Board as required by  
16 the General Permit. Such documents and reports shall be mailed to Baykeeper  
17 contemporaneously with submission to the Regional or State Board.

#### 18 V. MITIGATION, FEES, AND COSTS

19 66. **Mitigation for Alleged Past Violations:** As mitigation of the violations alleged in  
20 Baykeeper's Notice and Complaint, Alco shall pay the sum of \$50,000.00 to the Rose  
21 Foundation for the Environment for projects relating to the reduction, prevention or mitigation  
22 of, or research on, the effects of discharges of pollutants in storm water to the San Francisco  
23 Bay. Alco shall tender payment to the Rose Foundation for the Environment, 6008 College  
24 Avenue, Oakland, California 94618 4 in four quarterly installments of \$12,500 each tendered  
25 on or by October 1, 2005; January 2, 2006, April 3, 2006 and July 3, 2006. Alco shall provide  
26 notice to Baykeeper that Alco has tendered these payments. Alco

27 67. **Baykeeper's Attorneys Fees and Costs:** Alco shall reimburse Baykeeper in the amount of  
28 \$66,000 to help defray Baykeeper's investigation fees and costs, expert fees and costs,

1 reasonable attorneys' fees, and all other costs incurred as a result of investigating the activities at  
2 the Mare Island and San Leandro Facilities, bringing these matters to Alco's attention, and  
3 negotiating a resolution of this action in the public interest. Alco tender this sum in four  
4 quarterly payments of \$16,500 each tendered on or by October 1, 2005; January 2, 2006, April  
5 3, 2006 and July 3, 2006. Alco shall tender payment to Environmental Advocates for deposit in  
6 the Environmental Advocates Client Trust Fund account.

7 (a) **Amended Fees and Costs:** Alco shall reimburse Baykeeper in the amount of \$12,843.70 to  
8 help defray Baykeeper's investigation fees and costs, expert fees and costs, reasonable  
9 attorneys' fees, and all other costs incurred as a result of investigating, negotiating, and  
10 amending this Consent Decree between the parties. Alco shall tender payment to  
11 Environmental Advocates for deposit in the Environmental Advocates Client Trust Fund  
12 account by September 30, 2008.

13 68. **Compliance Monitoring Funds:** Alco shall reimburse Baykeeper one thousand and seven  
14 hundred and fifty dollars (\$1,750) per year for three years, in the total amount of five thousand  
15 two hundred and fifty dollars (\$5,250) for costs and fees associated with monitoring Alco's  
16 compliance with this Consent Decree. Monitoring activities include site inspections, review of  
17 water quality sampling reports, review of annual reports, discussion with representatives of Alco  
18 concerning potential changes to compliance requirements, water quality sampling, etc. Alco  
19 shall tender payment, in yearly installments of \$1,750 commencing on January 1, 2006, to  
20 Environmental Advocates for deposit in the Environmental Advocates Client Trust Account.

21 (a) **Amended Compliance Monitoring Funds:** Alco shall reimburse Baykeeper four  
22 thousand dollars (\$4,000) per year for two years, in the total amount of eight thousand  
23 (\$8,000) for costs and fees associated with monitoring Alco's compliance with this  
24 Amended Consent Decree. Payments shall be made annually, commencing on January 1,  
25 2009, and shall be made to Environmental Advocates for deposit in the Environmental  
26 Advocates Client Trust Account.

27 **VI. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

28 69. If a dispute under this Consent Decree arises, or either Party believes that a breach of this

1 Consent Decree has occurred, the Parties shall schedule a meet and confer within seven (7) days  
2 of receiving written notification from the other Party of a request for a meeting to determine  
3 whether a violation has occurred and to develop a mutually agreed upon plan, including  
4 implementation dates, to resolve the violation. If the Parties fail to meet and confer or the meet  
5 and confer does not resolve the issue, after at least seven days have passed after the meet and  
6 confer occurred or should have occurred, either Party shall be entitled to all rights and remedies  
7 under the law, including bringing a motion before the United States District Court for the  
8 Northern District of California which shall retain jurisdiction over the Action for the limited  
9 purposes of enforcement of the terms of this Consent Decree. The parties shall be entitled to  
10 seek fees and costs incurred in any such action, and such fees and costs shall be awarded,  
11 pursuant to the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C.  
12 §1365(d), and applicable case law interpreting such provision.

#### 13 VII. JURISDICTION

14 70. For the purposes of this Consent Decree, the Parties stipulate that the United States District  
15 Court for the Northern District of California has jurisdiction over the Parties and subject matter  
16 of this Action. The Parties stipulate that venue is appropriate in this Court. The Parties further  
17 stipulate for purposes of this Consent Decree that the complaint states a claim upon which relief  
18 may be granted against Alco pursuant to Section 505 of the Act, 33 U.S.C. §1365, and that  
19 Baykeeper has standing to bring this action.

#### 20 VIII. WAIVER AND RELEASES

21 71. **Baykeeper Waiver and Release of Alco:** Upon entry of this Consent Decree, Baykeeper, on  
22 its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers,  
23 agents, attorneys, representatives, and employees, releases Alco (and its agents, attorneys,  
24 representatives, employees, and assigns) from, and waives, all claims for damages, penalties,  
25 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,  
26 expenses or any other sum incurred or claimed or which could have been claimed in this Action,  
27 for the alleged failure of Alco to comply with the Clean Water Act at the Mare Island and San  
28 Leandro Facilities, up to and through the term of this Consent Decree (hereafter "Claims"),

1 except as specifically provided for in this Consent Decree.

2 72. **Alco Waiver and Release of Baykeeper:** Alco, on its own behalf and on behalf of its agents,  
3 attorneys, representatives, employees, and assigns, releases Baykeeper (and its members,  
4 subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and  
5 employees) from, and waives all claims which arise from or pertain to this Action, including all  
6 claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other  
7 sum incurred or claimed or which could have been claimed for matters associated with or related  
8 to this Action.

9 73. **No Admission:** The Parties enter into this Consent Decree for the purpose of avoiding  
10 prolonged and costly litigation. Nothing in this Consent Decree shall be construed as, and Alco  
11 expressly does not intend to imply, any admission as to any fact, finding, issue of law, or  
12 violation of law, nor shall compliance with this Consent Decree constitute or be construed as an  
13 admission by Alco of any fact, finding, conclusion, issue of law, or violation of law. However,  
14 this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties  
15 of the Parties under this Consent Decree.

#### 16 **IX. MISCELLANEOUS PROVISIONS**

17 74. **Effective Date:** The Effective Date shall be the date this Consent Decree is executed by both  
18 Parties.

19 75. **Term of Consent Decree:** The Consent Decree shall continue in effect for a period of five  
20 years from the Effective Date.

21 76. **Execution in Counterparts:** The Consent Decree may be executed in one or more  
22 counterparts which, taken together, shall be deemed to constitute one and the same document.

23 77. **Severability:** In the event that any of the provisions of this Consent Decree is held by a court  
24 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

25 78. **Construction:** The language in all parts of this Consent Decree, unless otherwise stated, shall  
26 be construed according to its plain and ordinary meaning.

27 79. **Authority to Sign:** The undersigned are authorized to execute this Consent Decree on behalf  
28 of their respective parties and have read, understood and agreed to all of the terms and

1 conditions of this Consent Decree.

2 **80. Integrated Consent Decree:** All agreements, covenants, representations and warranties,  
3 express or implied, oral or written, of the Parties concerning the subject matter of this Consent  
4 Decree are contained herein.

5 **81. Mailing of Documents to the Parties:** Any notices, documents or payments required or  
6 provided for by this Consent Decree or related thereto that are to be provided to Baykeeper or  
7 Environmental Advocates pursuant to this Consent Decree shall be hand delivered or sent by  
8 U.S. Mail, postage prepaid, and addressed as set forth below, or shall be sent via electronic mail  
9 to the following e-mail addresses:

10 Amy Chastain  
11 San Francisco Baykeeper  
12 785 Market Street, Suite 850  
13 San Francisco, CA 94103  
14 e-mail: [amy@sfbaykeeper.org](mailto:amy@sfbaykeeper.org)

14 Jodene Isaacs  
15 Environmental Advocates  
16 5135 Anza Street  
17 San Francisco, California 94129  
18 e-mail: [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com)

17 Any notices or documents required or provided for by this Consent Decree or related thereto that are  
18 to be provided to Alco pursuant to this Consent Decree shall be sent by U.S. Mail, postage prepaid,  
19 and addressed as set forth below, or shall be sent via electronic mail to the following e-mail  
20 addresses:  
21

22 Michael Bercovich  
23 Alco Iron and Metal Company  
24 1091 Doolittle Drive  
25 San Leandro, CA 94577  
26 e-mail: [michaelbercovich@alcometals.com](mailto:michaelbercovich@alcometals.com)

26 Christine K. Noma  
27 Wendel, Rosen, Black & Dean, LLP  
28 P.O. Box 2047  
Oakland, CA 94604  
e-mail: [cnoma@wendel.com](mailto:cnoma@wendel.com)

1 82. **Facsimile Signatures:** Signatures of the Parties transmitted by facsimile or PDF electronic  
2 format shall be deemed binding.

3 83. **Force Majeure:** No Party shall be considered to be in default in the performance of any of its  
4 obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is  
5 any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A  
6 Force Majeure event does not include normal inclement weather, such as anything less than or  
7 equal to a 100 year/24 hour storm event or inability to pay. Any Party seeking to rely upon this  
8 paragraph shall have the burden of establishing that it could not reasonably have been expected  
9 to avoid, and which by exercise of due diligence has been unable to overcome, the Force  
10 Majeure.

11 84. If for any reason the Court should decline to approve this Consent Decree in the form presented,  
12 the Parties shall agree to work together to modify the Consent Decree within 30 days so that it is  
13 acceptable to the Court.

14 85. The settling Parties hereto enter into this Consent Decree, Order and Final Judgment and submit  
15 it to the Court for its approval and entry as a final judgment.

16 SAN FRANCISCO BAYKEEPER

17  
18 Date: \_\_\_\_\_, 2008

19  
20 \_\_\_\_\_  
21 by: Sejal Choksi  
22 San Francisco Baykeeper

23 ALCO IRON AND METAL COMPANY

24 Date: August 22, 2008

25 Michael Bercovich  
26 by: Michael Bercovich  
27 Alco in-House Counsel

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

82. **Facsimile Signatures:** Signatures of the Parties transmitted by facsimile or PDF electronic format shall be deemed binding.
83. **Force Majeure:** No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24 hour storm event or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the Force Majeure.
84. If for any reason the Court should decline to approve this Consent Decree in the form presented, the Parties shall agree to work together to modify the Consent Decree within 30 days so that it is acceptable to the Court.
85. The settling Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the Court for its approval and entry as a final judgment.

SAN FRANCISCO BAYKEEPER

Date: 8/22, 2008

  
by: Sejal Choksi  
San Francisco Baykeeper

ALCO IRON AND METAL COMPANY

Date: \_\_\_\_\_, 2008

\_\_\_\_\_  
by: Michael Bercovich  
Alco in-House Counsel

EXHIBIT 1  
Storm Water Sampling Chart  
ALCO Iron and Metals

Constituent	Target Levels		Benchmark Levels	
	Value	Basis	Value	Basis
Total Suspended Solids			100,000 µg/l	<i>EPA Storm Water Benchmark</i>
Oil and Grease			15,000 µg/l	<i>EPA Storm Water Benchmark</i>
Chemical Oxygen Demand			120,000 µg/l	<i>EPA Storm Water Benchmark</i>
pH	6.5 to 8.5	<i>San Francisco Regional Water Quality Control Board ("SF-RWQCB"), Basin Plan, all surface waters</i>	6.0-9.0	<i>EPA Storm Water Benchmark</i>
Aluminum			750 µg/l	<i>EPA Storm Water Benchmark</i>
Arsenic	36.0 µg/l	<i>SF-RWQCB, Table 3-3, Basin Plan, Salt Water Chronic</i>	69.0 µg/l	<i>SF-RWQCB, Table 3-3, Basin Plan, Salt Water Maximum Concentration, 1 hr</i>
Cadmium	9.3 µg/l	<i>California Toxics Rule ("CTR") Criteria: Saltwater Aquatic Life protection CCC (Chronic)</i>	15.9 µg/l	<i>EPA Storm Water Benchmark</i>
Chromium III	-	-	2417 µg/l	<i>SF-RWQCB, Table 3-3, Basin Plan, Salt Water Maximum Concentration, 1 hr average, <u>objective may be met as total chromium</u></i>
Chromium VI	50.0 µg/l	<i>CTR Criteria: Saltwater</i>	1100 µg/l	<i>SF-RWQCB, Table 3-3, Basin Plan, Salt Water</i>

		<i>Aquatic Life protection CCC (Chronic)</i>		<i>Maximum Concentration, 1 hr average, <u>objective may be met as total chromium</u></i>
Chromium total	50.0 µg/l	<i>CTR Criteria: Saltwater Aquatic Life protection CCC (Chronic)</i>	1100 µg/l	<i>SF-RWQCB, Table 3-3, Basin Plan, Salt Water Maximum Concentration, 1 hr average, <u>objective may be met as total chromium</u></i>
Copper	3.1 µg/l	<i>CTR Criteria: Saltwater Aquatic Life protection CCC (Chronic)</i>	63.6 µg/l	<i>EPA Storm Water Benchmark</i>
Iron			1000.0 µg/l	<i>EPA Storm Water Benchmark</i>
Lead	7.1 µg/l	<i>CTR Criteria: Saltwater Aquatic Life protection CCC (Chronic)</i>	81.6 µg/l	<i>EPA Storm Water Benchmark</i>
Mercury	0.94 µg/l	<i>EPA NAWQC Criteria: Saltwater Aquatic Life protection (Chronic)</i>	2.4 µg/l	<i>EPA Storm Water Benchmark</i>
Nickel	7.1 µg/l	<i>SF-RWQCB, Table 3-3, Basin Plan, Salt Water Chronic</i>	1417 µg/l	<i>EPA Storm Water Benchmark</i>
Zinc	58.0 µg/l	<i>SF-RWQCB, Table 3-3, Basin Plan, Salt Water 24 hr</i>	117 µg/l	<i>EPA Storm Water Benchmark</i>