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6 MONTEREY WATERKEEPER

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 MONTEREY COASTKEEPER, a non-profit
10 corporation, doing business as MONTEREY
11 WATERKEEPER,

12 Plaintiff,

13 v.

14 KRISTICH MONTEREY PIPE COMPANY, a
California corporation,

15 Defendant.
16

Case No.: 5:24-cv-04092-VKD

~~PROPOSED~~ **CONSENT DECREE**

Re: Dkt. No. 15

CONSENT DECREE

WHEREAS, Plaintiff Monterey Coastkeeper doing business as Monterey Waterkeeper (“Monterey Waterkeeper” or “Plaintiff”) is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California;

WHEREAS, Monterey Waterkeeper is dedicated to the preservation, protection and defense of the surface, ground, coastal and ocean waters of the Monterey Bay area from all sources of pollution and degradation;

WHEREAS, Defendant Kristich Monterey Pipe Company (“Kristich” or “Defendant”) owns and operates a facility at 225 Salinas Road, Suite B, Royal Oaks, California 95076 (“Facility”);

WHEREAS, the Facility’s industrial activities consist of concrete pipe manufacturing. The Facility is categorized under Standard Industrial Classification (“SIC”) Code 3272 (Concrete Products, Except Block and Brick);

WHEREAS, storm water discharges associated with industrial activity at the Facility are regulated by the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order 2014-0057-DWQ, as amended by Order Nos. 2015-0122-DWQ and 2018-0028-DWQ (collectively and as amended, the “General Permit” or “Permit”)¹, and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, *et seq.* (“Clean Water Act” or “CWA”), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

WHEREAS, Plaintiff alleges that Kristich’s operations at the Facility result in discharges of pollutants into waters of the United States and are regulated by the Clean Water Act Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

WHEREAS, the General Permit requires all permittees, including Defendant, to comply

¹ Any references to the “General Permit” or “Permit” herein shall be to the then-effective version, regardless of whether such changes are the result of amendments, revisions, reissuance, or similar modification of material terms. Any reference in this Consent Decree to specific sections or subsections of the General Permit that are moved, modified, or otherwise changed in a subsequent version of the General Permit shall be to such subsequent reference(s) as if set forth herein, *e.g.*, the current §XI.B.6.c may be renumbered as §XI.B.7.c, combined into the current §XI.B.6.d, or split into a new §XI.B.6.c and §XI.B.6.d.

1 with, inter alia, the following mandates: (1) develop and implement a storm water pollution
 2 prevention plan (“SWPPP”) and a storm water monitoring implementation plan (“MIP”), (2) control
 3 pollutant discharges using, as applicable, best available technology economically achievable or best
 4 conventional pollutant control technology to prevent or reduce pollutants through the development
 5 and application of Best Management Practices (“BMPs”), which must be detailed in and timely
 6 updated in the SWPPP, (3) reduce and eliminate pollutant discharges from the Facility necessary to
 7 comply with any and all applicable Water Quality Standards, and (4) implement a monitoring and
 8 reporting program, including the MIP, designed to assess compliance with the Permit;

9 **WHEREAS**, on March 18, 2024, Plaintiff issued a notice of intent to file suit (“60-Day
 10 Notice Letter”) to Defendant, its registered agent, the Administrator of the United States
 11 Environmental Protection Agency (“EPA”), the Executive Director of the State Water Resources
 12 Control Board (“State Board”), the Executive Director Central Coast Regional Water Quality
 13 Control Board (“Regional Board”), and the Regional Administrator of EPA Region IX, alleging
 14 violations of the Clean Water Act and the General Permit;

15 **WHEREAS**, on July 8, 2024, Monterey Waterkeeper filed a complaint against Kristich in
 16 the Northern District of California (“Court”), Civil Case No. 5:24-cv-04092-VKD (“Complaint”);

17 **WHEREAS**, Plaintiff’s Complaint alleges violations of the General Permit and the Clean
 18 Water Act for Kristich’s alleged discharges of pollutants into storm drains and surface waters,
 19 including Watsonville Creek, Carneros Creek, Blohm-Porter Marsh, Elkhorn Slough, and Monterey
 20 Bay (collectively, “Receiving Waters”);

21 **WHEREAS**, Kristich denies all of Plaintiff’s allegations in its 60-Day Notice Letter and
 22 Complaint;

23 **WHEREAS**, Plaintiff and Kristich (each a “Settling Party” or “Party” and together, the
 24 “Settling Parties” or the “Parties”) agree that it is in their mutual interest to enter into a Consent
 25 Decree setting forth terms and conditions appropriate to resolving the allegations set forth in the 60-
 26 Day Notice Letter and Complaint without further proceedings; and

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

2 **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE SETTling**
3 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

4 1. The Court has jurisdiction over the subject matter of this action pursuant to Section
5 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A).

6 2. Venue is appropriate in the Court for the Northern District of California pursuant to
7 Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the Facility at which the alleged
8 violations are taking place is located within this District.

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

11 4. Monterey Waterkeeper has standing to bring this action.

12 5. The Court shall retain jurisdiction over this action for purposes of interpreting,
13 modifying, or enforcing the terms of this Consent Decree, or as long thereafter as necessary for the
14 Court to resolve any motion to enforce this Consent Decree, as long as it is regarding issues raised
15 within the Term (as defined below) of this Consent Decree.

16 **I. OBJECTIVES**

17 6. It is the express purpose of the Settling Parties as follows:

18 a.) Monterey Waterkeeper through this Consent Decree seeks to further the
19 objectives of the Clean Water Act, and to resolve all issues alleged by Monterey Waterkeeper in its
20 60-Day Notice Letter and Complaint. These objectives include compliance with the provisions of
21 this Consent Decree, compliance with all terms and conditions of the General Permit, and
22 compliance with all applicable sections of the CWA.

23 b.) Kristich through this Consent Decree seeks to avoid further litigation to prove
24 that it has consistently complied with all obligations of the CWA, and to resolve all issues alleged
25 by Monterey Waterkeeper in its 60-Day Notice Letter and Complaint, each and every allegation of
26 which Kristich denies.

27 7. In light of these objectives and as set forth fully below, Kristich agrees to comply
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with the provisions of this Consent Decree, terms and conditions of the General Permit, and all applicable sections of the CWA at the Facility.

II. AGENCY REVIEW AND DEFINITIONS

A. AGENCY REVIEW OF CONSENT DECREE

8. Agency Review. Plaintiff shall submit this Consent Decree to the United States Department of Justice and the EPA (together, the “Federal Agencies”) for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the Federal Agencies, as evidenced by certified return receipts, or upon the date that the Federal Agencies provide a no objection letter, whichever is earlier (“Agency Review Period”). In the event that the Federal Agencies object to entry of this Consent Decree or to any portion of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies. If the Parties are unable to resolve any issue(s) raised by the Federal Agencies in their comments, the Parties agree to expeditiously seek a settlement conference with the assigned Judge to resolve any issue(s).

9. Court Notice. Plaintiff shall notify the Court of the receipt date by the Federal Agencies, as required by 40 C.F.R. § 135.5, in order to coordinate the Court’s calendar with the 45-day review period.

10. Entry of Consent Decree. Following the expiration of the Agency Review Period, Plaintiff shall submit the Consent Decree to the Court for entry.

B. DEFINITIONS

11. Unless otherwise expressly defined herein, terms used in this Consent Decree which are defined in the CWA or in regulations or rules promulgated under the CWA have the meaning assigned to them in the statutes or regulations or rules. Whenever terms listed below are used in this Consent Decree, whether or not capitalized, the following definitions apply:

- a. “BAT” means the Best Available Technology Economically Achievable.
- b. “BCT” means the Best Conventional Pollutant Control Technology, and together with BAT is referred to herein as “BAT/BCT.”

- c. “BMPs” means Best Management Practices as defined in Attachment C (Glossary) of the General Permit.
- d. “Central Operations Area” means the finished pipe curing slab and any portion of the Facility that drains to the swale downstream of the storm water gravel filter and/or the drainage interceptor southeast of the finished pipe curing slab (as these areas are depicted on the site plan attached as Exhibit A to this Consent Decree);
- e. “Consent Decree” means this Consent Decree and any attachments or documents incorporated by reference.
- f. “Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.
- g. “Discharge Point” means each discharge location designated in the then-current SWPPP for the Facility.
- h. “Effective Date” means the effective date of this Consent Decree, which shall be the date of full execution by the Parties.
- i. “Entry Date” means the day this Consent Decree is approved and entered by the Court.
- j. “Forecasted Rain Event” means a forecasted rain event as determined by the National Oceanic and Atmospheric Administration (<http://forecast.weather.gov/>) for “Watsonville, California.”²
- k. “MIP” means a Monitoring Implementation Plan.
- l. “PPT” means Pollution Prevention Team.
- m. “Qualified Industrial Storm Water Practitioner” or “QISP” shall have the

² Available at <https://forecast.weather.gov/MapClick.php?lat=36.910233&lon=-121.756873>.

definition set forth in Section IX.A.1 of the General Permit.

- n. “Qualifying Storm Event” or “QSE” shall have the definition set forth in Section XI.B.1 of the General Permit.
- o. “Reporting Year” means the period from July 1 of a given calendar year to June 30 of the following calendar year.
- p. “SMARTS” means the California State Water Resources Control Board’s Stormwater Multiple Application and Report Tracking System.
- q. “SWPPP” means a Storm Water Pollution Prevention Plan.
- r. “Term” means the period between the Effective Date and the “Termination Date.”
- s. “Termination Date” means seven days from Defendant’s completion of all payments and affirmative duties required by this Consent Decree and either:
 - i. The latest of:
 - 1. June 30 following three (3) years from the Effective Date, unless prior to then there have been two (2) consecutive Wet Seasons with no exceedances of any Numeric Limit in Tables 1 or 2 below, in which case June 30 following two (2) such consecutive Wet Seasons; or
 - 2. Seven (7) days from the conclusion of any proceeding or process to enforce this Consent Decree initiated prior to June 30 following the occurrence of either of the conditions in Paragraph 11.s.i.1.
 - ii. Or, the date a Notice of Termination (“NOT”) is submitted to and accepted by the Regional Water Quality Control Board for the Facility, or the date on which the Facility receives approval for Notice of Non-Applicability (“NONA”) coverage, whichever occurs first. Defendant will notify Plaintiff of its intent to submit an application for a NOT or NONA at least twenty-one (21) days prior to submitting these materials to the

State Water Resources Control Board or the Regional Water Quality Control Board, as applicable.

t. “Wet Season” for purposes of this Consent Decree means the period beginning October 1 of any given calendar year and ending May 31 of the following calendar year.

III. COMMITMENTS OF THE SETTling PARTIES

A. STORM WATER POLLUTION CONTROL BEST MANAGEMENT PRACTICES

12. Non-Storm Water Discharge Prohibition. Any unauthorized non-storm water discharge, as defined in the General Permit and within the Defendant’s control, shall be a violation of this Consent Decree. Examples of unauthorized non-storm water discharges include discharges of water used for dust control or washing equipment or Facility surfaces that reach drainage interceptors or curb cuts and subsequently flow off-site.

13. Current and Additional Best Management Practices. Defendant shall implement BMPs identified in its SWPPP and BMPs described herein, and shall develop and implement additional BMPs as necessary to comply with the provisions of this Consent Decree and the General Permit, including but not limited to those (1) necessary to comply with BAT/BCT-level pollutant reductions; and (2) the General Permit’s Receiving Water Limitations, which require that discharges from the Facility “not cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water.”

14. Rain Gauge/Sensor. Defendant shall install and maintain an electronic rain gauge or sensor at the Facility within ten (10) days of the Effective Date. The rain gauge/sensor shall be capable of measuring precipitation down to at least 0.1 inches, and record start/stop times and non-cumulative precipitation for each rain event. During the Term, Defendant shall collect data using the gauge/sensor for all precipitation events to the nearest 0.1 inch, including start/stop times. Valid data from the rain gauge/sensor shall be conclusive of precipitation quantities and timing for purposes of this Consent Decree. Precipitation is as defined by the American Meteorological Society. Rain gauge measurements of precipitation are only conclusive of rainfall at the given point

1 of the rain gauge.

2 15. Control of Pollutants from Central Operations Area: Defendant shall take the
3 following steps to develop (and subsequently implement) a plan for inclusion in its SWPPP for
4 preventing and reducing pollutant discharges from the Central Operations Area.

- 5 a. Implement, as soon as practicable³ within the first Wet Season of the Term , a
6 targeted monitoring program to evaluate the effectiveness of existing BMPs
7 at reducing and preventing discharge of pollutants from the Central
8 Operations Area, including by analyzing storm water runoff from four (4)
9 precipitation events that produce runoff from: (a) the discharge point from the
10 existing sand and gravel filter, (b) the curb cut at the southern boundary of
11 finished pipe curing slab, and (c) the drainage interceptor in the unpaved area
12 at the southeast corner of the finished pipe curing slab. Samples shall be
13 analyzed for iron, total suspended solids, and pH.
- 14 b. Nothing herein shall require the Defendant to sample non-QSEs during the
15 Facility's non-operational hours.
- 16 c. Compare results of sampling to the limits in Table 1 below, and if results of
17 from any sample exceeds the limit(s) in Table 1 (as defined in Paragraph 25
18 below), develop and implement a Central Operations Area BMPs Plan to
19 reduce and prevent the discharge of pollutants from the Central Operations
20 Area. The Central Operations Area BMPs Plan shall be prepared and
21 submitted to Monterey Waterkeeper for review and comment within thirty
22 (30) days of Kristich's receipt of laboratory results indicating an exceedance
23 of Table 1 limit(s). The Central Operations Area BMPs Plan shall reduce or
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25
26 ³ The goal is to sample discharges from four rain events as early as possible in the Wet Season whether the rain event is
27 a QSE or not. Examples of when sampling should be attempted include (1) during all QSEs, (2) anytime there is a
28 discharge from a storm even if there has been less than 48 hours between storms, (3) during a discharge more than 4
hours after a rain event commenced if sampling in the first four hours was infeasible, or (4) during a discharge more
than 12 hours after a rain event commenced if the rain event started during non-operating hours and sampling any
earlier was otherwise infeasible.

1 eliminate the discharge of pollutants and may include enhanced media filter
2 treatment of storm water flows from the Central Operations Area (similar to
3 the existing sand and gravel system at the Facility).

- 4 d. If an Action Plan is required as a result of sampling from the Central
5 Operations Area, see Paragraph 28 for Action Plan requirements. In such a
6 case, the Central Operations Area BMPs Plan may, at the Defendant's
7 discretion, serve as the Action Plan provided it meets the requirements of
8 Paragraph 28. Kristich shall not be obligated to pay for Plaintiff's review of a
9 Central Operations Area BMPs Plan which meets the requirements of
10 Paragraph 28 and the review of which has been paid for as an Action Plan.
- 11 e. Monterey Waterkeeper shall have thirty (30) days upon receipt of
12 Defendant's proposed Central Operations Area BMPs Plan to provide
13 Defendant with comments. Within fourteen (14) days of receiving Monterey
14 Waterkeeper's proposed revisions to the Central Operations Area BMPs Plan,
15 Defendant shall consider each of Monterey Waterkeeper's recommended
16 revisions and accept them or justify in writing why any comment is not
17 incorporated. Any disputes as to the adequacy of a Central Operations Area
18 BMPs Plan shall be resolved pursuant to the dispute resolution provisions of
19 this Consent Decree, set out in Section IV below. Disputes regarding the
20 adequacy of a particular BMP shall not impact the schedule for implementing
21 any other BMP set forth in the Central Operations Area BMPs Plan.
- 22 f. Following receipt of MWK comments on the Central Operations Area BMPs
23 Plan, or after resolution of any dispute related to the contents of the Central
24 Operations Area BMPs Plan, Defendant shall update the then-current SWPPP
25 to reflect any new Central Operations Area BMPs, as set forth in Paragraph
26 33 below.

27 16. Maintenance of Existing Sand and Gravel Filter: No later than October 1, 2024,
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1 Defendant shall replace the media in the Facility's existing sand and gravel filter treatment system.

2 17. Additional Structural and Non-Structural BMPs for the Facility. As soon as possible
3 but no later than forty-five (45) days from the end of the Agency Review Period, unless otherwise
4 noted, Defendant shall:

- 5 a. Develop and implement a formal pre-rain protocol throughout the Wet
6 Season that includes inspection within twenty-four (24) hours prior to a
7 Forecasted Rain Event of any treatment units deployed at the Facility for
8 effectiveness, removal or coverage of any exposed waste material, and
9 relocation of uncontained debris bins and trash cans under cover; protocol
10 activities may account for and exclude weekends, holidays and other non-
11 operational periods;
- 12 b. Institute enhanced daily sweeping of the Central Operations Area and at a
13 regular, pre-determined frequency at all other impervious surfaces with an
14 effective and well-maintained regenerative air or vacuum sweeper. Hand
15 sweeping should also continue to be employed to serve areas inaccessible to
16 larger street sweepers;
- 17 c. Inspect all wattles/filters/filtration socks, and, as necessary and as detailed
18 below, employ and secure new wattles/filters/filtration socks to remove
19 sediments, metals, and organic materials in storm water discharged from the
20 Facility, and configure such wattles/filters/filtration socks to achieve
21 maximum contact time with storm water prior to discharge, *i.e.*, in multiple
22 layers and/or overlapping formations. Defendant shall, thereafter:
- 23 i. Employ and secure new wattles/filters/filtration socks annually prior
24 to the start of the Wet Season [*i.e.*, no later than October 1 of each
25 year during the Term]; and
- 26 ii. Within twenty-four (24) hours prior to a Forecasted Rain Event,
27 inspect all wattles/filters/filtration socks deployed at the site, and, as
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necessary, replace or maintain the wattles/filters/filtration socks when degraded or ineffective, including without limitation when there are rips, tears or other visual damage, and/or sampling data demonstrating the wattles/filters/filtration socks are not sufficiently reducing pollutant concentrations; inspections may occur longer than twenty-four (24) hours prior to a Forecasted Rain Event if non-operational periods occur before such an event (e.g. weekends, holidays, other non-operational periods).

- d. Inspect operation work areas daily to ensure adequate implementation and maintenance of operational procedures and pollutant control measures;
- e. Remove all unused, inutile, and/or abandoned, as determined by Defendant, racks, vehicles, equipment, and waste scrap materials from the entire property, and prevent future storage of such materials;
- f. Ensure that:
 - i. No vehicle or equipment maintenance activities occur outdoors during wet weather, unless such maintenance is required for safe operation of the Facility, *e.g.*, if the forklift breaks down in a location that prevents ingress/egress;
 - ii. Vehicle or equipment maintenance activities occur only in designated work areas or beneath covered maintenance areas; and
 - iii. When vehicle or equipment maintenance activities must be performed outdoors, action shall be taken to immediately contain, capture, and clean up any discharge or spills of waste fluids to the ground; and
- g. Within fourteen (14) days of each of the above BMPs being implemented for the first time and every October 1 thereafter, Defendant shall confirm to Monterey Waterkeeper in writing, with photographs, that such BMP has been implemented as set forth above.

B. SAMPLING AT THE FACILITY

1 18. Sampling Locations: During a QSE, as defined in the General Permit, Defendant
2 shall sample from the following locations to ensure sampling is representative of storm water
3 leaving the site: (a) the outlet from the existing sand and gravel filter, (b) the curb cut at the
4 southern boundary of finished pipe curing slab, (c) the drainage interceptor in the unpaved area at
5 the southeast corner of the finished pipe curing slab, and (d) the curb cut at the northeast boundary
6 of the Facility. These locations may be eliminated or modified accordingly if the flow paths are
7 eliminated or modified as the result of BMP upgrades.

8 19. Defendant shall, consistent with the General Permit, collect samples of storm water
9 discharge at each Discharge Point from two (2) QSEs within the first half of each reporting year
10 (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1
11 to June 30). Such sampling shall take place as soon as possible within the four (4) hour period
12 required by the General Permit § XI.B.5. If Defendant would have been required to collect samples
13 during a rain event pursuant to this Consent Decree had such rain event produced a discharge, but
14 Defendant did not collect samples because such rain event did not produce a discharge, then
15 Defendant shall use its best efforts to document the inability to sample by written observation logs
16 and take photographs during the rain event where possible of each Discharge Point from which no
17 discharge occurred. Defendant shall submit such documentation to Monterey Waterkeeper by email,
18 along with rain gauge/sensor data for the date of such rain event, within five (5) days of a written
19 request for such records by Monterey Waterkeeper.

20 20. Sampling Parameters. All samples collected pursuant to this Consent Decree shall be
21 analyzed, at minimum, for the parameters listed in Table 1, except where otherwise specified.
22 Should Defendant intend to conduct sampling for any additional parameter(s) that are listed in 40
23 C.F.R. § 131.38 and/or in the General Permit for any reason, including without limitation as a result
24 of changed operations, a revised pollutant source assessment, or a new mandate from a regulatory
25 agency, such parameter(s) shall be incorporated into this Consent Decree as if listed in Table 1 for
26 all purposes, including any Action Plan requirements (as defined below). Defendant shall
27 immediately notify Monterey Waterkeeper of its intent to conduct sampling for any such additional
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1 parameter(s) and the Parties shall meet and confer regarding the applicable Table 1 limit for such
2 purposes within ten (10) days of such notification.

3 21. Laboratory and Holding Time. Except for pH samples, Defendant shall deliver all
4 samples to a California-certified environmental laboratory for analysis within allowable hold times,
5 pursuant to 40 C.F.R. Part 136. Analysis of pH will be completed onsite using a portable instrument
6 that is calibrated and used according to the manufacturer's instructions.

7 22. Detection Limit. Defendant shall request that the laboratory use analytical methods
8 adequate to detect the individual pollutants at or below the values specified in the General Permit
9 and Table 1 below.

10 23. Reporting. Defendant shall provide complete laboratory results of all samples
11 collected at the Facility to SMARTS in accordance with the General Permit and shall provide copies
12 to Monterey Waterkeeper within ten (10) days of receiving the final laboratory report with the
13 results.

14 **C. REDUCTION OF POLLUTANTS IN DISCHARGES**

15 24. Numeric Limits. Defendant shall develop and implement BMPs for storm water
16 discharges from the Facility that reduce pollutant concentrations to levels below those in Table 1
17 and Table 2.

TABLE 1⁴

Parameter	Numeric Limit
pH	6 - 9 s.u.
Total Suspended Solids	100 mg/L
Oil and Grease	15 mg/L
Iron	1 mg/L

TABLE 2

Parameter	Numeric Limit
Total Suspended Solids	400 mg/L
Oil and Grease	25 mg/L

25. Table 1 Exceedances. An “Exceedance” of Table 1 is defined as follows: where the concentration of any pollutant in any storm water sample collected at a Facility Discharge Point exceeds any numeric limit contained in Table 1.

26. Table 2 Exceedances. An “Exceedance” of Table 2 is defined as follows: where the concentration of any pollutant in any storm water sample collected at a Facility Discharge Point exceeds any numeric limit contained in Table 2.

27. Corrective Actions. As of the Effective Date, and for the first reporting year of the Term, if any Discharge Point storm water sample demonstrates a Table 1 Exceedance as defined above in Table 1 and Paragraph 25, Defendant shall immediately take corrective actions to reduce or eliminate the Exceedance and document the corrective actions taken for each Exceedance. By July 15, 2025, the Defendant shall also prepare and submit to Monterey Waterkeeper a proposed revised SWPPP that incorporates the corrective actions taken to reduce pollutant levels to below the numeric limits and/or eliminating the relevant discharge of pollutants for the Facility.

28. Action Plan. Defendant shall develop and implement an action plan (“Action Plan”) if: (i) any Table 2 Exceedance(s) occur(s) during any time during the Term, (ii) the annual average

⁴ The numeric limits listed in Table 1 are for reference only, and the Table 1 limit applicable to each parameter shall be the then-effective limit provided by the applicable source, e.g., if the NAL for zinc is either increased to 0.30 mg/L or decreased to 0.20 mg/L, such new NAL, and not 0.26 mg/L, shall be used as the Table 1 limit for the purposes of this Consent Decree as if set forth herein. If the source of a limit in Table 1 is revised to no longer provide a limit for a given parameter, then the Parties shall meet and confer regarding the applicable Table 1 limit for such parameter for the purposes of this Consent Decree.

1 of all samples exceed the numeric limits in Table 1 in the 2024-2025 Reporting Year, (iii) any Table
2 1 Exceedance(s) occur(s) in any year during the Term after the 2024-2025 Reporting Year, or (iv)
3 Defendant has an unauthorized non-storm water discharge during the Term. A complete proposed
4 Action Plan shall be submitted to Monterey Waterkeeper within the following timeframes: (i)
5 within thirty (30) days of the receipt of the laboratory report demonstrating a Table 2 Exceedance;
6 (ii) by July 15, 2025 for any Action Plan required as a result of the annual average of all samples
7 exceeding the numeric limits in Table 1 in the 2024-2025 Reporting Year; (iii) by July 15 of the
8 applicable year any Table 1 Exceedance occurring during the Term after the 2024-2025 Reporting
9 Year; or (iv) within thirty (30) days of the unauthorized non-storm water discharge.

10 a. Action Plan Requirements. Each complete Action Plan submitted shall
11 include at a minimum: (1) the identification of the pollutant(s) discharged in
12 excess of the limit(s) in Table 1 or Table 2 and/or the applicable unauthorized
13 non-storm water discharge; (2) an assessment of the source of each pollutant
14 exceedance and/or applicable unauthorized non-storm water discharge; (3)
15 the identification of additional BMPs that shall be implemented to achieve
16 compliance with the limit(s) in Table 1 or Table 2 and/or unauthorized non-
17 storm water discharge prohibition, as well as the design plans and
18 calculations of these additional BMPs; and (4) time schedules for
19 implementation of the proposed BMPs. The time schedule(s) for
20 implementation shall ensure that all BMPs are implemented as soon as
21 possible, but in no event later than ninety (90) days following the submission
22 of the Action Plan, unless a later implementation date is mutually agreed
23 upon by the Settling Parties. Within fifteen (15) days of each of the BMPs set
24 forth in the Action Plan being implemented, Defendant shall confirm to
25 Monterey Waterkeeper in writing, with photographs, that such BMP has been
26 implemented as set forth in the Action Plan.

27 b. Action Plan Proposed BMPs. If an Action Plan is required as a result of an
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Exceedance of limits in Table 1 or Table 2 in discharges from the Central Operations Area, then the Defendant shall evaluate and include a plan for enhanced media filter treatment of storm water flows from the Central Operations Area. In addition, the following BMPs should generally be evaluated for inclusion in Action Plans to attain the Table 1 and Table 2 levels in the Facility's storm water discharges:

- i. Hydrologic Controls. Installation of additional berms or equivalent structural controls necessary to reduce or prevent storm water from flowing off-site other than through the engineered storm water conveyance system or storm water retention or treatment facilities;
 - ii. Sweeping. The increased/more frequent use of sweepers and manual sweeping in otherwise inaccessible areas;
 - iii. Treatment Systems. Installing additional components or systems, or otherwise improving, an advanced storm water treatment system, or making changes to the operation and maintenance protocols for such system, to provide more effective filtration treatment of storm water prior to discharge; and
 - iv. Evaluation of Existing BMPs. Replacing, rehabilitating, or eliminating existing BMPs, taking into account the age of the BMPs involved or employed, the engineering aspect of the application of various BMPs, and any adverse environmental impact of the BMPs.
- c. Action Plan Review. Monterey Waterkeeper shall have thirty (30) days upon receipt of Defendant's complete proposed Action Plan to provide Defendant with comments. Within fourteen (14) days of receiving Monterey Waterkeeper's proposed revisions to an Action Plan, Defendant shall consider each of Monterey Waterkeeper's recommended revisions and accept them or justify in writing why any comment is not incorporated. Action

Plan(s) developed and implemented pursuant to this Consent Decree are an obligation of this Consent Decree. Any disputes as to the adequacy of an Action Plan shall be resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section IV below. Disputes regarding the adequacy of a particular BMP shall not impact the schedule for implementing any other BMP set forth in the Action Plan.

d. Defendant shall revise the then-current SWPPP to reflect the changes required by the Action Plan, as set forth in Paragraph 33 below.

e. Defendant shall pay Three Thousand Dollars (\$3,000) for Monterey Waterkeeper's time spent reviewing an Action Plan. Payment shall be due at the time the Action Plan is submitted to Monterey Waterkeeper and shall be made to "Monterey Waterkeeper" via certified mail, return receipt requested to Monterey Waterkeeper, c/o Natalie R. Herendeen, P.O. Box 855, Seaside, CA 93955.

D. VISUAL OBSERVATIONS

29. Storm Water Discharge Observations. During the Term, staff trained pursuant to the training program described in Paragraph 32 shall conduct visual observations during the Facility's operating hours during every rain event during hours of operation. Such inspections shall comply with all requirements of Section XI.A.2 of the General Permit.

30. Monthly Visual Observations. During the Term, appropriately trained staff of Defendant shall conduct monthly non-storm water visual observations of the Facility. Such inspections shall comply with all requirements of Section XI.A.1 of the General Permit. Such monitoring shall include outfalls, Discharge Points, outdoor industrial equipment and storage areas, outdoor industrial activities areas, BMPs, and all other potential sources of industrial pollutants. All Discharge Points shall also be inspected for accumulation of dust, sediment, sand, grit, oily substances, oily sheens upon any standing water, and other materials associated with operations at the Facility. During the Wet Season, such inspections shall further include observations of all storm

1 water BMPs that are used only during the Wet Season at the Facility to ensure that operational
2 BMPs are being implemented, structural BMPs are in good condition or working order, and that
3 BMPs have been effective in producing clean conditions at the Facility. Such inspections shall
4 further include observation as to whether there are any non-storm water discharges from the
5 Facility.

6 31. Visual Observations Records. Defendant shall maintain observation records,
7 including photographs, to document compliance with Paragraphs 29 and 30. Such records shall
8 include, but not be limited to, the persons who completed the inspection, the date of the inspection,
9 and notes sufficient to describe the completed activity and all observations thereof, including but
10 not limited to: (i) whether BMPs are in a proper, working condition; (ii) whether any repair,
11 replacement, or operation and maintenance is needed for any BMPs; (iii) other conditions that have
12 the potential to lead to pollutant loading in storm water discharges; and (iv) photographs of all the
13 foregoing. Defendant shall provide Monterey Waterkeeper with a copy of those records within
14 seven (7) days of receipt of a written request from Monterey Waterkeeper for those records.

15 32. Employee Training Program. Within forty-five (45) days of the Effective Date,
16 Defendant shall develop and implement an employee training program that meets the following
17 requirements and ensures (1) that there is a sufficient number of employees at the Facility
18 designated to achieve compliance with the General Permit and this Consent Decree (“Designated
19 Employees”), and (2) that these Designated Employees are properly trained to perform the
20 activities required by the General Permit and this Consent Decree (“Training Program”).

- 21 a. Materials. Training materials should include, at minimum, a detailed Training
22 Manual or Standard Operating Procedure, including photographs, drawings,
23 or diagrams where appropriate, for reference and use by Defendant’s
24 personnel to ensure effective implementation of all BMPs at the Facility.
- 25 b. Language. The training and training materials shall be available and offered
26 in the language(s) in which relevant employees are fluent. If necessary,
27 Defendant shall provide a translator or translators at all trainings where such
28

translation is likely to improve staff comprehension of the Training Program and improve compliance with this Consent Decree and the General Permit.

- c. Training Frequency. Training shall be provided by a QISP familiar with the requirements of this Consent Decree and the General Permit, and shall be repeated as necessary to ensure that all relevant employees are familiar with the requirements of this Consent Decree, the Permit, and the Facility's SWPPP. All relevant new staff shall receive this training before assuming responsibilities for implementing the SWPPP.
- d. Sampling Training. Defendant shall designate an adequate number of employees or contractors necessary to collect storm water samples as required by this Consent Decree, including training to ensure samples are properly collected, stored, and submitted to a certified laboratory.
- e. Visual Observation Training. Defendant shall provide training on how and when to properly conduct visual observations to Designated Employees or contractors.
- f. Non-Storm Water Discharge Training. Defendant shall train all Designated Employees or contractors at the Facility on the General Permit's prohibition of non-storm water discharges, so that Designated Employees know what non-storm water discharges are and how to detect and prevent non-storm water discharges.
- g. Employees or Contractors. All Designated Employees or contractors at the Facility shall participate in the Training Program annually. New Designated Employees or contractors shall participate in the Training Program within thirty (30) days of their hiring date.
- h. Records. Defendant shall maintain training records to document compliance with this Paragraph and shall provide Monterey Waterkeeper with a copy of these records within seven (7) days of receipt of a written request.

1 33. SWPPP Revisions.

2 a. Initial SWPPP Revisions. Defendant shall amend the Facility's SWPPP to
3 incorporate the requirements in this Consent Decree and comply with the General
4 Permit and submit the complete, updated SWPPP to Monterey Waterkeeper
5 within forty-five (45) days of the Effective Date for Monterey Waterkeeper's
6 review and comment as set forth below. The complete, updated SWPPP shall
7 contain, at a minimum, the following elements:

- 8 i. A revised pollutant source assessment, including all elements required
9 by section X.G of the General Permit as well as assessments of the
10 potential for the Facility's storm water discharges to contain
11 pollutants for which the Receiving Waters are 303(d)-listed and/or
12 have Total Maximum Daily Loads;
- 13 ii. A detailed narrative description and assessment of each industrial
14 activity with the potential to impact storm water quality occurring at
15 the Facility as required by section X.G of the General Permit;
- 16 iii. Descriptions of all BMPs in accordance with section X.H.4 of the
17 General Permit, including without limitation BMPs required by this
18 Consent Decree;
- 19 iv. A set of site maps that comply with section X.E of the General Permit
20 and provisions of this Consent Decree, including accurately depicting
21 the different drainage areas and flows;
- 22 v. A MIP as required by sections XI and X.I of the General Permit;
- 23 vi. A designation (by position/title) of employees responsible for
24 carrying out storm water management, monitoring, sampling and
25 SWPPP implementation, e.g., visual inspection of each specific area,
26 monitoring each specific BMP, sampling, etc.; and
- 27 vii. A Training Program as described above in Paragraph 32.
- 28

1 b. Additional SWPPP Revisions.

- 2 i. Within thirty (30) days after approval of the Central Operations Area
3 BMP Plan or any Action Plan by Monterey Waterkeeper (or
4 resolution pursuant to Dispute Resolution), Defendant shall revise the
5 then-current SWPPP to reflect the changes required by the Action
6 Plan and submit the complete, updated SWPPP to Monterey
7 Waterkeeper for Monterey Waterkeeper's review and comment.
8 ii. Within thirty (30) days after any changes in industrial activities,
9 sources of industrial pollutants, changes to Discharge Points, or
10 changes to sections of the SWPPP identified in the SWPPP as
11 requiring a SWPPP revision (including but not limited to, changes in
12 Facility contacts or PPT members, changes or additions of BMPs, or
13 changes in or additions of industrial activities that impact storm water
14 discharge), Defendant shall revise the then-current SWPPP to reflect
15 such changes and submit the complete, updated SWPPP to Monterey
16 Waterkeeper for Monterey Waterkeeper's review and comment.
17 iii. Nothing in this section shall restrict Defendant from complying with
18 its obligation to immediately upload SWPPP revisions to SMARTS.

- 19 c. Review of SWPPP. For any SWPPP updates pursuant to Paragraphs 33.a. and
20 33.b., Monterey Waterkeeper shall have thirty (30) days upon receipt of
21 Defendant's complete SWPPP to provide Defendant with comments. Within
22 thirty (30) days of receiving Monterey Waterkeeper's comments and proposed
23 changes to the SWPPP, Defendant shall consider each of the comments and
24 proposed changes and either accept them or justify in writing why a change is
25 not incorporated. The Parties agree to work in good faith to resolve any
26 disputes with respect to the SWPPP, and any remaining disputes will be
27 resolved through timely initiation of the dispute resolution procedures in
28

1 Section IV below. Following its incorporation of proposed modification or
2 additions (if any) into each revised SWPPP, Defendant shall upload the
3 revised SWPPP to SMARTS.

4 **E. COMPLIANCE MONITORING AND REPORTING**

5 34. Monterey Waterkeeper may conduct two site inspections during the Term for the
6 purpose of ensuring compliance with this Consent Decree and the General Permit. In the event of a
7 dispute regarding Defendant's compliance with this Consent Decree, and provided a site inspection
8 would be relevant to resolving the Parties' dispute, the Parties agree to meet and confer regarding an
9 additional site inspection at Plaintiff's request. Plaintiff shall not unreasonably request, and
10 Defendant shall not unreasonably deny, an additional site inspection. Any site inspection shall occur
11 during normal business hours, and Monterey Waterkeeper will provide Defendant with at least two
12 (2) weeks' notice prior to a dry weather site inspection and at least forty-eight (48) hours' notice
13 prior to an inspection intended to occur during wet weather. If Josip Madar or other client designee,
14 the QISP, or counsel are unavailable, there will be no site visit until such time as all three are
15 available, or Defendant otherwise agrees in writing to allow the inspection to proceed. For any site
16 inspection requested to occur in wet weather, Plaintiff shall be entitled to adjust timing or
17 reschedule during normal business hours in the event the forecast changes and anticipated
18 precipitation appears unlikely and thus frustrates the purpose of visiting the Facility in wet weather.
19 Notice will be provided by electronic mail to the individual(s) designated below at Paragraph 61.
20 During the wet weather inspection, Plaintiff may request that Defendant collect a sample of
21 industrial storm water discharge from the Facility's Discharge Point(s), to the extent that such
22 discharges are occurring. Defendant shall collect the sample and provide a split sample to Monterey
23 Waterkeeper. Monterey Waterkeeper's representative(s) may observe the split sample(s) being
24 collected by Defendant's representative and shall supply any laboratory bottles for collection of
25 split samples. Monterey Waterkeeper shall be permitted to take photographs or video recordings
26 during any site inspection unless there is a business process underway at the Facility during the site
27 inspection that constitutes a trade secret in which case, any photograph or video of the business
28

process that constitutes a trade secret shall not be allowed. Defendant shall not be obligated to cease business processes or operations for a site inspection.

35. Document Provision. During the Term, Defendant shall notify and submit documents to Monterey Waterkeeper as follows:

- a. Defendant shall contemporaneously provide Monterey Waterkeeper, by electronic mail or other means to the individual(s) designated below at Paragraph 61, all compliance documents, monitoring and/or sampling data, written communications and/or correspondences, or any documents related to storm water quality at the Facility that are submitted to the Regional Water Quality Control Board, the State Water Resources Control Board, and/or any state or local agency, county or municipality.
- b. Within seven (7) business days of receipt by Defendant, Defendant shall send to Monterey Waterkeeper, by electronic mail to the individual(s) designated below at Paragraph 61, any compliance document, inspection report, written communication and/or correspondence, or any document related to storm water quality at the Facility received by Defendant from the Regional Water Quality Control Board, the State Water Resources Control Board, and/or any state or local agency, county, municipality.

36. Compliance Monitoring. Defendant shall partially defray costs associated with Plaintiff's monitoring of Defendant's compliance with this Consent Decree during the Term by paying Fifteen Thousand Dollars (\$15,000.00) to Monterey Waterkeeper within thirty (30) days of the Entry Date. Payment pursuant to this Paragraph shall be made via check, made payable to: "Monterey Waterkeeper" via certified mail, return receipt requested to Monterey Waterkeeper, c/o Natalie R. Herendeen, P.O. Box 855, Seaside, CA 93955. Failure to submit payment as required under this Paragraph will constitute breach of the Consent Decree.

F. ENVIRONMENTALLY BENEFICIAL PROJECT, LITIGATION FEES AND COSTS, MISSED DEADLINES, AND INTEREST

37. Environmentally Beneficial Project. To fund environmentally beneficial project

activities that will reduce or mitigate the impacts of storm water pollution from industrial activities occurring in tributaries to Monterey Bay, Defendant shall make a payment totaling Thirty Thousand Dollars (\$30,000.00) to the Rose Foundation within thirty (30) days of the Entry Date, payable to the Rose Foundation for Communities and the Environment and sent via overnight mail to Rose Foundation, 201 4th Street, Suite 102, Oakland, CA 94607. Failure to submit payment as required under this Paragraph will constitute breach of the Consent Decree.

38. Monterey Waterkeeper's Fees and Costs. Defendant shall pay a total of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00) to Monterey Waterkeeper to partially reimburse Plaintiff for their investigation fees and costs, expert/consultant fees and costs, reasonable attorneys' fees, and other costs incurred as a result of investigating and filing the lawsuit and negotiating a resolution of this matter within thirty (30) days of the Entry Date. The payment shall be made payable to: "California Coastkeeper Alliance" and delivered by overnight carrier to California Coastkeeper Alliance, c/o Sean Bothwell, 1100 11th Street, 3rd Floor, Sacramento, California 95814. Failure to submit payment as required under this Paragraph will constitute breach of the Consent Decree.

39. Missed Deadlines. In the event that Defendant fails to submit to Monterey Waterkeeper any payment, document, report, or communication required by this Consent Decree, and such delay is unexcused, Defendant shall pay a stipulated payment of (i) Two Hundred Dollars (\$200.00) for every fourteen (14) days a payment is late and said lateness is unexcused, or (2) One Hundred Dollars (\$100.00) for each fourteen (14) days a document, report or communication is late and unexcused. Under no circumstances shall a total stipulated payment for an individual late payment, document, report, or communication exceed two thousand dollars (\$2,000.00) per calendar year during the term of this Consent Decree. Excuses for delayed deadlines shall be addressed pursuant to the Section IV "Dispute Resolution Procedures" herein below. Payments shall be made by check payable to: Rose Foundation for Communities and the Environment, and such funds shall be used for the sole purpose of funding environmentally beneficial projects, as described in Paragraph 37. Payment shall be sent via overnight mail to Rose Foundation, 201 4th

Street, Suite 102, Oakland, CA 94607. Defendant shall make the stipulated payment within fourteen (14) days after the resolution of the event that precipitated the stipulated payment liability.

IV. DISPUTE RESOLUTION

40. This Court shall retain jurisdiction over this matter for the Term for the purposes of enforcing the Consent Decree terms and conditions, and adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree. The Court shall have the power to enforce this Consent Decree with all available legal and equitable remedies, including contempt.

41. Meet and Confer. Either Party to this Consent Decree may invoke the dispute resolution procedures of this Section IV by notifying the other Party in writing of the matter(s) in dispute and of the disputing Party's proposal for resolution. The Parties shall then meet and confer in good faith (either telephonically or in person) within ten (10) days of the date of the notice in an attempt to fully resolve the dispute no later than thirty (30) days from the date of the meet and confer.

42. Settlement Conference. If the Parties cannot resolve the dispute within thirty (30) days from the date of the meet and confer described in Paragraph 41, the Parties agree that the dispute may be submitted for formal resolution by filing a motion before the United States District Court for the Northern District of California. The Parties agree to request an expedited hearing schedule on the motion.

43. In resolving any dispute arising from this Consent Decree before the Court, the prevailing Party shall be entitled to seek fees and costs incurred pursuant to the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and applicable case law interpreting such provisions, or as otherwise provided for by statute and/or case law.

V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

44. Plaintiff's Waiver and Release of Defendant. In consideration of the above, upon the Effective Date of this Consent Decree, Plaintiff, on its own behalf and on behalf of its officers and directors, release Defendant, its officers, directors, managers, employees, members, parents, subsidiaries, divisions, affiliates, successors or assigns, agents, attorneys and other representatives,

1 from and waives all claims that were raised in the 60-Day Notice Letter and/or the Complaint up to
2 and including the Termination Date of this Consent Decree.

3 45. Defendant's Waiver and Release of Plaintiff. In consideration of the above, upon the
4 Effective Date of this Consent Decree, Defendant, on its own behalf and on behalf of its officers,
5 directors, employees, parents, subsidiaries, affiliates and each of their successors or assigns, release
6 Plaintiff, its officers and directors, from and waives all claims related to the 60-Day Notice Letter
7 and/or the Complaint up to and including the Termination Date of this Consent Decree.

8 46. Nothing in this Consent Decree limits or otherwise affects Plaintiff's rights to
9 address or take any position that it deems necessary or appropriate in an informal or formal
10 proceeding before the State Water Resources Control Board, Regional Water Quality Control
11 Board, EPA, or any other judicial or administrative body on any matter relating to Defendant's
12 compliance at the Facility with the General Permit or the Clean Water Act occurring or arising
13 during the term of the Consent Decree.

14 **VI. MISCELLANEOUS PROVISIONS**

15 47. No Admission of Liability. The Parties enter into this Consent Decree for the
16 purpose of avoiding prolonged and costly litigation. Neither the Consent Decree nor any payment
17 pursuant to the Consent Decree shall constitute or be construed as a finding, adjudication, or
18 acknowledgement of any fact, law or liability, nor shall it be construed as an admission of violation
19 of any law, rule, or regulation. Defendant maintains and reserves all defenses it has or may have to
20 any and all of the alleged violations that have been raised in the 60-Day Notice Letter, the
21 Complaint or that may be raised in the future.

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

25 49. Authority. The undersigned representatives for Plaintiff and Defendant each certify
26 that s/he is fully authorized by the Party whom s/he represents to enter into this Consent Decree. A
27 Party's signature to this Consent Decree transmitted by facsimile or electronic mail shall be deemed
28

1 binding.

2 50. Construction. The language in all parts of this Consent Decree shall be construed
3 according to its plain and ordinary meaning, except as to those terms defined in the Permit, the
4 CWA, or specifically herein. The captions and paragraph headings used in this Consent Decree are
5 for reference only and shall not affect the construction of this Consent Decree.

6 51. Full Settlement. This Consent Decree constitutes a full and final settlement of this
7 matter.

8 52. Integration Clause. This is an integrated Consent Decree. This Consent Decree is
9 intended to be a full and complete statement of the terms of the agreement between the Parties and
10 expressly supersedes any and all prior oral or written agreements, covenants, representations, and
11 warranties (express or implied) concerning the subject matter of this Consent Decree.

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

15 54. Choice of Law. The laws of the United States shall govern this Consent Decree.

16 55. Diligence. Defendant shall diligently file and pursue all required permit applications
17 for any required BMPs and shall diligently procure contractors, labor, and materials needed to
18 complete all BMPs by the required deadlines.

19 56. Effect of Consent Decree. Compliance with this Consent Decree does not mean that
20 Defendant is complying with the General Permit, the CWA, or any other law, rule, or regulation.

21 57. Negotiated Settlement. The Settling Parties have negotiated this Consent Decree, and
22 agree that it shall not be construed against the Party preparing it, but shall be construed as if the
23 Settling Parties jointly prepared this Consent Decree, and any uncertainty and ambiguity shall not
24 be interpreted against any one Party.

25 58. Modification of the Consent Decree. This Consent Decree, and any provisions
26 herein, may not be changed, waived, discharged, or terminated unless by a written instrument,
27 signed by the Parties and approved by the Court. Any request to modify any provision of the
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1 Consent Decree, including but not limited to any deadline(s) set forth herein, must be made in
2 writing at least fourteen (14) days before the existing deadline(s) applicable to the provision(s)
3 proposed to be modified.

4 59. Assignment. Subject only to the express restrictions contained in this Consent
5 Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the
6 benefit of and be binding upon the Parties, and their successors and assigns. Defendant shall notify
7 Plaintiff within ten (10) days of any assignment.

8 60. Force Majeure. Neither of the Parties shall be considered to be in default in the
9 performance of any of their respective obligations under this Consent Decree when performance
10 becomes impossible due to a Force Majeure event. A Force Majeure event is any circumstance
11 beyond a Settling Party's control, including without limitation, any act of God, war, fire,
12 earthquake, flood, windstorm, pandemic, public health crisis, or natural catastrophe; criminal,
13 intentional, negligent, or reckless acts by third parties, such as civil disturbance, vandalism,
14 sabotage, or terrorism; restraint by court order or public authority or agency; or action or non-action
15 by, or inability to obtain the necessary authorizations or approvals from any governmental agency.
16 A Force Majeure event shall not include normal inclement weather, economic hardship, inability to
17 pay, or employee negligence. Any Party seeking to rely upon this Paragraph to excuse or postpone
18 performance shall have the burden of establishing that it could not reasonably have been expected to
19 avoid the Force Majeure event and which by exercise of due diligence has been unable to overcome
20 the failure of performance. The Parties shall exercise due diligence to resolve and remove any Force
21 Majeure event.

22 61. Correspondence. All notices required herein or any other correspondence pertaining
23 to this Consent Decree shall be, the extent feasible, sent via electronic mail transmission to the e-
24 mail address listed below, or if electronic mail is not feasible, then by certified U.S. mail with return
25 receipt, or by hand delivery to the following addresses:

If to Plaintiff:

Monterey Waterkeeper
 Natalie R. Herendeen
 P.O Box 855
 Seaside, CA 93955
 Email: natalie@montereywaterkeeper.org

With copies to:

California Coastkeeper Alliance
 Drevet Hunt
 1100 11th Street, 3rd Floor
 Sacramento, California 95814
 Email: dhunt@cacoastkeeper.org

If to Defendant:

Diane G. Kindermann
 Abbott & Kindermann, Inc.
 2100 21st Street
 Sacramento, CA 95818
 Email: dkindermann@aklandlaw.com

With copies to:

Kristich Monterey Pipe
 Josip Madar
 225 Salinas Road, Suite B
 Royal Oaks, CA 95076
 Email: kmpipe1@gmail.com

Notifications of communications shall be deemed submitted three (3) days after the date that they are postmarked and sent by first-class mail, or immediately after acknowledgement of receipt via email by the receiving Party. Any change of address or addresses shall be communicated in the manner described above for giving notices.

62. If for any reason the Federal Agencies should object to entry of this Consent Decree or to any portion of this Consent Decree or the Court should decline to approve this Consent Decree in the form presented, the Parties shall use their best efforts to work together to modify the Consent Decree within thirty (30) days so that it is acceptable to the Federal Agencies or the Court, as applicable. If the Parties are unable to modify this Consent Decree in a mutually acceptable manner that is also acceptable to the Court, this Consent Decree shall immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408 and California Evidence Code Section 1152.

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1 The Parties hereto enter into this Consent Decree and submit it to the Court for its approval
2 and entry as a final judgment.

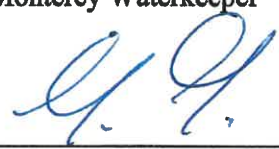
3 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date
4 first set forth below.

5
6 APPROVED AS TO CONTENT

7
8
9 Dated: _____, 2025

By: _____
Natalie R. Herendeen
Executive Director
Monterey Waterkeeper

10
11
12
13 Dated: 03/13, 2025

By: 
Kristo Kristich
President
Kristich Monterey Pipe Company

14
15
16 APPROVED AS TO FORM

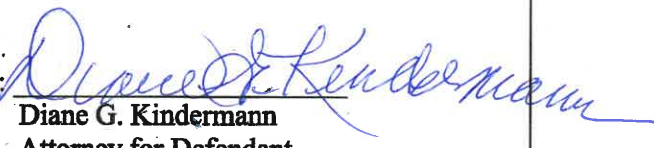
17 California Coastkeeper Alliance

18
19
20 Dated: _____, 2025

By: _____
Drevet Hunt
Attorney for Plaintiff
Monterey Waterkeeper

21
22
23 Abbott & Kindermann, Inc.

24
25
26 Dated: 3.13, 2025

By: 
Diane G. Kindermann
Attorney for Defendant
Kristich Monterey Pipe Company

1 The Parties hereto enter into this Consent Decree and submit it to the Court for its approval
2 and entry as a final judgment.

3 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date
4 first set forth below.

5
6 APPROVED AS TO CONTENT

7
8
9 Dated: _____, 2025

By: _____
Natalie R. Herendeen
Executive Director
Monterey Waterkeeper

10
11
12
13 Dated: _____, 2025

By: _____
Kristo Kristich
President
Kristich Monterey Pipe Company

14
15
16 APPROVED AS TO FORM

17
18 California Coastkeeper Alliance

19
20 Dated: March 11, 2025

By: 
Drevet Hunt
Attorney for Plaintiff
Monterey Waterkeeper

21
22
23 Abbott & Kindermann, Inc.

24
25
26 Dated: _____, 2025

By: _____
Diane G. Kindermann
Attorney for Defendant
Kristich Monterey Pipe Company

1 The Parties hereto enter into this Consent Decree and submit it to the Court for its approval
2 and entry as a final judgment.

3 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date
4 first set forth below.

5
6 APPROVED AS TO CONTENT

7
8
9 Dated: 3/11, 2025

By: 
Natalie R. Herendeen
Executive Director
Monterey Waterkeeper

10
11
12
13 Dated: _____, 2025

By: _____
Kristo Kristich
President
Kristich Monterey Pipe Company

14
15
16 APPROVED AS TO FORM

17
18 California Coastkeeper Alliance

19
20 Dated: _____, 2025

By: _____
Drevet Hunt
Attorney for Plaintiff
Monterey Waterkeeper

21
22
23 Abbott & Kindermann, Inc.

24
25
26 Dated: _____, 2025

By: _____
Diane G. Kindermann
Attorney for Defendant
Kristich Monterey Pipe Company

1
2 **IT IS SO ORDERED.**
3 **FINAL JUDGMENT**

4 Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall
5 constitute a final judgment between the Plaintiff and Defendant.

6
7
8 Dated: May 7, 2025

NORTHERN DISTRICT OF CALIFORNIA

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11 HONORABLE VIRGINIA K. DeMARCHI
12 Magistrate Judge of the United States District Court
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Exhibit A

Preliminary Map of the Central Operations Area and Associated Sampling Locations

Kristich Monterey Pipe Co., Pajaro, CA

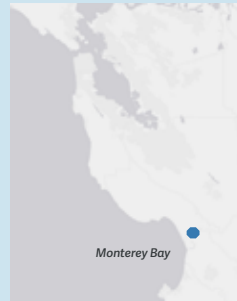
● Proposed sampling locations

■ Potential Catchment of the Central Operations Area

CONFIDENTIAL SETTLEMENT COMMUNICATION



25 feet



Gravel Filter
Outlet

Central Operations Area
Curb Cut

Central Operations Area
Southern Inlet

