

ATTACHMENT E

Santa Monica Baykeeper v. Kramer Metals, Inc.
Consent Decree

EXHIBIT A

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12 Attorneys for Plaintiff

13 SANTA MONICA BAYKEEPER

14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 SANTA MONICA BAYKEEPER,
18 a non-profit corporation,

19 Plaintiff,

20 v.

21 KRAMER METALS, Inc., *et al.*,

22 Defendants.

Case No. CV-07-03849 DDP (FMOx)

Hon. Dean D. Pregerson

[Proposed]
CONSENT DECREE

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

1 **WHEREAS**, Santa Monica Baykeeper (“Baykeeper” or “Plaintiff”) is a non-
2 profit corporation dedicated to the preservation, protection and defense of the
3 environment, the wildlife, and the natural resources of the Santa Monica Bay watershed
4 and area receiving waters in Los Angeles County;

5 **WHEREAS**, Kramer Metals, Inc. (“Kramer Inc.” or “Defendant”) is an Owner
6 and/or Operator of the Kramer Inc. scrap metal recycling facility located at 1760 E.
7 Slauson Avenue, Los Angeles, California (hereinafter “Kramer 1760 Facility”) and was
8 an Owner and/or Operator of the Kramer Inc. facility located at 1000 E. Slauson
9 Avenue (hereinafter “Kramer 1000 Facility”) (collectively referred to as the “Kramer
10 Facilities” or the “Sites”);

11 **WHEREAS**, Baykeeper contends that the Kramer Inc.’s operations at the Kramer
12 Facilities result in discharges of pollutants to storm drains, Compton Creek, the Los
13 Angeles River, and ultimately San Pedro Bay and the Pacific Ocean (collectively
14 referred to as the “Receiving Waters”) and Kramer Inc.’s discharges are regulated by
15 the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“CWA” or “Act”),
16 Sections 301(a) and 402, 33 U.S.C §§ 1311(a), 1342;

17 **WHEREAS**, on 10 March 2007, Baykeeper served Kramer Inc., Spectrum Alloys,
18 Inc., Continental Truck and Towing Co., LLC, and R & P Renovators, LLC,
19 Kramer/Spirtas, LLC, Rail Prop, LLC, the United States Environmental Protection
20 Agency (“EPA”), EPA Region IX, the State Water Resources Control Board (“State
21 Board”) and the Regional Water Quality Control Board (“Regional Board”), with a notice
22 of intent to file suit ("60-Day Notice") under Sections 505(a) and (b) of the CWA, 33
23 U.S.C. § 1365(a) and (b). The 60-Day Notice alleged that the recipients had in the past
24 and in fact continue to violate Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a)
25 and 1342, by discharging pollutants into Receiving Waters in violation of National
26 Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS0000001
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1 [State Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-
2 DWQ (“Industrial Permit”) and the Act;

3 **WHEREAS**, on 13 June 2007, Baykeeper filed a complaint against Kramer Inc.,
4 *Spectrum Alloys, Inc., Continental Truck and Towing Co., LLC, and R & P Renovators,*
5 *LLC, Kramer/Spirtas, LLC, and Rail Prop, LLC*, in the United States District Court,
6 Central District of California (Civil Case No. CV 07-03849 VBF (FFMx)) entitled
7 *Santa Monica Baykeeper v. Kramer Metals, Inc., Spectrum Alloys, Inc., Continental*
8 *Truck and Towing Co., LLC, and R & P Renovators, LLC, Kramer/Spirtas, LLC, and*
9 *Rail Prop, LLC* ("Complaint");

10 **WHEREAS**, on December 12, 2008, Plaintiff filed a Notice of Motion and
11 Motion for Partial Summary Judgment (“Motion”) to establish Kramer Inc.’s liability
12 for violations of the Industrial Permit and the Act at the Kramer Facilities;

13 **WHEREAS**, on February 27, 2009, the Court issued an order granting in part
14 Plaintiff’s Motion;

15 **WHEREAS**, Baykeeper and Kramer Inc. (collectively referred to herein as the
16 "Settling Parties" or “Parties”) have agreed that it is in the Parties' mutual interest to
17 enter into a Consent Decree setting forth terms and conditions appropriate to resolving
18 the allegations set forth in the Complaint without further proceedings;

19 **WHEREAS**, this Consent Decree shall be submitted to the United States
20 Department of Justice and the United States Environmental Protection Agency for the
21 statutory review period pursuant to 33 U.S.C. § 1365(c) and 40 C.F.R. § 135.5;

22 **WHEREAS**, all actions taken by Kramer Inc. pursuant to this Consent Decree
23 shall be made in compliance with all applicable federal, state and local rules and
24 regulations;

25 ///

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

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

6 2. Venue is appropriate in the Central District Court pursuant to Section
7 505(c)(1) of the Act, 33 U.S.C. §1365(c)(1), because the Kramer Facilities at which the
8 alleged violations took place are located within this District;

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

11 4. Baykeeper has standing to bring this action.

12 **I. OBJECTIVES**

13 5. It is the express purpose of the Parties entering into this Consent Decree to
14 further the objectives set forth in Section 101 *et seq.* of the CWA, 33 U.S.C. § 1251 *et*
15 *seq.*, and to resolve those issues alleged by Baykeeper in its Complaint. In light of these
16 objectives and as set forth fully below, Kramer Inc. agrees, *inter alia*, to comply with the
17 provisions of this Consent Decree and to comply with the requirements of the Industrial
18 Permit and all applicable provisions of the CWA at the Kramer 1760 Facility.
19 Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the
20 Kramer 1760 Facility “not cause or contribute to the exceedance of an applicable water
21 quality standard.” Effluent Limitation B(3) of the Industrial Permit requires that Best
22 Management Practices (“BMPs”) be developed and implemented to achieve Best
23 Available Technology (“BAT”) and the Best Conventional Pollutant Control Technology
24 (“BCT”). Kramer Inc. is required to develop and implement BMPs necessary to comply

1 with the Industrial Permit's requirement to achieve compliance with BAT/BCT standards
2 and with Water Quality Standards.¹

3 **II. COMMITMENTS OF THE PARTIES**

4 **A. Industrial Storm Water Pollution Control Measures**

5 6. Kramer Inc. shall comply with the industrial storm water pollution control
6 requirements of this Consent Decree by implementing the Discharge Minimization and
7 Interim Discharge Minimization provisions of this Consent Decree as set forth below.

8 7. Interim Discharge Minimization. In the 2009-2010 wet season (defined as
9 October 1 – May 31), Kramer Inc. shall eliminate storm water discharges from the
10 Kramer 1760 Facility for all storms up to and including the 5 year, 24 hour storm event
11 ("Interim Qualifying Storm Event"), as defined by the National Oceanographic and
12 Atmospheric Administration ("NOAA") Atlas 2, Vol. XI, Figure 39 (1973) with an
13 assumed dry antecedent condition and 4 total inches of rainfall over a 24-hour period.
14 The Parties agree that any discharge of stormwater and/or stormwater pollutants from the
15 Kramer 1760 Facility in connection with a rainfall event that exceeds an Interim
16 Qualifying Storm Event during the 2009-2010 wet season is not a violation of this
17 consent decree.

18 8. Kramer Inc. shall, within 30 days of the Effective Date of this Consent
19 Decree, develop an Interim Discharge Minimization BMP Plan ("Interim BMP Plan") to
20 detain, capture, infiltrate, evaporate, harvest treat, or store industrial storm water
21 generated at the Kramer 1760 Facility during storm events up to and including the
22 Interim Qualifying Storm Event. The Interim BMP Plan may contain the following
23 measures listed herein:

24 (a) Materials Storage and Industrial Activities. Placing sources of
25 contamination in covered containers or under cover with such areas contained by

26 _____
27 ¹ Water Quality Standards means water quality criteria contained in the Regional Water Quality Control
28 Plan, Los Angeles Region ("Basin Plan"), the California Ocean Plan, the National Toxics Rule, the
California Toxics Rule, and other state or federally approved surface water quality plans.

1 berming or other containment sufficient to prevent the exposure of pollutants to storm
2 water or rainwater and the runoff or discharge of pollutants;

3 (b) Coating. Coating structural sources of contamination (e.g. galvanized
4 building roofs and siding);

5 (c) Sweeping. Employing high efficiency sweeping in order to prevent
6 the discharge of pollutants;

7 (d) Harvesting and Storing Runoff. Constructing and maintaining on-site
8 retention facilities (such as retention ponds or swales, infiltration basins, baker tanks,
9 sumps, cisterns, or dry wells/ injection wells) designed to hold and store the runoff
10 generated by a 5 year 24 hour return period storm event without any off-site discharge;

11 (e) Infiltrating Runoff. Creating a pervious site such that infiltration
12 happens passively through the site;

13 (f) Infiltration Structure. Collecting and routing storm water to a
14 structure that is designed to be an infiltration structure (such as an infiltration basin or
15 dry well/ injection well);

16 (g) Treating Runoff. Treating runoff discharging from the site.

17 (h) Sand Filters. The Interim BMP Plan may include the installation of
18 the advanced sand filters evaluated in the Caltrans Retrofit Study (“CRS”) at appropriate
19 locations.

20 (i) Routing Discharge to the Publicly Owned Treatment Works. Routing
21 discharge to the publicly owned treatment works (“POTW”)/ sanitary sewers, in
22 combination with on-site retention such that flows are discharged off-peak in the POTW
23 so as not to risk exacerbating wet weather Sanitary Sewer Overflow risks from the
24 POTW.

25 (j) Vehicle and Equipment Maintenance and Fueling.

26 i. Conducting all vehicle and equipment maintenance and fueling
27 at the Kramer 1760 Facility on asphalt or another impermeable surface;

1 ii. Conducting all vehicle and equipment maintenance and fueling
2 at the Kramer 1760 Facility under cover;

3 iii. Berthing of otherwise containing the surface of the area where
4 vehicle maintenance and fueling occurs (hereinafter "Maintenance and Fueling Area") in
5 order to prevent the exposure of pollutants to storm water or rainwater and the runoff or
6 discharge of pollutants;

7 iv. Cleaning the Maintenance and Fueling Area as necessary to
8 control track-off of pollutants;

9 v. Dispensing all petroleum products within the Maintenance and
10 Fueling Area(s);

11 vi. Installing tire washing facilities at exit points from the Kramer
12 1760 Facility to prevent off-site tracking from vehicles;

13 vii. Annually power washing the entire paved part of the Kramer
14 1760 Facility, including areas not reachable by mechanical sweepers, and dispose of the
15 contaminated water consistent with all federal, state and local requirements, and not to
16 area storm drains.

17 9. Defendant shall complete and provide the Interim BMP Plan to Baykeeper
18 for review and comment no later than 30 days from the Effective Date of this Consent
19 Decree. Baykeeper shall respond with comments within 16 days of receiving the Interim
20 BMP Plan. Within 12 days of receiving Baykeeper's comments, if any, Defendant shall
21 submit a final Interim BMP Plan to Baykeeper, incorporating Baykeeper's comments into
22 the Interim BMP Plan, or justifying in writing why any comment is not being
23 incorporated. Defendant shall implement the Interim BMP Plan within 30 days of
24 submitting the final Interim BMP Plan to Baykeeper. All BMPs in the Interim BMP Plan
25 shall be implemented and functioning at the Kramer 1760 Facility on or before October
26 1, 2009 (the start of the 2009-2010 wet season). Any disputes as to the Interim BMP
27 Plan shall be resolved in accordance with the dispute resolution provisions of paragraphs
28

1 24 through 27 below.

2 10. In the 2009-2010 wet season, stormwater discharges from the Kramer 1760
3 Facility Containment Area (as defined in Exhibit A) occurring during rain events less
4 than the Interim Qualifying Storm Event shall be considered a breach of this Consent
5 Decree except where force majeure is demonstrated pursuant to paragraph 33 of this
6 Consent Decree. Non-stormwater discharges from the Containment Area not authorized
7 by the Industrial Permit, shall also be considered a breach of this Consent Decree.
8 Permitted Discharges to the POTW/sanitary sewer shall not be considered a discharge
9 from the Containment Area, and shall not be considered a breach of this Consent Decree.

10 11. Discharge Minimization. In the 2010-2011 wet season (defined as October
11 1 – May 31), Kramer Inc. shall eliminate storm water discharges from the Kramer 1760
12 Facility's Containment Area (as defined in Exhibit A) for all storms up to and including
13 the 25 year, 24 hour storm event ("Discharge Minimization Qualifying Storm Event"), as
14 defined by the National Oceanographic and Atmospheric Administration ("NOAA")
15 Atlas 2, Vol. XI, Figure 41 (1973) with an assumed dry antecedent condition and 6 total
16 inches of rainfall over a 24-hour period. The Parties agree that any discharge of
17 stormwater and/or stormwater pollutants from the Kramer 1760 Facility in connection
18 with a rainfall event that exceeds a Discharge Minimization Qualifying Storm Event is
19 not a violation of this consent decree.

20 12. Kramer Inc. shall, within 60 days of the Effective Date of this Consent
21 Decree, develop a Discharge Minimization BMP Plan ("DM BMP Plan") detailing
22 Kramer Inc.'s proposal to roof all areas of the Kramer 1760 Facility where industrial
23 activity takes place. Defendant shall complete and provide the DM BMP Plan to
24 Baykeeper for review and comment no later than 60 days from the Effective Date of this
25 Consent Decree. Baykeeper shall respond with comments within 30 days of receiving the
26 DM BMP Plan. Within 20 days of receiving Baykeeper's comments, if any, Defendant
27 shall submit a final DM BMP Plan to Baykeeper, incorporating Baykeeper's comments
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1 into the DM BMP Plan, or justifying in writing why any comment is not being
2 incorporated. All roofing and any additional BMPs in the DM BMP Plan shall be
3 completed, installed, and functioning at the Kramer 1760 Facility on or before October 1,
4 2010 (the start of the 2010-2011 wet season).

5 **B. STORM WATER POLLUTION PREVENTION PLAN**

6 13. SWPPP Revisions. Within 45 days of the Effective Date of this Consent
7 Decree, Kramer Inc. agrees to revise the SWPPP currently in effect at the Kramer 1760
8 Facility to incorporate all storm water pollution prevention measures and other applicable
9 requirements set forth in this Consent Decree and/or the Industrial Permit. Specifically,
10 the SWPPP shall include a description of all industrial activities and corresponding
11 potential pollution sources and, for each potential pollutant source, a description of the
12 potential pollutants from the sources. The SWPPP shall also identify BMPs (and their
13 implementation dates) designed to achieve compliance with the provisions of this
14 Consent Decree. Kramer Inc. shall revise the SWPPP as necessary to incorporate
15 additional BMPs developed pursuant to this Consent Decree.

16 14. Baykeeper's Review of Revised SWPPP. Kramer Inc. shall submit one
17 copy of the revised SWPPP to Baykeeper within seven days of completion of the
18 revisions.

19 a. Within twenty (20) days of Baykeeper's receipt of the revised
20 SWPPP, Baykeeper shall provide Kramer Inc. with comments and suggestions, if any,
21 concerning the revisions to the SWPPP.

22 b. Within ten (10) days of Kramer Inc.'s receipt of Baykeeper's
23 comments on the revised SWPPP, Kramer Inc. shall incorporate Baykeeper's comments
24 and re-issue the SWPPP.

25 c. If Baykeeper is dissatisfied with the SWPPP after its re-issuance
26 pursuant to paragraph 14(b) above, Baykeeper may, within sixty (60) days of
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1 Baykeeper's receipt of the SWPPP, elect to invoke the dispute resolution procedures
2 outlined in paragraphs 24 through 27 below.

3 **C. MONITORING AND REPORTING**

4 15. Site Inspections. During the life of this Consent Decree, Baykeeper's
5 Water Quality Engineer, accompanied by Baykeeper's attorney or other representative,
6 may conduct up to two Site Inspections each calendar year at the Kramer 1760 Facility .
7 The Site Inspections shall occur during normal business hours and Baykeeper shall
8 provide Kramer Inc. with forty-eight (48) hours notice prior to each inspection. If an
9 inspection is to take place on a Monday, Baykeeper shall provide written notice not later
10 than 10:00 a.m. on the preceding Friday during normal business hours. During the Site
11 Inspections, Baykeeper and/or its representatives shall be allowed access to the Kramer
12 1760 Facility's SWPPP and monitoring records and to all monitoring reports and data for
13 the Kramer 1760 Facility. During the Site Inspections, Baykeeper and/or its
14 representatives may collect samples of storm water discharges at the Kramer 1760
15 Facility. A certified California laboratory shall analyze storm water samples collected by
16 Baykeeper. Baykeeper shall make every reasonable effort to ensure that its inspections
17 are scheduled in such a manner as to allow Kramer Inc.'s compliance officer to be
18 present at all inspections.

19 16. Compliance Monitoring and Oversight. Kramer Inc. agrees to help defray
20 Baykeeper's reasonable costs incurred in conducting Site Inspections and compliance
21 monitoring by reimbursing Baykeeper Ten Thousand Dollars (\$10,000) for these costs.
22 Five-Thousand (\$5,000.00) dollars of this amount shall be paid within ten (10) days of
23 the Effective Date of this Consent Decree. The remaining Five Thousand (\$5,000.00)
24 dollars shall be paid within one hundred fifty (150) days of the Effective Date. Kramer
25 Inc. agrees to make compliance monitoring and oversight funds payable to "Lawyers for
26 Clean Water Attorney Client Trust Account" and delivered by certified mail or overnight
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1 delivery to Lawyers for Clean Water, Inc., 1004A O'Reilly Avenue, San Francisco,
2 California 94129, attention Layne Friedrich.

3 17. Reporting. During the life of this Consent Decree, on a monthly basis,
4 Kramer Inc. shall provide Baykeeper with a copy of all compliance and monitoring data,
5 including inspection reports, related to the Kramer 1760 Facility. During the life of this
6 Consent Decree, Kramer Inc. shall provide Baykeeper with all laboratory analyses or
7 stormwater discharge information related to the Kramer 1760 Facility within seven days
8 of Kramer Inc.'s receipt of such information.

9 18. Document Provision. During the life of this Consent Decree, Kramer Inc.
10 shall copy Baykeeper on all documents related to water quality at the Kramer 1760
11 Facility that are submitted to the Regional Board, the State Board, and/or any State or
12 local agency or municipality. Such reports and documents shall be provided to
13 Baykeeper concurrently as they are sent to the agencies and/or municipalities.

14 **D. ENVIRONMENTAL PROJECTS AND FEES**

15 19. Environmental Mitigation Project. Kramer Inc. agrees to pay Ninety-Five
16 Thousand Dollars (\$95,000.00) to the Rose Foundation for use in a supplemental
17 environmental project to eliminate or mitigate the impacts of storm water pollution to the
18 Compton Creek and/or Los Angeles River watersheds receiving discharges from the
19 Kramer 1760 Facility and Kramer 1000 Facility. Kramer Inc. shall make the mitigation
20 payment within one hundred fifty (150) days of the Effective Date of this Consent
21 Decree and mail via certified mail or overnight delivery to the Rose Foundation, 6008
22 College Avenue, Suite 10, Oakland, CA 94618. Kramer Inc. shall provide Baykeeper
23 with a copy of such payment.

24 20. Baykeeper's Fees and Costs. Kramer Inc. agrees to reimburse Baykeeper
25 for Baykeeper's investigation fees and costs, expert fees and costs, reasonable attorneys'
26 fees, and other costs incurred as a result of investigating and preparing the lawsuit, and
27 negotiating a resolution of this matter, totaling Three-Hundred Forty-Five Thousand
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1 (\$345,000.00) Dollars. The first payment of Forty-Five Thousand (\$45,000.00) Dollars
2 shall be made within ten days of the Effective Date, payable to “Lawyers for Clean
3 Water Attorney Client Trust Account” and delivered by certified mail or overnight
4 delivery to: Lawyers for Clean Water, Inc., 1004A O’Reilly Avenue, San Francisco,
5 California 94129 attention Layne Friedrich. The remaining sum of Three Hundred
6 Thousand (\$300,000.00) dollars shall be made in the manner above within one-hundred
7 fifty (150) days of the Effective Date.

8
9 **E. STIPULATED PAYMENT**

10 21. Kramer Inc. shall make a remediation payment of One Thousand Dollars
11 (\$1,000) for each missed deadline included in or contemplated by this Consent Decree,
12 unless the missed deadline results from a Force Majeure Event. Payments for missed
13 deadlines shall be made to Santa Monica Bay Restoration Commission for the restoration
14 and/or improvement of the watershed in the area affected by the missed deadline.
15 Kramer Inc. agrees to make the stipulated payment within thirty (30) days of a missed
16 deadline and mail via certified mail or overnight delivery to Santa Monica Bay
17 Restoration Commission, 320 West 4th Street, Suite 200, Los Angeles, CA 90013.
18 Kramer Inc. shall provide Baykeeper with a copy of each such payment.

19
20 **F. COMMITMENTS OF PLAINTIFF**

21 22. Stipulated Dismissal. Within three (3) days of execution of this Consent
22 Decree by the Parties, Baykeeper shall file this Consent Decree with the United States
23 District Court for the Central District of California (“District Court”).

24 23. Review by Federal Agencies. Baykeeper shall submit this Consent Decree
25 to EPA and the U.S. Department of Justice (“DOJ”) within three days of the execution of
26 this Consent Decree for review consistent with 40 C.F.R. § 135.5. In the event that EPA
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1 or DOJ comments negatively on the provisions of this Consent Decree, the Parties agree
2 to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

3 **G. DISPUTE RESOLUTION**

4 24. This Court shall retain jurisdiction over this matter for the purposes of
5 implementing and enforcing the terms and conditions of this Consent Decree, and
6 adjudicating all disputes among the parties that may arise under the provisions of this
7 Consent Decree. The Court shall have the power to enforce this Consent Decree with all
8 available legal and equitable remedies, including contempt.

9 25. Meet and Confer. A party to this Consent Decree shall invoke the dispute
10 resolution procedures of this Section by notifying all other Parties in writing of the
11 matter(s) in dispute and of the party's intention to resolve the dispute under this Section.
12 The Parties shall then meet and confer in an attempt to resolve the dispute informally
13 over a period of fourteen (14) calendar days from the date of the notice.

14 26. If the Parties cannot resolve a dispute by the end of meet and confer
15 informal negotiations, the party invoking the dispute resolution provision shall provide
16 notice to the other party that it intends to invoke formal dispute resolution by filing a
17 motion before the United States District Court for the Central District of California. The
18 Parties shall jointly apply to the Court for an expedited hearing schedule on the motion.

19 27. If a party initiates a motion or proceeding before the Court relating to
20 enforcement of the terms and conditions of this Consent Decree, the party shall be
21 entitled to recover fees incurred to enforce the terms of this Consent Decree consistent
22 with the provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §1365 and § 1319.

23 **III. RETENTION OF JURISDICTION AND TERMINATION**

24 28. Within ten (10) days of execution of this Consent Decree, Baykeeper will
25 dismiss with prejudice all defendants to this action except for Kramer Metals, Inc. The
26 Court shall retain jurisdiction over this matter for purposes of interpreting, modifying or
27 enforcing the terms of this Consent Decree executed by the Parties, or as long thereafter
28

1 as is necessary for the Court to resolve any motion to enforce this Consent Decree filed
2 within sixty (60) days after completion of the obligations set forth in the Consent Decree.
3 This Consent Decree shall terminate in accordance with paragraph 29 below after
4 Kramer Inc. completes the roofing of the Kramer 1760 Facility required under this
5 Consent Decree and after Baykeeper has conducted an inspection of the completed
6 roofing at the Kramer 1760 Facility.

7 29. If Kramer Inc. believes it has complied with the terms of this Consent
8 Decree, Kramer Inc. shall submit a written notice of compliance and request to terminate
9 this Consent Decree to Baykeeper setting forth the information justifying Kramer Inc.'s
10 request for termination. Upon receipt of this written request, Baykeeper shall have
11 twenty-one (21) days to conduct an inspection of the Kramer 1760 Facility in accordance
12 with the provisions of paragraph 15 above. If upon inspection Baykeeper does not agree
13 to terminate coverage under the Consent Decree, the Parties shall resolve the matter via
14 the dispute resolution provisions of paragraphs 24 through 27. If Baykeeper has not
15 invoked the dispute resolution provisions within 21 days of Baykeeper's receipt of the
16 written notice and request to terminate the Consent Decree, Kramer Inc. may move the
17 Court to terminate the Consent Decree and Baykeeper shall not oppose the motion.

18 **IV. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**
19

20 30. In consideration of the above, upon termination of this Consent Decree, the
21 Parties hereby fully release, except for claims for Kramer Inc.'s failure to comply with
22 this Consent Decree and as expressly provided below, each other and their respective
23 successors, assigns, officers, agents, employees, landlords/property owners, and all
24 persons, firms and corporations having an interest in them, from any and all alleged
25 CWA violations claimed in the Complaint, up to and including the Effective Date of this
26 Consent Decree.

1 31. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to
2 address or take any position that it deems necessary or appropriate in any formal or
3 informal proceeding before the Regional Board, EPA, or any other judicial or
4 administrative body on any other matter relating to Kramer Inc.

5 **V. MISCELLANEOUS PROVISIONS**

6 32. The Parties enter into this Consent Decree to avoid prolonged and costly
7 litigation. Neither the Consent Decree, nor any payment pursuant to the Consent Decree,
8 nor any implementation of BMPs or any other compliance with this Consent Decree,
9 shall constitute or be construed as – and Kramer Inc. expressly does not intend to
10 imply—any admission to any finding, adjudication, or acknowledgment of any fact, law,
11 or liability, nor shall it be construed as an admission of violation of any law, rule, or
12 regulation. Kramer Inc. maintains and reserves all defenses it may have to any alleged
13 violations that may be raised in the future.

14 33. Force Majeure. Force Majeure includes any act of God, war, fire, earthquake,
15 windstorm, flood or natural catastrophe; unexpected and unintended accidents not caused
16 by Kramer Inc.'s or its employees' negligence; civil disturbance, vandalism, sabotage or
17 terrorism; restraint by court order or public authority or agency; or action or non-action
18 by, or inability to obtain the necessary authorizations or approvals from any
19 governmental agency. Force Majeure shall not include normal inclement weather,
20 economic hardship or inability to pay. Any party seeking to rely upon this paragraph to
21 excuse or postpone performance, shall have the burden of establishing that it could not
22 reasonably have been expected to avoid the event or circumstance, and which by exercise
23 of due diligence has been unable to overcome the failure of performance. Kramer Inc.
24 shall exercise due diligence to resolve and remove any force majeure event.

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

1 35. Choice of Law. The laws of the United States shall govern this Consent
2 Decree.

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

6 37. Correspondence. All notices required herein or any other correspondence
7 pertaining to this Consent Decree shall be sent by regular, certified, or overnight mail as
8 follows:

9 If to Plaintiff:

10 Daniel G. Cooper, Esq.
11 Lawyers for Clean Water, Inc.
12 1004 O'Reilly Ave.
13 San Francisco, CA 94129

14 With copies to:

15 Santa Monica Baykeeper
16 120 W. Broadway, Suite 105
17 Santa Monica, CA 90401

18 If to Kramer Inc.:

19 Jason M. Booth
20 Dongell Lawrence Finney LLP
21 707 Wilshire Blvd., 45th Floor
22 Los Angeles, CA 90017

23 With copies to:

24 Douglas Kramer
25 Kramer Metals, Inc.
26 1760 E Slauson Avenue
27 Los Angeles, CA 90058-3827

1 Notifications of communications shall be deemed submitted three days after the
2 date that they are postmarked and sent by first-class mail or deposited with an overnight
3 mail/delivery service. Any change of address or addresses shall be communicated in the
4 manner described above for giving notices. In addition, the Parties may agree to transmit
5 documents electronically or by facsimile.

6 38. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent
7 Decree, warrant or aver in any manner that the Kramer Inc.'s compliance with this
8 Consent Decree will constitute or result in compliance with any federal or state law or
9 regulation. Nothing in this Consent Decree shall be construed to affect or limit in any
10 way the obligation of the Kramer Inc. to comply with all federal, state, and local laws and
11 regulations governing any activity required by this Consent Decree.

12 39. Counterparts. This Consent Decree may be executed in any number of
13 counterparts, all of which together shall constitute one original document. Telecopy
14 and/or facsimile copies of original signature shall be deemed to be originally executed
15 counterparts of this Consent Decree.

16 40. Modification of the Consent Decree. This Consent Decree, and any
17 provisions herein, may not be changed, waived, discharged, or terminated unless by a
18 written instrument, signed by the Parties.

19 41. Full Settlement. This Consent Decree constitutes a full and final settlement
20 of this matter.

21 42. Integration Clause. This is an integrated Consent Decree. This Consent
22 Decree is intended to be a full and complete statement of the terms of the agreement
23 between the parties and expressly supersedes any and all prior oral or written agreements
24 covenants, representations, and warranties (express or implied) concerning the subject
25 matter of this Consent Decree.
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1 43. Authority. The undersigned representatives for Baykeeper and Kramer Inc.
2 each certify that it is fully authorized by the party whom he/she represents to enter into
3 the terms and conditions of this Consent Decree.

4 44. The provisions of this Consent Decree apply to and bind the Parties,
5 including any successors or assigns. The Parties certify that their undersigned
6 representatives are fully authorized to enter into this Consent Decree, to execute it on
7 behalf of the Parties, and to legally bind the Parties to its terms.

8 45. The Parties agree to be bound by this Consent Decree and not to contest its
9 validity in any subsequent proceeding to implement or enforce its terms. By entering into
10 this Consent Decree, Kramer Inc. does not admit liability for any purpose as to any
11 allegation or matter arising out of this Action.

12 46. The term "Effective Date," as used in this Consent Decree, shall mean the
13 date of expiration of the 45-day review period for the Federal agencies set forth under
14 paragraph 23 of this Consent Decree.

15
16 The undersigned representatives for Baykeeper and Kramer Inc. each certify that
17 he/she is fully authorized by the party whom he/she represents to enter into the terms
18 and conditions of this Consent Decree and that this Consent Decree binds that party.

19
20 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as
21 of the date first set forth above.

22
23 LAWYERS FOR CLEAN WATER, INC.

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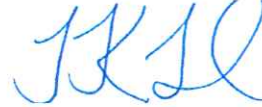
25 Dated: 20 July 2009

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27 Daniel Cooper
28 Martin McCarthy
Lawyers for Clean Water, Inc.

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Attorneys for Plaintiff
Santa Monica Baykeeper

SANTA MONICA BAYKEEPER



Dated: 20 July 2009

by: _____

Tom Ford
Santa Monica Baykeeper

DONGELL LAWRENCE FINNEY, LLP

Dated: _____ July 2009

Jason M. Booth
Attorney for Kramer Metals, Inc.

KRAMER METALS, INC

Dated: _____ July 2009

by: _____

Stanley Kramer
Kramer Metals, Inc.

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Attorneys for Plaintiff
Santa Monica Baykeeper

SANTA MONICA BAYKEEPER



Dated: 20 July 2009

by: _____

Tom Ford
Santa Monica Baykeeper

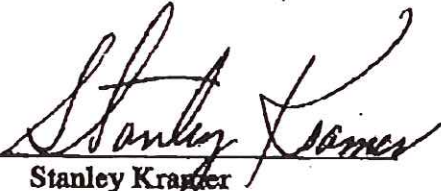
DONGELL LAWRENCE FINNEY, LLP



Dated: 28 July 2009

Jason M. Booth
Attorney for Kramer Metals, Inc.

KRAMER METALS, INC



Dated: 27th July 2009

by: _____

Stanley Kramer
Kramer Metals, Inc.

Exhibit A

