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10 Attorney for Plaintiff
11 INLAND EMPIRE WATERKEEPER, a program of
12 ORANGE COUNTY WATERKEEPER

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 EASTERN DIVISION - RIVERSIDE

16 INLAND EMPIRE WATERKEEPER, a
17 program of ORANGE COUNTY
18 WATERKEEPER, a non-profit corporation,

19 Plaintiff,

20 v.

21 J LEE'S METALS, INC., dba D&M
22 METALS, and J LEE'S METALS, INC., a
23 California corporation,

24 Defendants.

Civil Case No.: EDCV 09-1549 VAP
(OPx)

[Proposed]
CONSENT DECREE

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

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1 **WHEREAS**, Inland Empire Waterkeeper, a program of Orange County
2 Coastkeeper (“Waterkeeper” or “Plaintiff”) is a non-profit corporation dedicated to the
3 preservation, protection, and defense of the environment, the wildlife, and the natural
4 resources of Orange County and Inland Empire area receiving waters;

5 **WHEREAS**, J Lee’s Metals, Inc., dba D & M Metals, Inc., and J. Lee’s Metals,
6 Inc. (collectively “Defendants”), operate a scrap metals recycling operation located at
7 840 E. State Street, in Ontario, California 91761 (hereinafter the “D & M Metals
8 Facility,” “Site,” or “Facility”).

9 **WHEREAS**, Waterkeeper contends that the operations at the D & M Metals
10 Facility result in discharges of pollutants into storm drains, West Cucamonga Creek,
11 Cucamonga Creek, the Santa Ana River, and ultimately the Pacific Ocean (collectively
12 referred to as the “Receiving Waters”); and that discharges from the Facility are
13 regulated by the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean
14 Water Act”, “CWA” or “Act”), Sections 301 (a) and 402, 33 U.S. C. §§ 1311 (a), 1342;

15 **WHEREAS**, on June 10, 2009, Waterkeeper served Defendants, the United States
16 Environmental Protection Agency (“EPA”), EPA Region IX, the State Water Resources
17 Control Board (“State Board”) and the Regional Water Quality Control Board
18 (“Regional Board”), with a notice of intent to file suit (“60-Day Notice”) under Sections
19 505 (a) and (b) of the CWA, 33 U.S.C. § 1365 (a) and (b). The 60-Day Notice alleged
20 that the recipients had in the past and continues to violate Sections 301 (a) and 402 of
21 the Act, 33 U.S.C. §§ 1311 (a) and 1342, by discharging pollutants into Receiving
22 Waters in violation of National Pollution Discharge Elimination System (“NPDES”)
23 General Permit No. CAS0000001 [State Board] Water Quality Order No. 92-12-DWQ,
24 as amended by Order No. 97-03-DWQ (“Industrial Permit”) and the Act;

25 **WHEREAS**, on August 13, 2009, Waterkeeper filed a complaint against
26 Defendants in the United States District Court, Central District of California (Civil Case
27 No. EDCV 09-1549 VAP (OPx)) entitled *Inland Empire Waterkeeper et al. v. J Lee’s
28 Metals, Inc. et al.* (“Complaint”);

1 **WHEREAS**, on August 24, 2009, Waterkeeper filed a corrected complaint against
2 Defendants with the same caption set forth in the preceding paragraph, which corrected
3 a typographical error in the Complaint (“Corrected Complaint”);

4 **WHEREAS**, Defendants deny all allegations of the Complaint and Corrected
5 Complaint and the contentions of Waterkeeper, as set forth in these Recitals and in the
6 60-Day Notice;

7 **WHEREAS**, Waterkeeper and Defendants (collectively referred to herein as the
8 “Settling Parties” or “Parties”) have agreed that it is in the Parties’ mutual interest to
9 enter into a Consent Decree setting forth terms and conditions appropriate to resolving
10 the allegations set forth in the Complaint without further proceedings and without any
11 admission of liability on the part of the Defendants;

12 **WHEREAS**, Defendants intend to continue their industrial activities at the D & M
13 Metals Facility and will therefore undertake additional measures to control stormwater
14 pollution associated with continuing industrial activities;

15 **WHEREAS**, this Consent Decree shall be submitted to the United States
16 Department of Justice and EPA for the statutory review period pursuant to 33 U.S.C. §
17 1365 (c) and 40 C.F.R. § 135.5;

18 **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree
19 shall be made in compliance with all applicable Federal and State laws and local rules
20 and regulations.

21 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
22 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**
23 **FOLLOWS:**

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

26 2. Venue is appropriate in the Central District Court pursuant to Section 505(c)
27 (1) of the Act, 33 U.S.C. § 1365 (c)(1), because the D & M Metals Facility at which the
28 alleged violations took place is located within this District;

1 3. The Complaint and Corrected Complaint state a claim upon which relief
2 may be granted pursuant to Section 505 of the Act, 33 U.S.C. § 1365.

3 4. Waterkeeper has standing to bring this action.

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

8 **I. CONSENT DECREE OBJECTIVES**

9 6. It is the express purpose of the Parties entering into this Consent Decree to
10 further the objectives set forth in Sections 101 *et seq.* of the CWA, 33 U.S.C. §§ 1251 *et*
11 *seq.*, and to resolve those issues alleged by Waterkeeper in its Complaint. In light of
12 these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply
13 with the provisions of this Consent Decree and to comply with the requirements of the
14 Industrial Permit and all applicable provisions of the CWA at the D & M Metals
15 Facility. Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires
16 that the D & M Metals Facility “not cause or contribute to the exceedance of an
17 applicable water quality limit.” Effluent Limitation B(3) of the Industrial Permit
18 requires that Best Management Practices (“BMPs”) be developed and implemented to
19 achieve Best Available Technology (“BAT”) and the Best Conventional Pollutant
20 Control Technology (“BCT”). Defendants are required to develop and implement
21 BMPs necessary to comply with the Industrial Permit’s requirement to achieve
22 compliance with Water Quality Standards and BAT/BCT standards. BMPs must be
23 developed and implemented to prevent discharges or to reduce contamination in storm
24 water discharged from the D & M Metals Facility sufficient to achieve the numeric
25 action limits detailed in paragraph 12 below.

26 **II. COMMITMENTS OF THE PARTIES**

27 **A. Industrial Stormwater Pollution Control Measures**

1 7. Design Storm Event. The Parties agree that the Design Storm Event for the
2 D & M Metals Facility is a 25-year 24-hour return period rain event as defined by the
3 County of San Bernardino Hydrology Manual (August 1986) with an assumed dry
4 antecedent condition and 5.87 total inches of rainfall over a 24-hour period; or any
5 single event exceeding a rainfall intensity of 1.67 inches in one hour.

6 8. BMP Plan. The BMP Plan attached as Exhibit A hereto is designed to
7 capture and infiltrate stormwater generated during rain events up to and including the
8 Design Storm Event (the "Infiltration Unit") within the D & M Metals Facility
9 Containment Zone (set forth on and attached hereto as Exhibit B). The BMPs set forth
10 in the plan shall be implemented to ensure that no stormwater discharges occur from the
11 D & M Metals Facility Containment Zone during rain events up to and including the
12 Design Storm Event, and so that no pollutants from the D & M Metals Facility's
13 stormwater infiltration system cause degradation of groundwater. As set forth on the
14 attached BMP Plan (Exhibit A), the location and design of the Infiltration Unit shall be
15 accessible for future inspection and maintenance. Defendants shall also ensure that the
16 soils and groundwater conditions at the installation site of the Infiltration Unit are at
17 least as conducive to effective infiltration as those on the property owned and/or
18 operated by Defendants directly to the east of the D & M Metals Facility operations
19 yard, shown on Exhibit B as area "YY". If the proposed site of the Infiltration Unit
20 does not provide equally effective infiltration capacity, Defendants and Waterkeeper
21 shall meet and confer to determine an alternate site for the Infiltration Unit. Defendants
22 shall continue to properly implement the BMP Plan during the life of this Consent
23 Decree.

24 9. Stormwater discharges from the D & M Metals Facility that do occur shall
25 be monitored as described in Section B below of this Consent Decree during the life of
26 this Consent Decree, and discharges from the D & M Metals Facility Containment Zone
27 during storm events less than the Design Storm Event shall constitute a breach of this
28 Consent Decree.

1 10. Non-stormwater discharges from the D & M Metals Facility Containment
2 Zone during the life of this Consent Decree not authorized by the Industrial Permit shall
3 be considered breaches of this Consent Decree.

4 **B. Stormwater Sampling and Numeric Action Levels**

5 11. Sampling. During the life of this Consent Decree, Defendants shall sample
6 every offsite discharge from the D & M Metals Facility Containment Zone and shall
7 provide the results of such sampling to Waterkeeper in accordance with the provisions
8 set forth below. Samples shall be evaluated consistent with the requirements of the
9 Industrial Permit and shall have detection limits sufficiently sensitive to evaluate
10 compliance with the Numeric Action Levels set forth in paragraph 12.

11 12. Numeric Action Levels. During the life of this Consent Decree,
12 contaminants in discharges occurring during storm events smaller than the Design
13 Storm Event from the D & M Metals Facility Containment Zone shall not exceed the
14 Numeric Action Levels set forth in Table 1, consistent with paragraphs 13 and 14
15 below.

16 **Table 1. Numeric Action Levels for D & M Facility Discharges**

| 17 Contaminant | 18 Numeric Action Level |
|---------------------------|--------------------------------|
| 19 Total suspended solids | 100 mg/L |
| 20 Copper | 0.0636 mg/L |
| 21 Lead | 0.0816 mg/L |
| 22 Zinc | 0.117 mg/ |
| 23 Oil and grease | 15 mg/L |
| 24 Aluminum | 0.750 mg/L |
| 25 Arsenic | 0.16854 mg/L |
| 26 Cadmium | 0.0159 mg/L |
| 27 Iron | 1.0 mg/L |
| 28 Mercury | 0.0024 mg/L |
| Nickel | 1.417 mg/L |
| Silver | 0.0318 mg/L |
| Chemical oxygen demand | 120 mg/L |
| pH | 6.0-9.0 |

1 13. Comparing Analytical Monitoring Results to Numeric Action Levels:

2 Following each sampling event, discharge data for storm events smaller than the Design
3 Storm Event will be compared to the Numeric Action Levels in paragraph 12 above. In
4 the event that one or more of the pollutant concentrations exceed the Numeric Action
5 Levels, Defendants shall prepare an Action Plan as described below in paragraph 15,
6 unless Defendants can demonstrate that contaminant mass for that parameter has been
7 reduced through onsite stormwater infiltration and/or diversion of runoff from existing
8 or newly installed roofs or canopies to avoid contact with industrial contaminants
9 consistent with the requirements of paragraph 14 below.

10 14. Comparing Analytical Monitoring Results to Numeric Action Levels

11 Considering Mass Reduction Through Infiltration and/or Diversion: In the event that
12 onsite infiltration and/or diversion are implemented to reduce the mass of contaminants
13 discharged from the D & M Metals Facility, the following method will be used to assess
14 compliance with the Numeric Action Levels described in paragraph 12 for any
15 discharge point where stormwater discharges occur during storm events smaller than the
16 Design Storm Event.

17 a. Based on existing site conditions (100 percent impervious surfaces
18 and no stormwater infiltration or diversion) and the amount of rainfall that falls on the D
19 & M Metals Facility during each of the monitored storm events described in paragraphs
20 11 and 12, the volume of water that would have discharged from the D & M Metals
21 Facility prior to installation of the infiltration and/or diversion measures shall be
22 calculated.

23 b. Using the Numeric Action Levels described in paragraph 12, the mass
24 of “allowable” pollutants will be calculated (volume of water assuming no
25 infiltration/diversion multiplied by the Numeric Action Levels) for each constituent
26 listed in paragraph 12.

1 c. The actual contaminant mass discharged for each of the pollutants
2 listed in paragraph 12 will be calculated (volume of water actually discharged
3 multiplied by the analytical results for storm events where discharges occur);

4 d. For each of the monitored storm events, the calculated mass of actual
5 contaminants discharged under subparagraph (c) above will be compared to the mass of
6 allowable contaminants calculated under subparagraph b above. If the mass of actual
7 contaminants is above the allowable mass of contaminants, an Action Plan shall be
8 prepared as described in paragraph 15 below.

9 15. Numeric Action Level Action Plan. In the event that one or more of the
10 Numeric Action Levels in Table 1 are found to be exceeded using the procedures set
11 forth in paragraphs 13 and 14 above during storms of intensity less than the Design
12 Storm, Defendants shall produce an Action Plan within 45 days of receipt of laboratory
13 reports demonstrating the exceedance. The Action Plan shall include additional BMPs
14 designed to achieve compliance with the Numeric Action Levels set forth in Table 1 and
15 include deadlines for implementation of the proposed BMPs that will be as soon as
16 practicable, but in no event later than the beginning of the next wet season as defined by
17 the Industrial Permit. Defendants agree to submit the Action Plan to Waterkeeper for
18 review and comment as soon as it is completed but in any event no later than 45 days
19 following receipt of laboratory reports for the data demonstrating the exceedance.
20 Waterkeeper shall provide comments, if any, to the Defendants within 30 days of
21 receipt. Defendants shall incorporate Waterkeeper's comments into the Action Plan and
22 implement the revisions within 14 days of receiving Waterkeeper's comments. If any of
23 Waterkeeper's comments are not utilized, Defendants shall justify in writing why any
24 comment is not being incorporated within 14 days of receiving comments. Any disputes
25 as to the adequacy of the Action Plan shall be resolved pursuant to the dispute resolution
26 provisions of this Consent Decree, set out at paragraphs 28 through 31 below.
27 Defendants shall notify Waterkeeper in writing when the Action Plan has been
28 implemented.

1 **C. Vadose Zone Sampling**

2 16. Sampling. During the first two years of the Consent Decree, Defendants
3 shall collect samples of infiltrating stormwater in areas where significant stormwater
4 infiltration occurs. During the first and second wet seasons, vadose zone samples will be
5 collected after at least three storm events from a minimum of one lysimeter or similar
6 device. At least two lysimeters shall be installed in mutually agreed locations on the
7 edge of the infiltration field. The lysimeter samples will be analyzed for the metals (both
8 total and dissolved) presented in Table 1.

9 17. Vadose Zone Results Evaluation. The vadose zone sampling results from the
10 first wet season under this Consent Decree (October 1, 2010-May 31, 2011) will be used
11 to prepare a Stormwater Infiltration Evaluation Report, which will evaluate the potential
12 for infiltrating stormwater to degrade groundwater below the D & M Metals Facility.
13 The evaluation of potential impacts to groundwater will include a comparison of the
14 vadose zone sample results to Maximum Contaminant Levels (MCLs) established by
15 US EPA for the metals in Table 1 in groundwater. If any MCL is exceeded, Defendants
16 shall inform Waterkeeper within 48 hours of receiving the result and shall prepare a
17 plan to perform additional assessments to evaluate the potential for MCL exceedances
18 in groundwater itself (Contingency Plan) to be ready and available to implement if the
19 wet season mean of sampling results from the lysimeter exceeds the MCL for any metal
20 listed on Table 1. The Contingency Plan, if necessary, will be included as part of the
21 Stormwater Infiltration Evaluation Report and may include literature research regarding
22 background concentrations of metals in soil and groundwater; collection and analysis of
23 background soil, pore water, and groundwater samples; additional monitoring of the
24 existing lysimeter; installation and monitoring of deeper lysimeters; installation and
25 monitoring of upgradient/downgradient groundwater wells; vadose zone modeling;
26 additional pretreatment BMPs, or other methods as appropriate to assess or to mitigate
27 the potential for exceedances of MCLs in groundwater. Defendants shall prepare for the
28

1 Stormwater Infiltration Evaluation Report, including potential vadose zone modeling,
2 by collecting appropriate soils and hydrogeologic data when the lysimeters are installed.

3 18. Defendants agree to submit the Contingency Plan, if required under
4 paragraph 17, to Waterkeeper as part of the Stormwater Infiltration Evaluation Report
5 for Waterkeeper's review and comment no later than 60 days following the end of the
6 2010/2011 wet season. In addition to evaluating the potential for infiltrating stormwater
7 to degrade groundwater, the report will provide recommendations for additional
8 pretreatment BMPs as appropriate to protect groundwater. The report will also establish
9 "trigger levels" for infiltrating stormwater collected from the lysimeters, which if
10 exceeded, will require Defendants to prepare Stormwater Infiltration Evaluation Reports
11 at the completion of the second wet season under this Consent Decree. Waterkeeper
12 shall provide comments, if any, to Defendants within 30 days of receipt. Defendants
13 shall incorporate Waterkeeper's comments into the contingency plan, if any, and into the
14 Stormwater Infiltration Evaluation Report, and re-issue this Report to Waterkeeper
15 within 14 days of receiving Waterkeeper's comments. If any of Waterkeeper's comments
16 are not utilized, Defendants shall justify in writing why any comment is not being
17 incorporated within 14 days of receiving comments. Any disputes as to the adequacy of
18 the contingency plan, if any, and the Stormwater Infiltration Evaluation Report, shall be
19 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at
20 paragraphs 28 through 31 below. If the wet season mean of vadose sampling results
21 exceeds the MCL or background if background exceeds the MCL for any metal,
22 Defendants shall implement the contingency plan immediately upon its finalization.

23 **D. Monitoring and Reporting**

24 19. Site Inspections. Waterkeeper's Water Quality Engineer, accompanied by
25 Waterkeeper's attorney or other representative approved by Defendants, may conduct up
26 to one Site Inspection per year at the D & M Metals Facility during the life of this
27 Consent Decree. The Site Inspections shall occur during normal business hours and
28 Waterkeeper shall provide Defendants with 48 hours notice prior to each inspection.

1 During the Site Inspections, Waterkeeper and/or its representatives shall be allowed
2 access to the D & M Metals Facility's SWPPP and monitoring records and to all
3 monitoring reports and data for the Facility. During the Site Inspections, Waterkeeper
4 and/or its representatives may collect samples of stormwater discharges from the D & M
5 Metals Facility, if any. A certified California laboratory shall analyze stormwater
6 samples collected by Waterkeeper and copies shall be provided to Defendants within ten
7 (10) business days of receipt. At the request of Defendants, the samples shall be split
8 and one half provided to Defendants to allow Defendants to have their own certified
9 California laboratory analyze stormwater samples collected by Waterkeeper, in which
10 case Defendants shall provide their laboratory results to Waterkeeper within ten (10)
11 business days of receipt. Waterkeeper shall make all reasonable efforts to ensure that its
12 inspections are scheduled in such a manner as to allow Defendants' compliance officer
13 to be present at all inspections.

14 20. Compliance Monitoring and Oversight. Defendants agree to help defray
15 Waterkeeper's monitoring costs by reimbursing Waterkeeper Two Thousand Dollars
16 (\$2,000.00) within 60-days of the Effective Date of this Consent Decree. Defendants
17 agree to make compliance monitoring and oversight funds payable to "Lawyers for
18 Clean Water Attorney Client Trust Account" and deliver them by certified mail or
19 overnight delivery to Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San
20 Francisco, California 94129, attention Layne Friedrich. Waterkeeper shall provide
21 copies of any invoicing for Site Inspections and compliance oversight within 30-days of
22 receiving a written request by Defendants. Any compliance monitoring money
23 remaining when this Consent Decree terminates shall be refunded to Defendants.

24 21. Reporting. During the life of this Consent Decree, each January 15 and July
25 15, Defendants shall provide Waterkeeper with a copy of all stormwater-related
26 compliance and monitoring data, including inspection reports, related to the D & M
27 Metals Facility for the wet season. The reports shall be submitted every January 15 for
28 the period from October 1 to December 31, and on July 15 for the period from January 1

1 through April 30th. During the life of this Consent Decree, Defendants shall provide
2 Waterkeeper with all laboratory analyses related to the D & M Metals Facility within 7
3 business days of Defendants' receipt of such information.

4 22. Document Provision. During the life of this Consent Decree, Defendants
5 shall copy Waterkeeper on all documents related to water quality at the D & M Metals
6 Facility that are submitted to the Regional Board, the State Board, and/or any State or
7 local agency or municipality. Such reports and documents shall be provided to
8 Waterkeeper concurrently as they are sent to the agencies and/or municipalities.

9 **E. ENVIRONMENTAL PROJECTS AND FEES**

10 23. Environmental Mitigation Project. Defendants agree to pay Four Thousand
11 Dollars (\$4,000.00) to the Public Interest Green Fund at the Orange County Community
12 Foundation, 30 Corporate Park, Suite 410 Irvine, California 92606, www.oc-cf.org.
13 The Public Interest Green Fund is a nonprofit organization that uses its funds to support
14 environmental advocacy by area law students, either via stipends or scholarships. This
15 mitigation payment shall be used to support student advocacy in projects that reduce or
16 mitigate the impacts of storm water pollution in Orange County and the Inland Empire.
17 Defendants shall make the mitigation payment within 60-days of the Effective Date of
18 this Consent Decree and mail the payment via certified mail or overnight delivery to the
19 Public Interest Green Fund. Defendants shall provide Waterkeeper with a copy of such
20 payment.

21 24. Waterkeeper's Fees and Costs. Defendants agree to reimburse Waterkeeper
22 for Waterkeeper's investigation fees and costs, expert fees and costs, reasonable
23 attorneys' fees, and other costs incurred as a result of investigating and preparing the
24 lawsuit, and negotiating a resolution of this matter, totaling Fifty-six Thousand Dollars
25 (\$56,000.00). Such payment shall be made within sixty (60) days of the Effective Date,
26 payable to "Lawyers for Clean Water Attorney Client Trust Account" and delivered by
27 certified mail or overnight delivery to: Lawyers for Clean Water, Inc., 1004 O'Reilly
28 Avenue, San Francisco, California 94129, attention Layne Friedrich.

1 **F. COMMITMENTS OF PLAINTIFF**

2 25. Within 10-days of the execution of this Consent Decree by the Parties,
3 Waterkeeper shall file a Notice of Tentative Settlement and Notice of 45-Day Review in
4 the United States District Court for the Central District of California (“District Court”).

5 26. Review by Federal Agencies. Plaintiff shall submit this Consent Decree to
6 the United States Environmental Protection Agency (“EPA”) and the United States
7 Department of Justice (“DOJ”) within three days of the execution of this Consent
8 Decree for review consistent with 40 C.F.R. § 135.5. In the event that EPA or DOJ
9 comments negatively on the provisions of this Consent Decree, the Parties agree to meet
10 and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

11 27. Plaintiff shall lodge this Consent Decree with the District Court within forty-
12 eight (48) days after receipt by EPA and DOJ of the Consent Decree for the review set
13 forth in paragraph 26 above. Waterkeeper is responsible for notifying Defendants of the
14 District Court’s entry of the Order dismissing these claims with prejudice. Such
15 notification can be satisfied by the Central District of California’s Case
16 Management/Electronic Case Filing (“CM/ECF”) notification to the Parties that the
17 Order was executed and entered by the District Court.

18 **G. DISPUTE RESOLUTION**

19 28. This Court shall retain jurisdiction over this matter for a period of five years
20 from the date of entry of the Consent Decree for the purposes of implementing and
21 enforcing the terms and conditions of this Consent Decree, and adjudicating all disputes
22 among the parties that may arise under the provisions of this Consent Decree. The
23 Court shall have the power to enforce this Consent Decree with all available legal and
24 equitable remedies, including contempt.

25 29. Meet and Confer. A party to this Consent Decree shall invoke the dispute
26 resolution procedures of this Section by notifying all other Parties in writing of the
27 matter(s) in dispute and of the party's intention to resolve the dispute under this Section.
28 The Parties shall then meet and confer in good faith (either telephonically or in person)

1 in an attempt to resolve the dispute informally over a period of 14-calendar days from
2 the date of the notice.

3 30. If the Parties cannot resolve a dispute by the end of meet and confer
4 informal negotiations, the party invoking the dispute resolution provision shall provide
5 notice to the other party that it intends to invoke formal dispute resolution by filing a
6 motion before the United States District Court for the Central District of California.

7 31. If Waterkeeper initiates a motion or proceeding before the Court relating to
8 enforcement of the terms and conditions of this Consent Decree, and is determined by
9 the Court to be the prevailing party, Waterkeeper shall be entitled to recover fees
10 incurred to enforce the terms of this Consent Decree consistent with the provisions of
11 Sections 505 and 309 of the CWA, 33 U.S.C. §1365 and § 1319.

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

13 32. During the life of this Consent Decree, the Court shall retain jurisdiction
14 over this matter for purposes of interpreting, modifying or enforcing the terms of this
15 Consent Decree, or as long thereafter as is necessary for the Court to resolve any motion
16 to enforce this Consent Decree filed within 60-days after completion of the obligations
17 set forth in the Consent Decree. This Consent Decree and the Court's jurisdiction shall
18 terminate five years from the Effective Date.

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

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

26 34. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to
27 address or take any position that it deems necessary or appropriate in any formal or
28 informal proceeding before the Regional Board, EPA, or any other judicial or

1 administrative body on any other matter relating to stormwater discharges from the D &
2 M Metals Facility occurring or arising after the Effective Date of the Consent Decree
3 but specifically excluding the discharges and all other matters addressed by this Consent
4 Decree.

5 **V. MISCELLANEOUS PROVISIONS**

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

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

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

25 38. Choice of Law. The laws of the United States shall govern this Consent
26 Decree.

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

4 40. Correspondence. All notices required herein or any other correspondence
5 pertaining to this Consent Decree shall be sent by overnight mail or courier as follows:

6 If to Plaintiff:

7 Daniel Cooper
8 Martin McCarthy
9 Lawyers for Clean Water, Inc.
10 1004 A O'Reilly Ave.
11 San Francisco, CA 94129

12 With copies to:

13 Garry Brown
14 Orange County Waterkeeper
15 3151 Airway Ave, Suite F-110
16 Costa Mesa, CA 92626

17 If to Defendants:

18 Wayne S. Rosenbaum
19 Foley & Lardner LLP
20 402 W. Broadway, Suite 2100
21 San Diego, CA 92101

22 With copies to:

23 Albert Lee
24 D & M Metals/ J. Lee's Metals, Inc.
25 840 E. State Street
26 Ontario, CA 91761

27 Notifications of communications shall be deemed submitted the next business day
28 after having been deposited with an overnight mail/delivery service, or within three days
after mailing via regular or certified mail. Any change of address or addresses shall be

1 communicated in the manner described above for giving notices. In addition, the Parties
2 may agree to transmit documents electronically or by facsimile.

3 41. Effect of Consent Decree. Except as provided herein, Plaintiff does not, by
4 its consent to this Consent Decree, warrant or aver in any manner that Defendants'
5 compliance with this Consent Decree will constitute or result in compliance with any
6 Federal or State law or regulation. Nothing in this Consent Decree shall be construed to
7 affect or limit in any way the obligation of the Defendants to comply with all Federal,
8 State, and local laws and regulations governing any activity required by this Consent
9 Decree.

10 42. Counterparts. This Consent Decree may be executed in any number of
11 counterparts, all of which together shall constitute one original document. Telecopy,
12 email of a .pdf signature and/or facsimile copies of original signature shall be deemed to
13 be originally executed counterparts of this Consent Decree.

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

17 44. Full Settlement. This Consent Decree constitutes a full and final settlement
18 of this matter.

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

24 46. Authority. The undersigned representatives for Plaintiff and Defendants
25 each certify that he/she is fully authorized by the party whom he/she represents to enter
26 into the terms and conditions of this Consent Decree.

27 47. The provisions of this Consent Decree apply to and bind the Parties,
28 including any successors or assigns, upon execution of the Consent Decree. The Parties

1 certify that their undersigned representatives are fully authorized to enter into this
2 Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to
3 its terms.

4 48. The Parties agree to be bound by this Consent Decree and not to contest its
5 validity in any subsequent proceeding to implement or enforce its terms. By entering
6 into this Consent Decree, the Defendants do not admit liability for any purpose as to any
7 allegation or matter arising out of this Action.

8 49. The term "Effective Date," as used in this Consent Decree, shall mean the
9 tenth (10th) calendar day after the date that Waterkeeper lodges the Consent Decree with
10 the District Court for approval, or the date the District Court signs the Consent Decree,
11 whichever date occurs earlier.

12 The undersigned representatives for Waterkeeper and Defendants each certify that
13 he/she is fully authorized by the party whom he/she represents to enter into the terms
14 and conditions of this Consent Decree and that this Consent Decree binds that party.

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

17
18 LAWYERS FOR CLEAN WATER, INC.

19
20
21 Dated: 7 April 2010

22 By: 

23 Martin McCarthy
24 Daniel Cooper
25 Lawyers for Clean Water, Inc.
26 Attorneys for Plaintiff
27 Inland Empire Waterkeeper/
28 Orange County Coastkeeper

INLAND EMPIRE WATERKEEPER/
ORANGE COUNTY COASTKEEPER

Dated: 5 April 2010

By: Garry Brown
Garry Brown
Inland Empire Waterkeeper/
Orange County Coastkeeper

FOLEY & LARDNER, LLP

Dated: _____ April 2010

By: S. Wayne Rosenbaum
S. Wayne Rosenbaum
Attorney for Defendants
J Lee's Metals, Inc., dba
D & Metals, Inc., and
J Lee's Metals, Inc.

J. LEE'S METALS, INC., dba
D & M METALS, and J. LEE'S
METALS, INC.

Dated: 1 April 2010

By: Joong T. Lee
Joong T. Lee

IT IS SO ORDERED:

Date: _____

Honorable Virginia A. Phillips
UNITED STATES DISTRICT COURT JUDGE
CENTRAL DISTRICT OF CALIFORNIA

EXHIBIT A

To Consent Decree

Inland Empire Waterkeeper et. al. v. J Lee's Metals, Inc., et al., EDCV 09-1549 VAP (OPx)

D & M METALS

840 E. STATE STREET
ONTARIO, CA. 91761

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|-----------|
| REVISIONS |
|-----------|

PES ENGINEERING
9060 TELSTAR AVE #225
EL MONTE, CA. 91731
phone (626) 288-2444
fax (626) 288-2771

JOB TITLE TITLE SHEET, SITE PLAN, SHEET INDEX,
D & M METALS
840 E. STATE STREET
ONTARIO, CA. 91761

JOB TITLE
DRAWN BY

DATE
JOB NO.

SHEET
1

OF

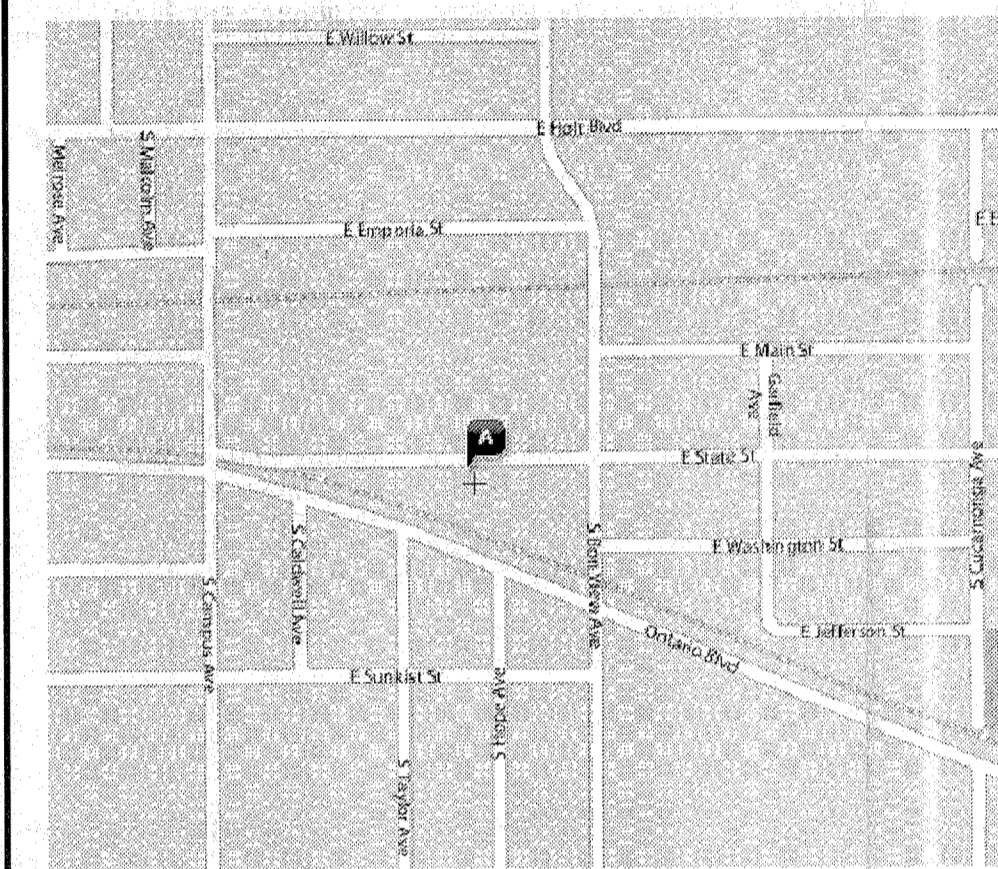
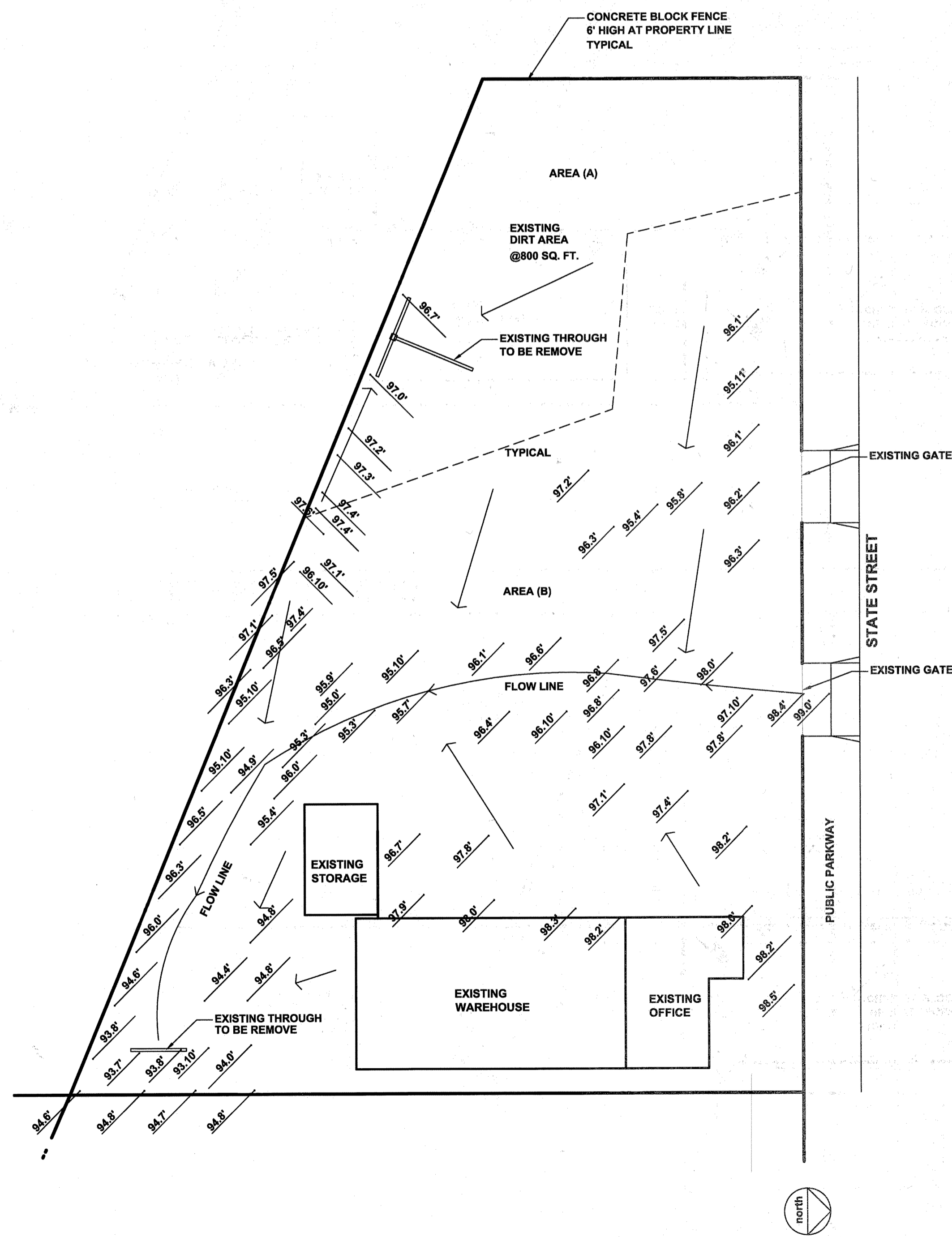
JOB TITLE

DATE

OF

NOTE:
EXCAVATION DEPTH CAN
NOT EXCEED 5'-0" BELOW
EXISTING GRADE

APPROXIMATE AREA
60,100 SQ. FT.
1.38 ACRES



VICINITY MAP

- THE TOTAL AREA OF THE SITE SUBJECT OF THIS PLAN IS 1.38 ACRES MOSTLY COVERED WITH ASPHALT PAVEMENT.
- REMOVE THE EXISTING TWO CHANNEL TYPE CLOTH FILTERS LOCATED AT THE SOUTH-EAST AND SOUTH-WEST OF THE PROPERTY. (SEE DRAWING FOR DETAILS)
- BUILD TWO CATCH BASINS LOCATED AT THE LOWEST POINTS WHERE THE DIRECTION OF THE RUN-OFF STORM WATER IS FLOWING.
- FOR THE PURPOSE OF THE DESIGN CALCULATIONS I DIVIDED THE SITE TO AREA (A) AND AREA (B) FLOW TO THE S-E CATCH BASIN. AREA (B) IS THE LARGER AREA.
- INSTALL ONE SET OF TWO PUMPS INSIDE THE S-W CATCH BASIN WITH LEVEL SWITCHES TO ACTIVATE THE PUMPS TO RESPOND TO THE WATER LEVEL IN THE CATCH BASIN. THE PUMP ARE SELECTED TO HAVE THE CAPABILITY TO MEET THE MAXIMUM (PEAK) FLOW OF THE RUN OFF VOLUME FROM AREA (A). THE OUTLET OF THE PUMPS IS DIRECTED THROUGH, ABOVE GROUND 4" DIAMETER PVC PIPE TO THE S-E CATCH BASIN.
- FROM THE S-E CATCH BASIN THE RUN OFF COLLECTED WATER WILL FLOW BY GRAVITY THROUGH 8" DIAMETER PVC PIPE TO THE STORM WATER CHAMBERS THRU ONE OR TWO FILTERS.
- TOTAL PROPOSED NUMBER OF STORM CHAMBERS IS 36 WITH TOTAL STORAGE CAPACITY OF 4,500 CU.FT. AS MINIMUM. THE PROPOSED MODEL OF FILTERS AND STORM CHAMBERS CAN BE REPLACED WITH EQUIVALENT SET FROM DIFFERENT VENDOR BASED ON THE OWNER DECISION AS LONG AS THE SYSTEM WILL MATCH IN CAPACITY AND QUALITY.
- THERE ARE TWO AREAS WE CALLED ON THE DRAWING DETENTION AREA 1 AND 2 AROUND THE TWO CATCH BASINS. THESE ARE LOWER ELEVATION AREAS WE ARE USING TO DETAIN PART OF THE STORM WATER DURING HE PEAK RAIN INTENSITY. THE DETAINED STORM WATER IN THESE TWO AREAS WILL SURFACE FLOW TO THE CATCH BASINS AND END UP FLOWING TO THE STORM CHAMBERS.

PROJECT SUMMARY

PROPERTY ADDRESS: D & M METALS
840 E. STATE STREET
ONTARIO, CA. 91761

APN #

LEGAL DISCRPTION:

ZONING:

SITE INFORMATION

- GENERAL AND/OR SUBCONTRACTOR SHALL VISIT JOB SITE PRIOR TO THE START OF ANY WORK TO VERIFY ALL DIMENSIONS, GRADES, AND/OR ANY OTHER FIELD CONTINGENCIES THAT MIGHT OCCUR DURING CONSTRUCTION AND SHALL CONFORM TO LOCAL CODES REGARDLESS OF WHAT IS SHOWN OR NOT SHOWN ON THESE DRAWINGS. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT/ENGINEER BEFORE ANY WORK IS DONE. THE CONTRACT DRAWINGS AND SPECIFICATIONS REPRESENT THE FINISHED STRUCTURE. UNLESS OTHERWISE SHOWN, THEY DO NOT INDICATE THE METHOD OF CONSTRUCTION. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE WORK AND SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES AND PROCEDURES. OBSERVATION VISITS TO THE SITE BY FIELD REPRESENTATIVES OF THE DESIGNER SHALL NOT INCLUDE INSPECTIONS OF THE PROTECTIVE MEASURES OR THE CONSTRUCTION PROCEDURES REQUIRED FOR SAME. ANY SUPPORT SERVICES PERFORMED BY THE ARCHITECT/ENGINEER DURING CONSTRUCTION SHALL BE DISTINGUISHED FOR CONTINUOUS AND DETAILED INSPECTION SERVICES WITH ARE FURNISHED BY OTHERS. THESE SUPPORT SERVICES PERFORMED BY THE DESIGNER WHETHER OF SERVICES PERFORMED BY THE DESIGNER WHETHER OF MATERIAL OR WORK AND WHETHER PERFORMED PRIOR TO DURING OR AFTER COMPLETION OF CONSTRUCTION ARE PERFORMED SOLELY OF THE PURPOSE OF ASSISTING IN QUALITY CONTROL AND IN ACHIEVING CONFORMANCE WITH CONTRACT DRAWING AND SPECIFICATIONS, BUT THEY DO NOT GUARANTEE CONTRACTOR'S PERFORMANCE AND SHALL NOT BE CONSTRUED AS SUPERVISION OF CONSTRUCTION.
- IT IS THE INTENT OF THESE CONTRACT DOCUMENTS THAT, THE NEW CONSTRUCTION. THE PROJECT WHEN COMPLETED SHALL CONFORM TO REGULATIONS AT THE TIME OF PLAN CHECK, OF THE FOLLOWING CODES. GOVERNING CODES: PERFORM ALL WORKING ACCORDANCE WITH THE LATEST EDITION OF CALIFORNIA ADMINISTRATIVE CODES AND THE FOLLOWING ADOPTED CODES AND REGULATIONS, AND STANDARDS:
 - NATIONAL FIRE PROTECTION ASSOC.
 - CALIFORNIA BUILDING CODE 1997 EDITION
 - CALIFORNIA MECHANICAL CODE
 - CALIFORNIA PLUMBING CODE
 - NATIONAL ELECTRICAL CODE
 - MASONRY ASSOCIATION
 - CALIFORNIA BUILDING CODE
- IN THE CASE WHERE TWO OR MORE DETAILS APPLYING TO THE SAME PART OF THE WORK ARE IN CONFLICT, THE MOST RESTRICTIVE SHALL GOVERN UNLESS CLARIFIED OR OTHERWISE APPROVED BY THE ENGINEER.
- THE CONTRACTOR AND EACH SUBCONTRACTOR SHALL CAREFULLY EXAMINE THE CONDITIONS AFFECTING HIS WORK BEFORE PROCEEDING AND SHALL REPORT TO THE ENGINEER ANY CONDITION WHICH WOULD PREVENT THE PROPER AND LEGAL COMPLETION OF HIS WORK. NOT REPORTING ANY SUCH UNSUITABLE CONDITION WILL CONSTITUTE ACCEPTANCE OF ALL CONDITIONS BY THE CONTRACTOR AND/OR SUBCONTRACTOR.
- APPROVAL OF SHOP DRAWINGS MEANS APPROVAL OF GENERAL METHOD OF FABRICATION ONLY. DIMENSIONS AND QUANTITIES MAY NOT BE CHECKED, AND APPROVAL OF SHOP DRAWINGS DOES NOT RELIEVE THE CONTRACTOR FROM COMPLIANCE WITH THE REQUIREMENTS OF THE DRAWINGS AND SPECIFICATIONS UNLESS SPECIFICALLY SO INDICATED IN THE APPROVAL.
- CONTRACTOR TO VERIFY ALL DIMENSION IN FIELD
- CONCRETE TO HAVE 2500 PSI COMPRESSION STRENGTH WITHIN 28 DAYS.

GENERAL NOTES

EXISTING SITE PLAN / TOPO SCALE: 1" = 30'-0"

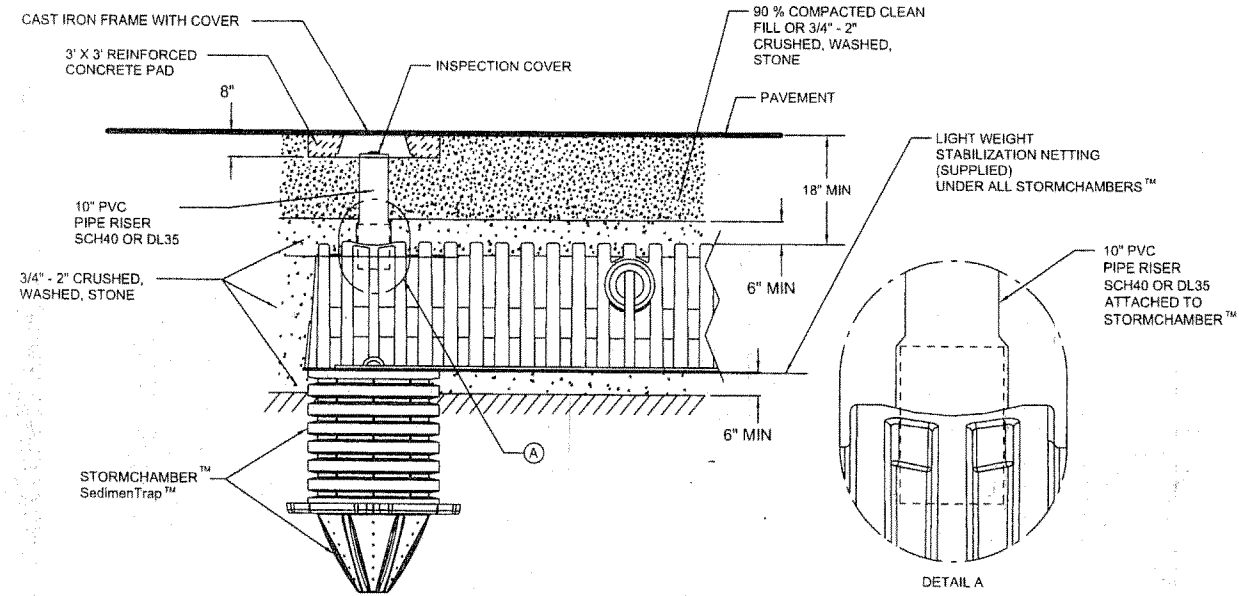
PROJECT SUMMARY

GENERAL NOTES

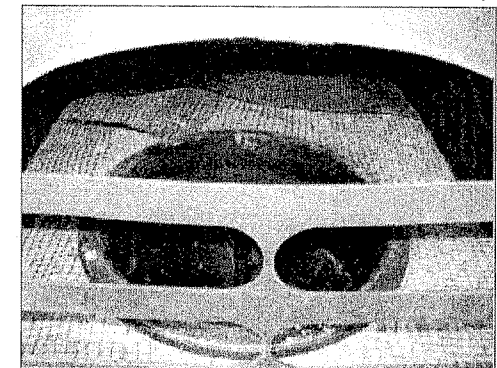
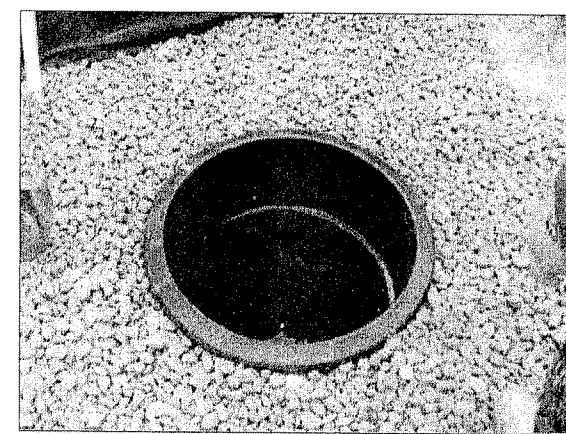
INSTALLING THE SEDIMENT TRAPS™ ADDENDUM TO INSTALLATION BROCHURE

Some StormChamber™ systems require the inclusion of our SedimenTraps™. The SedimenTraps™ are used as a low cost and highly effective method to capture and facilitate removal of sediment.

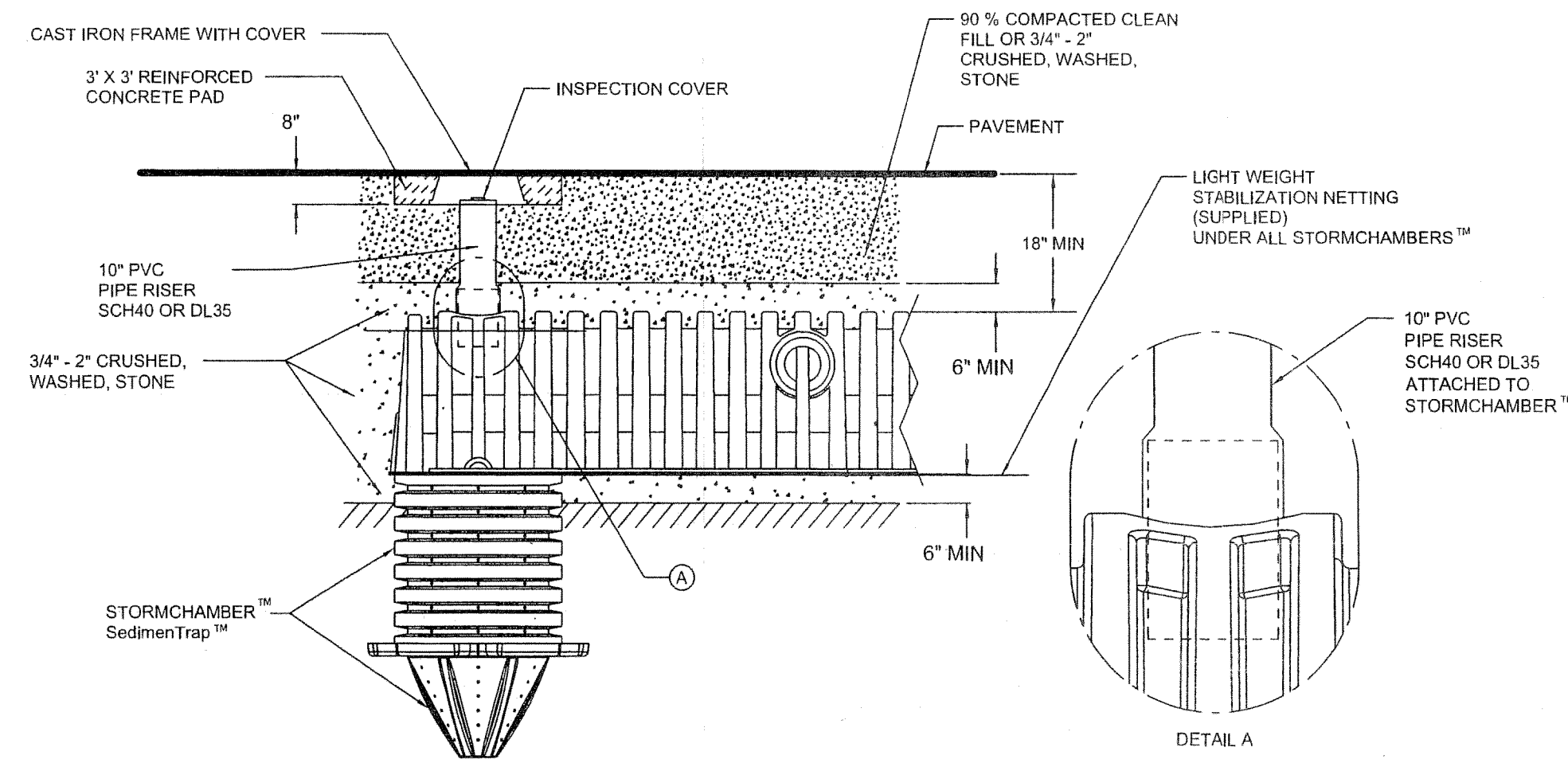
1. Prepare the StormChamber™ system trench as described on page 3.
2. StormChamber™ systems typically incorporate SedimenTraps™ at the first and last chamber of the row receiving the storm water inflow (see page 3). StormChamber™ systems are installed by placing all start units first, then building each row equally with Middle Units and finish building the rows with the End Units (see page 4).
3. Working from the Start Unit end of the StormChamber™ system, identify the location for the first SedimenTrap™. The SedimenTrap™ must be located so that the bottom is aligned exactly under the 10" PVC riser pipe.



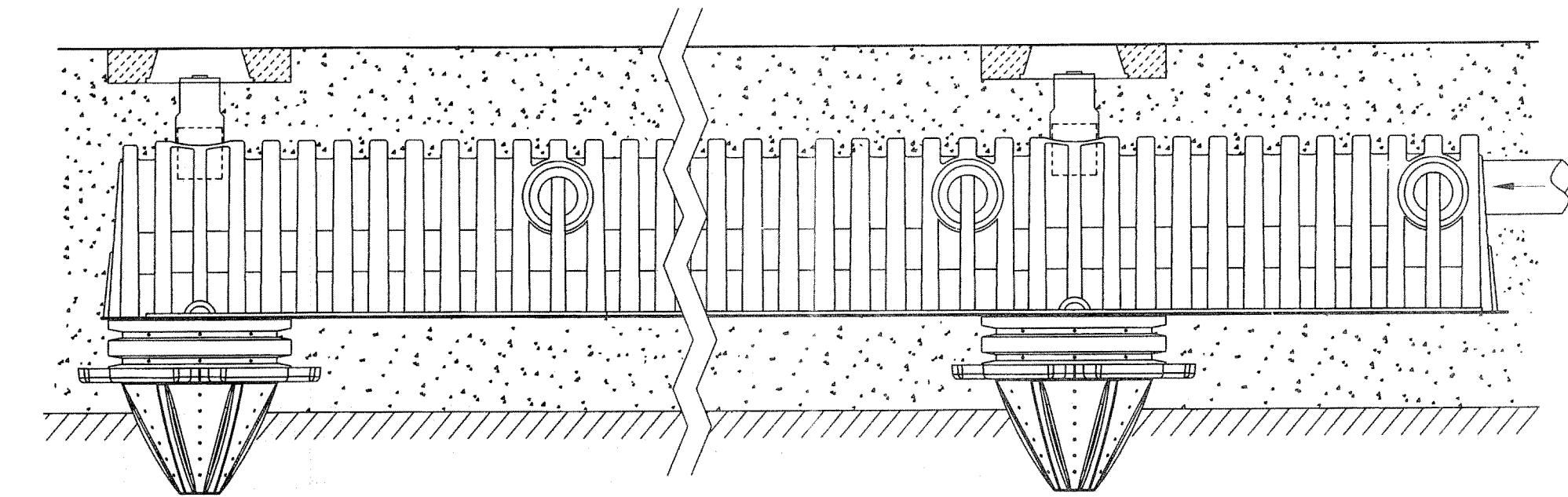
4. Excavate a hole deep enough so that the SedimenTrap™, when placed on about 6" of a crushed, washed 3/4" - 2" non-calcareous stone base, only the top corrugation of the 30" HDPE pipe will be exposed above the finished trench stone base (about 3").
5. Fill around the SedimenTrap™ with the crushed, washed 3/4" - 2" non-calcareous stone up to the level of the surrounding stone base.
6. Cut the plastic netting to fit snugly around the exposed portion of the SedimenTrap™.



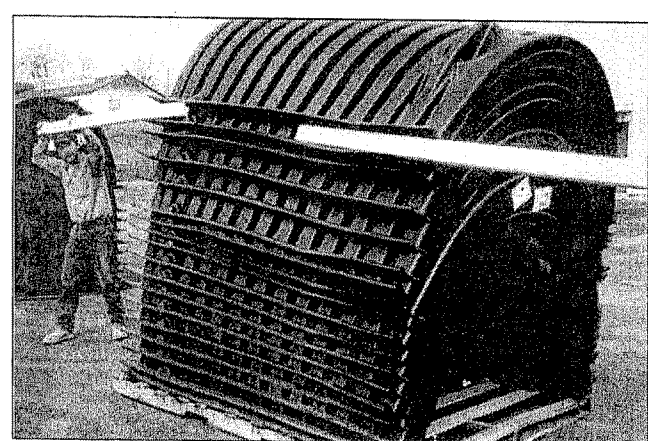
7. Place the chamber over the SedimenTrap™ and install the 10" PVC riser pipe as instructed on page 7.



FIRST ROW OF STORMCHAMBER™ SYSTEM

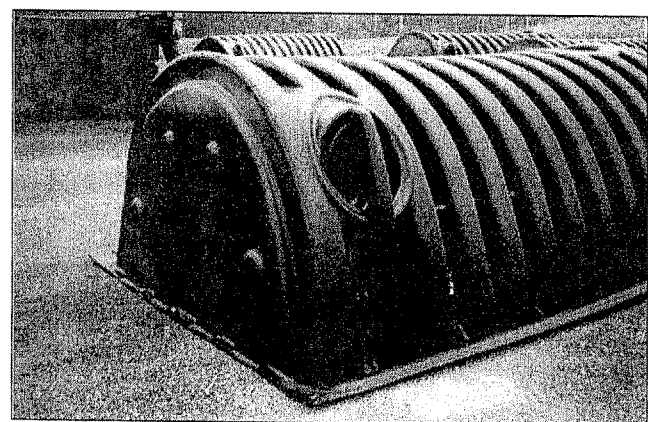


STORMCHAMBER™ INSTALLATION



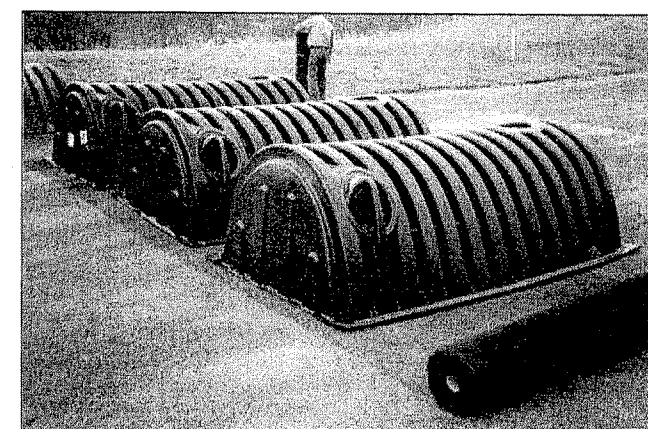
You may need to use 2x4's to separate chambers.

1. You may need assistance in separating the StormChambers™. Based on weather and transit conditions, sometimes the StormChambers™ become tightly compacted. Separate StormChambers™ using two 2x4 studs along one of its sides for leverage. Do not use any damaged units - contact HydroLogic Solutions immediately.



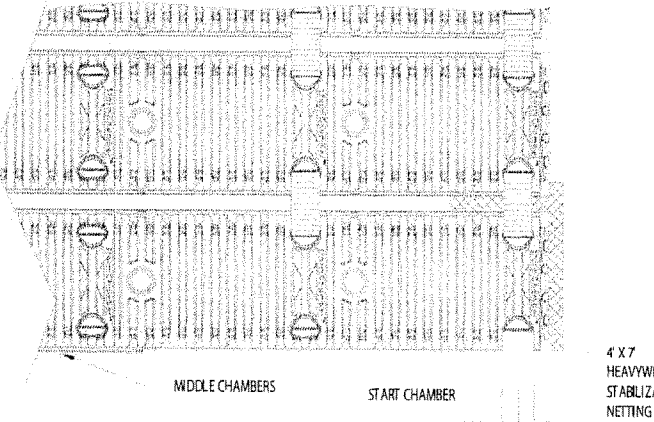
Row placement begins at inflow end of chamber system with Start Model StormChambers™.

2. Start building the StormChamber™ system with the Start Model StormChamber™ at the inflow end of the StormChamber™ system. The Start Models are completely closed at the end with the two side portals.



Place lightweight stabilization netting under StormChambers™.

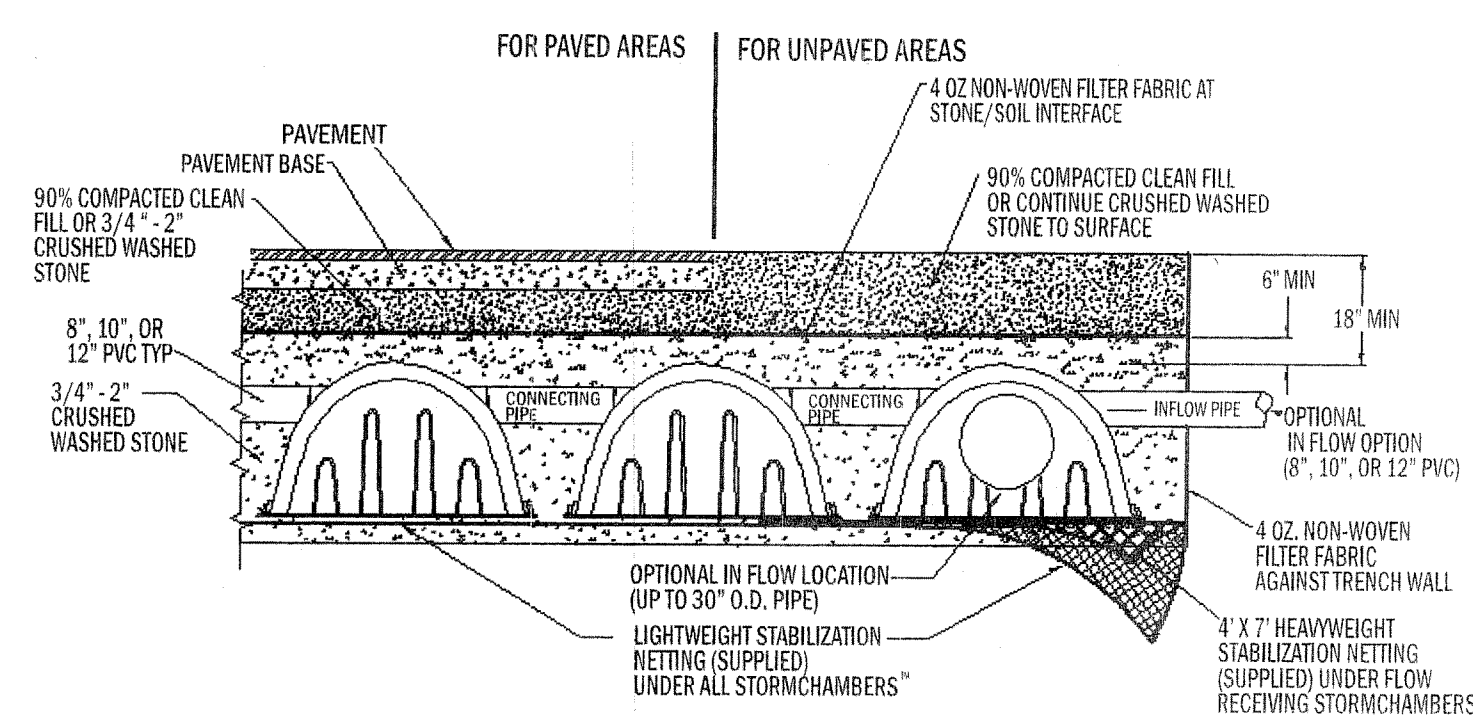
3. Roll out two rows of the light weight stabilization netting (provided with the StormChambers™) perpendicular to the rows of where the Start StormChambers™ will be placed. Overlap the rows by approximately 1'. Keep the netting flat; if moved, re-straighten and flatten out.



Place heavy weight stabilization netting under chambers receiving storm drain inflow.

4. Place one piece of the heavy weight stabilization netting (provided with the StormChambers™) perpendicular to and under each StormChamber™ that will be receiving inlet storm drain pipes. Place on top of the light weight netting and place one edge of the netting under, and slightly extending beyond, the closed end wall of the StormChamber™. Have the netting extend equally beyond both sides of the StormChamber™. The purpose of the heavy weight stabilization netting is to function as a "splash pan," preventing excavation of the underlying stone and soil, while allowing infiltration to occur.

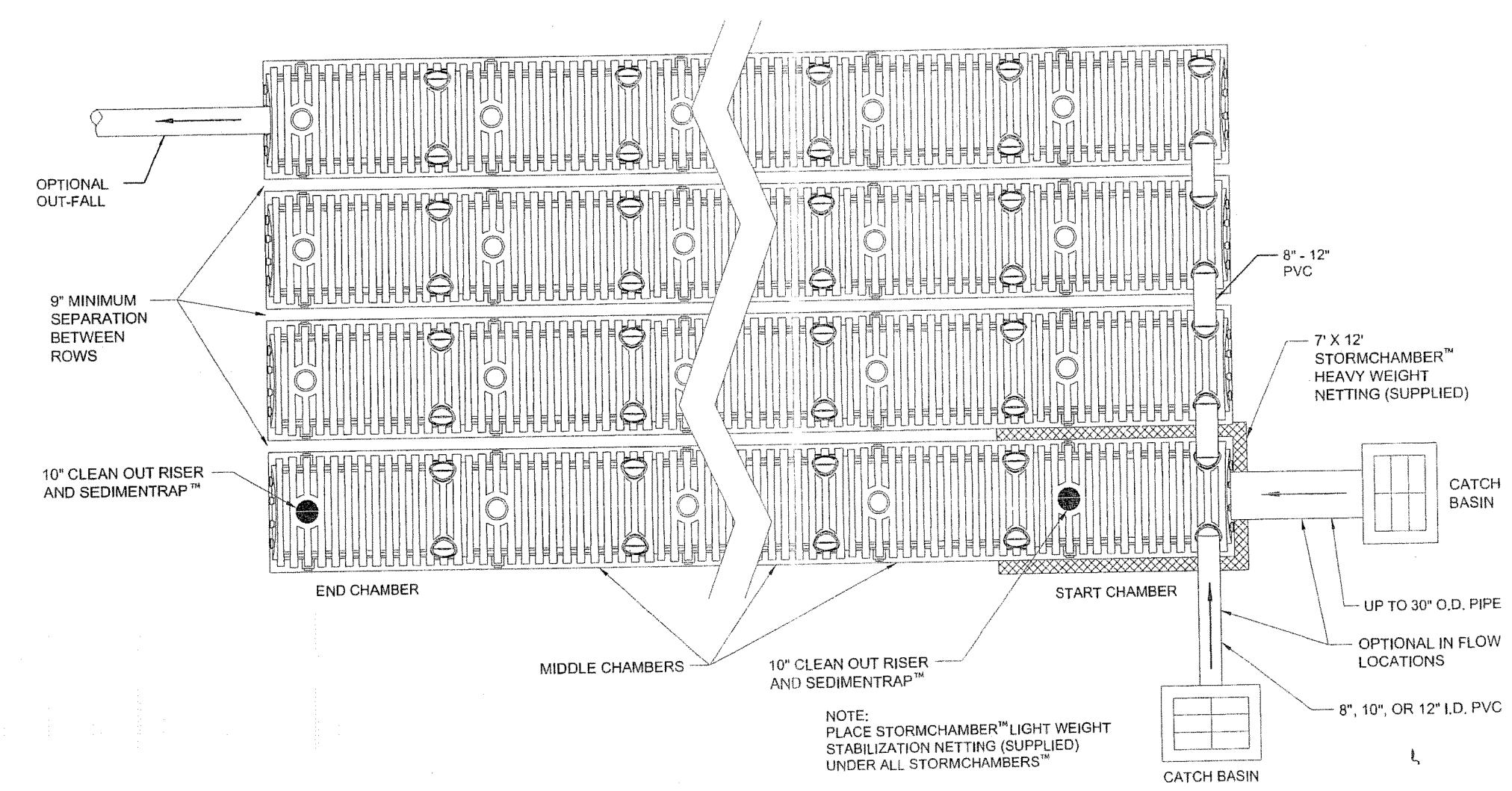
RECOMMENDED INSTALLATION OF STORMCHAMBER™



SECTION

SEDIMENT TRAP AND STORM CHAMBERS DETAILS

STORMCHAMBER™ EXAMPLE CONFIGURATION



PARTIAL INSTALLATION PROCEDURE

| | |
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PES ENGINEERING
 9060 TELSTAR AVE #225
 EL MONTE, CA 91731
 TEL: (626) 955-2844
 FAX: (626) 288-2771

D & M METALS
 840 E. STATE STREET
 ONTARIO, CA. 91761

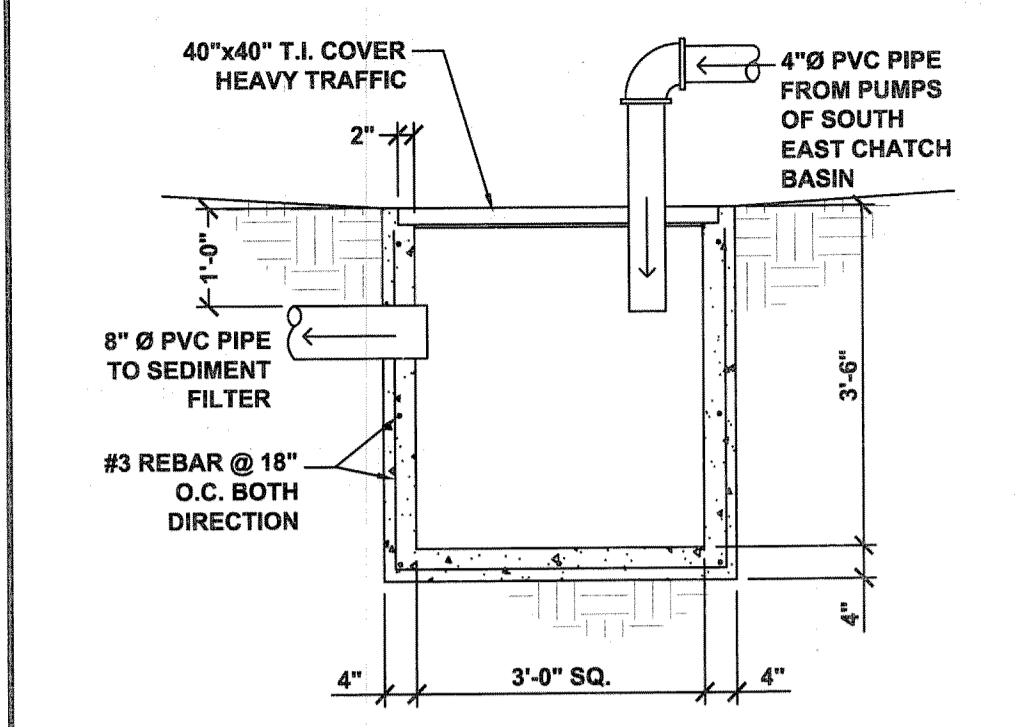
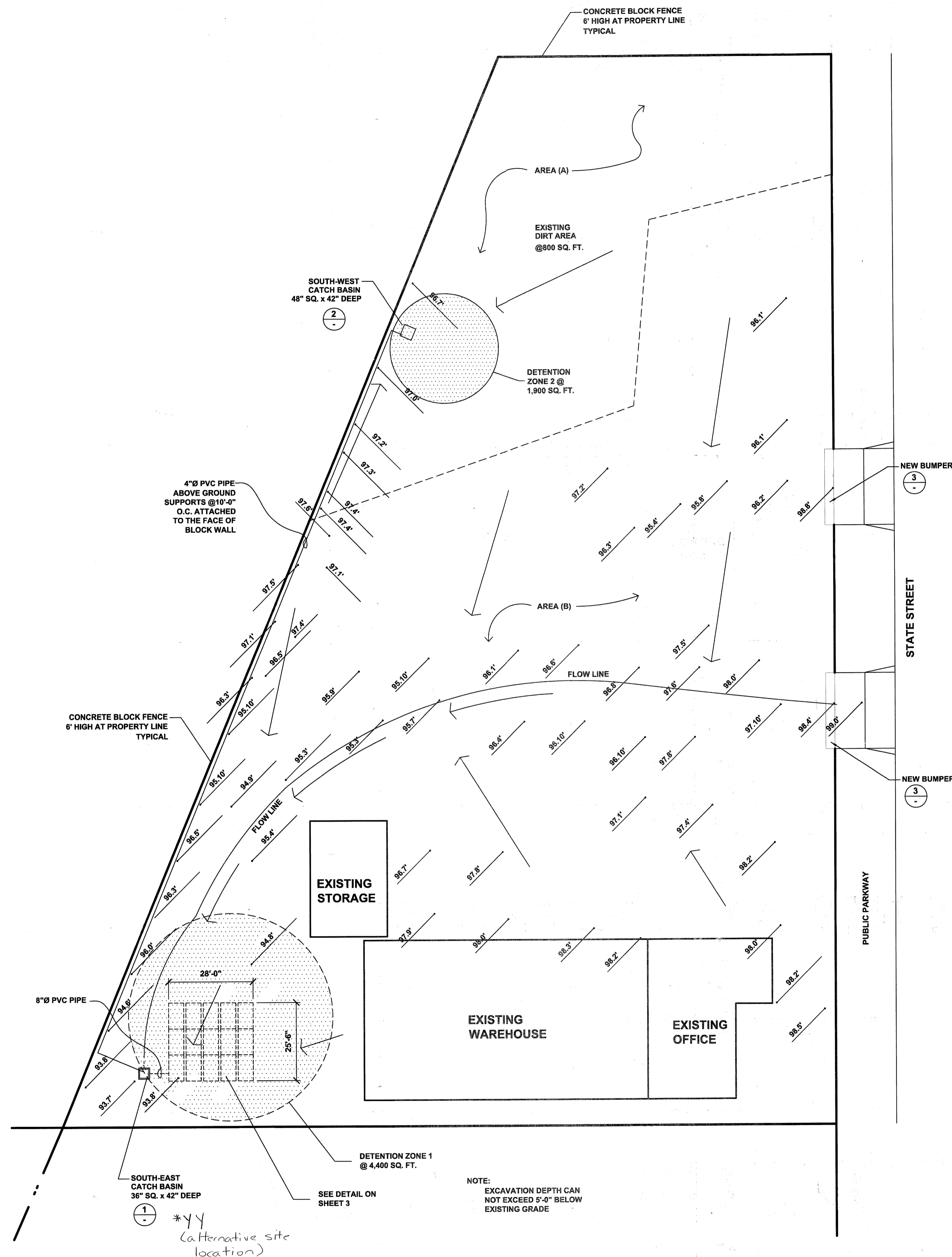


JOB TITLE _____
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 SHEET _____
 OF _____

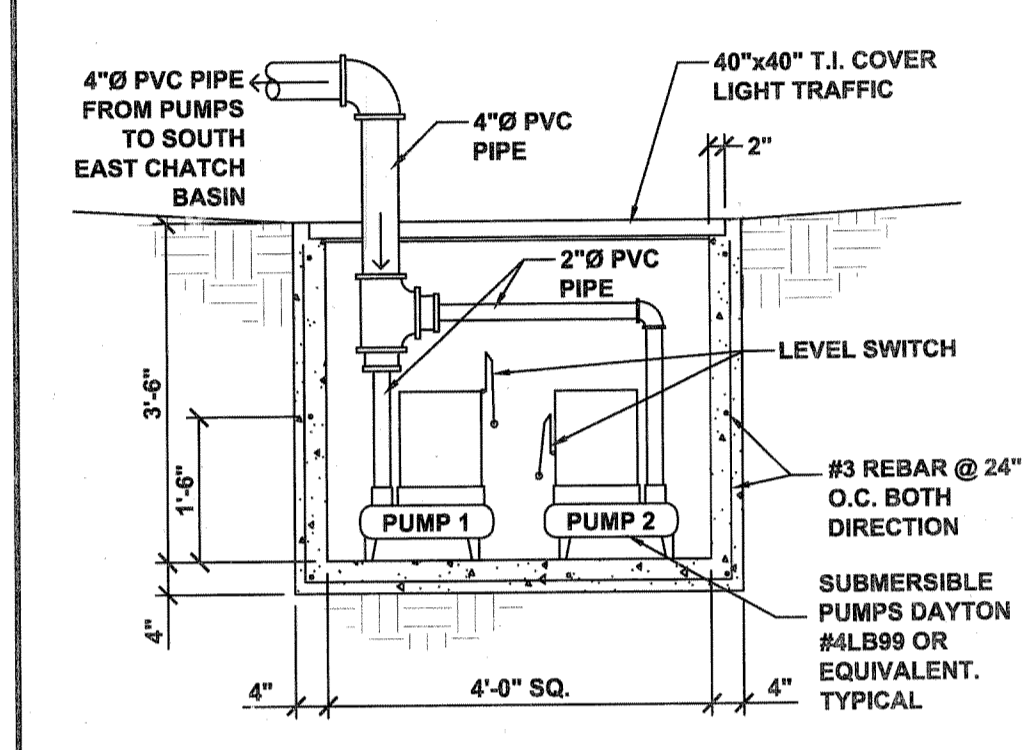
EXHIBIT B

To Consent Decree

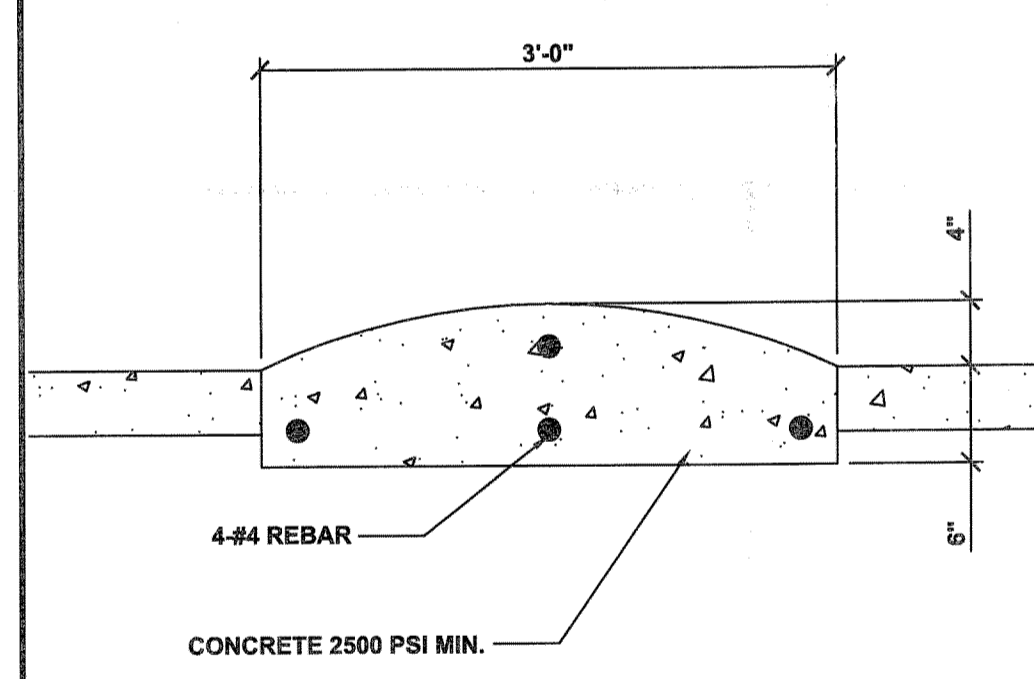
Inland Empire Waterkeeper et al. v. J Lee's Metals, Inc., et al., EDCV 09-1549 VAP (OPx)



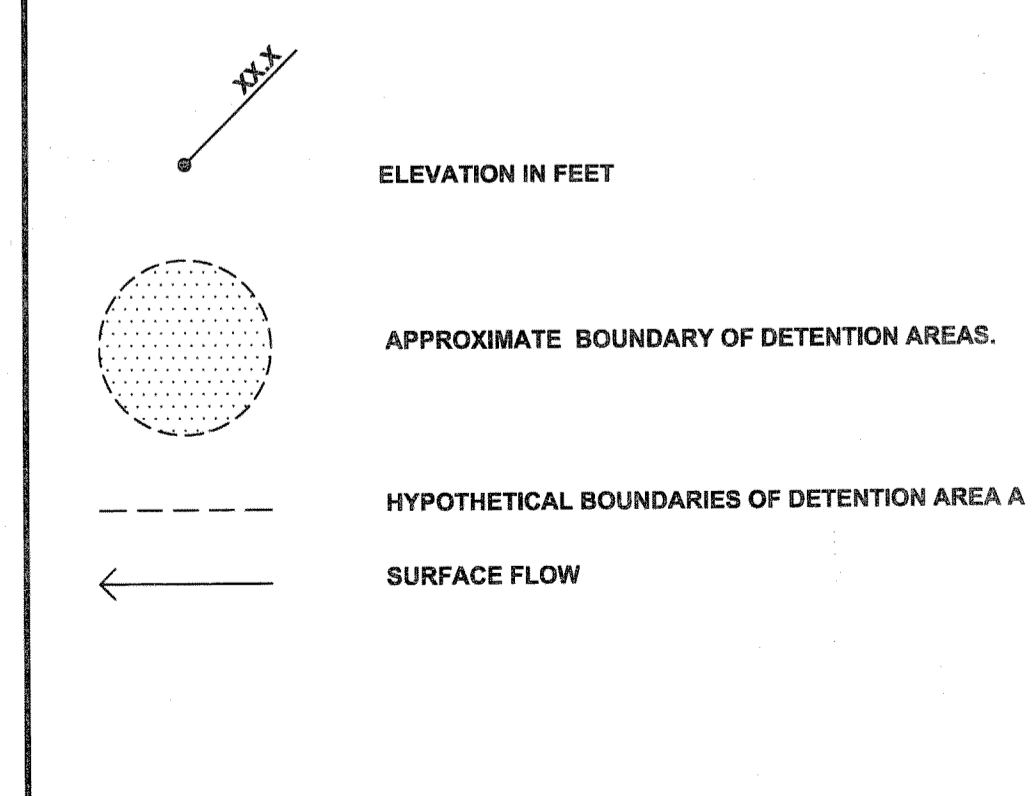
SOUTH-EAST
CATCH BASIN DETAIL 1
 CONCRETE: 2500 PSI MIN.



SOUTH-WEST
CATCH BASIN DETAIL 2
 CONCRETE: 2500 PSI MIN.



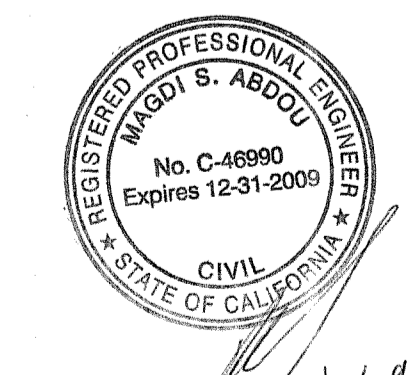
NOTE:
 CONTRACTOR OR OWNER CAN BUILD
 THE BUMPER USING ASPHALT OR CONCRETE
BUMER DETAIL 3



LEGEND 4

DRAINAGE PLAN

SCALE: 1" = 20'-0"



11/23/09

| NO. | REVISIONS |
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PES ENGINEERING
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 phone (626) 288-2644
 fax (626) 288-2771

JOB TITLE **DRAINAGE PLAN**
D & M METALS
 840 E. STATE STREET
 ONTARIO, CA. 91761

JOB TITLE
 DRAWN BY
 DATE
 JOB NO.
 SHEET

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