

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO.
)
)
 AGGREGATE INDUSTRIES - NORTHEAST)
 REGION, INC.)
)
 Defendant)

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint (the “Complaint”) in this action concurrently with this Consent Decree alleging that Defendant Aggregate Industries - Northeast Region, Inc. (“Aggregate-NE” or “Defendant”) violated Sections 301 and 308 of the Clean Water Act (the “Act”), 33 U.S.C. §§ 1311 and 1318;

WHEREAS, Aggregate-NE owns or operates, or has owned or operated, Construction Materials facilities, including ready-mix concrete operations, asphalt batching operations, and/or sand and gravel operations at forty-three facilities in Massachusetts, New Hampshire and Maine.

This action relates to twenty-three (23) facilities, namely: Barre, Massachusetts; Berlin, Massachusetts; Chelmsford, Massachusetts; Everett, Massachusetts; Groveland, Massachusetts; Holliston, Massachusetts; Hudson, New Hampshire; Hyde Park, Massachusetts; Littleton, Massachusetts; Manchester, New Hampshire; Peabody, Massachusetts; Portsmouth, New Hampshire; Raymond, New Hampshire; Saugus, Massachusetts; Shrewsbury, Massachusetts; Stoughton, Massachusetts; Swampscott, Massachusetts; Taunton, Massachusetts; Waltham, Massachusetts; Watertown, Massachusetts (2 facilities); Weymouth, Massachusetts; and Wrentham, Massachusetts;

WHEREAS, the Complaint alleges that Aggregate-NE discharges or has discharged wastewater, including process water and/or storm water, at the twenty-three (23) facilities identified above into waters of the United States;

WHEREAS, the Complaint alleges that Aggregate-NE discharged process water without a National Pollutant Discharge Elimination System (“NPDES”) permit at facilities in Berlin, Massachusetts; Manchester, New Hampshire; Raymond, New Hampshire; and Swampscott, Massachusetts; in violation of Section 301(a) of the CWA, 33U.S.C. § 1311(a), for various periods of time from June 2001 to September 2005;

WHEREAS, the Complaint alleges that Aggregate-NE discharged untreated sewage onto the ground which flowed to a storm drain system and waters of the United States at its facility in Saugus, Massachusetts;

WHEREAS, the Complaint alleges that Aggregate-NE discharged process water in violation of the effluent limitations established in its NPDES permit # MA0001830 at its facility in Swampscott, Massachusetts, between June 2001 and June 2006;

WHEREAS, the Complaint alleges that, in violation of Sections 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, Aggregate-NE discharged “storm water associated with industrial activity” from various point sources into waters of the United States without NPDES permits at its facilities in Barre, Massachusetts; Everett, Massachusetts; Hudson, New Hampshire; Hyde Park, Massachusetts; Littleton, Massachusetts; Manchester, New Hampshire; Portsmouth, New Hampshire; Raymond, New Hampshire; Waltham, Massachusetts; 48 Coolidge Ave., Watertown, Massachusetts; 105 Coolidge Hill Ave., Watertown, Massachusetts; and Wrentham, Massachusetts; and that Aggregate-NE failed to apply for an NPDES permit for each such discharge for various periods of time when the facilities were operational between June 2001 and June 2006;

WHEREAS, the Complaint alleges that, in violation of Sections 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, Aggregate-NE discharged “storm water associated with industrial activity” from point sources into waters of the United States without an NPDES permit at its facility in Weymouth, Massachusetts and that Aggregate-NE failed to apply for an NPDES permit for such discharge from June 2001 to the present;

WHEREAS, the Complaint also alleges that Aggregate-NE violated the conditions of the applicable Multi-Sector General Permit for Industrial Activities (the “MSGP”) at facilities in Barre, Massachusetts; Chelmsford, Massachusetts; Everett, Massachusetts; Groveland, Massachusetts; Holliston, Massachusetts; Hudson, New Hampshire; Hyde Park, Massachusetts; Littleton, Massachusetts; Manchester, New Hampshire; Peabody, Massachusetts; Raymond, New Hampshire; Saugus, Massachusetts; Shrewsbury, Massachusetts; Stoughton, Massachusetts; Swampscott, Massachusetts; Taunton, Massachusetts; Waltham, Massachusetts; 48 Coolidge Ave., Watertown, Massachusetts; 105 Coolidge Hill Ave., Watertown, Massachusetts; and Wrentham, Massachusetts, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for various periods of time when the facilities were operational between June 2001 and 2008;

WHEREAS, since September 2005, Aggregate-NE has filed Notices of Termination of its storm water discharges at its facilities in Barre, Massachusetts; Everett, Massachusetts; Groveland, Massachusetts; Holliston, Massachusetts; Hyde Park, Massachusetts; Marlborough, Massachusetts; and 105 Coolidge Hill Ave., Watertown, Massachusetts;

WHEREAS, Aggregate-NE no longer owns or operates the facilities in Barre, Massachusetts; Hyde Park, Massachusetts, and 105 Coolidge Hill Ave., Watertown, Massachusetts;

WHEREAS, Aggregate-NE disputes the allegations of the Complaint; and nothing in this Decree shall constitute or be construed as an admission of liability, fact, or, with the exception of Paragraphs 1, 2, and 77, law, or of any wrongdoing on the part of the Defendant;

WHEREAS, Aggregate-NE states that it has taken steps to improve its environmental management practices, including changes in management at the senior level and at the Violating Facilities, substantial investments in storm water improvements at the Violating Facilities, environmental training for employees, and enhancing its internal environmental compliance auditing system;

WHEREAS, Aggregate-NE has prior to the lodging of this Consent Decree electronically submitted Notices of Intent requesting coverage under the MSGP-2008 for storm water discharges at the Covered Facilities, with exception of the Swampscott, Massachusetts facility, which is subject to an individual NPDES permit, and the Weymouth, Massachusetts facility;

WHEREAS, at its Peabody, Massachusetts facility, Aggregate-NE has redesigned and reconstructed the access road to increase its elevation; eliminated Outfall 003; increased the vegetated surface areas adjacent to the road; and increased porous pavement.

WHEREAS, Aggregate-NE has constructed storm water monitoring stations at Outfalls 001 and 003 at its Saugus, Massachusetts facility; and

WHEREAS, the Parties agree that settlement of this matter before the taking of any testimony, upon the pleadings, and without adjudication is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

1. The Complaint filed in this action states claims upon which relief can be granted against Aggregate-NE pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter of this action and over the Parties to this Consent Decree pursuant to Section 309(b) of the Act, 33 U.S.C. §§1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue properly lies in this district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395.

III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the United States, and shall also apply to and be binding upon Defendant Aggregate-NE and its officers, directors, agents, employees acting in their official capacities, successors, and assigns. Defendant shall give notice and a copy of this Consent Decree to all persons, firms, consultants, and corporations that perform the work or any portion of the work required by this Consent Decree. This Consent Decree is not intended to restrict the lawful and legitimate sale or lease of assets by Aggregate-NE to a bona fide purchaser or tenant and would not bind such purchaser or tenant except to the extent such purchaser or tenant agrees in writing to be bound hereby. In the

event of transfer of ownership in the Covered Facilities by Defendant while this Consent Decree remains in effect, Defendant shall not be released from the obligations or liability under this Consent Decree unless (i) the new owner has executed an agreement expressly assuming said obligations and liability for compliance with these provisions, (ii) Defendant provides written notice to EPA of such transfer and a copy of the agreement by which the new owner will assume such obligations and liability, (iii) Defendant provides a written statement, certified by a representative in senior management, that the facility to be transferred is in compliance with this Consent Decree and the Clean Water Act; and (iv) Defendant does not receive a written objection from EPA to such transfer within thirty (30) Days following EPA's receipt of the notice described in clauses (ii) and (iii). Any objection provided by EPA pursuant to clause (iv) in the preceding sentence shall be based on its determination that the terms of the agreement by which the new owner will assume the obligations and liability under this Decree are insufficient to ensure that the new owner can comply with the terms of this Decree to the same extent as the Defendant in the absence of the transfer. Notwithstanding the foregoing, in the event that Defendant transfers ownership in any Covered Facility during the term of this Consent Decree, Defendant thereafter shall not be obligated to perform the obligations set forth in Paragraphs 17-21 hereof with respect to such transferred facility; provided that Defendant has given written notice, as described in clauses (ii) and (iii) above, to EPA prior to the effective date of such transfer.

IV. OBJECTIVES

4. It is the express purpose of the Parties in entering into this Consent Decree to further the goals of the Clean Water Act, as enunciated in Section 101, 33 U.S.C. § 1251. Any and all provisions herein relating to operation and maintenance, monitoring, reporting, and inspections shall have the objective of ensuring full compliance with the Act, the regulations promulgated pursuant to the Act, and the terms of any permit issued under the Act.

V. DEFINITIONS

5. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Aggregate-NE” shall mean Aggregate Industries - Northeast Region, Inc.;

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXV);

“Construction Materials” shall include, without limitation, ready-mix concrete, asphalt, and/or sand and gravel operations, and any operations associated therewith;

“Covered Facility” means those facilities listed in Appendix A hereto, any Aggregate-NE facility producing Construction Materials in New England which is determined at any time prior to the termination of this Consent Decree to be subject to the requirements of MSGP-2008, and any New Facility subject to the MSGP-2008;

“Day” shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

“Interest” shall mean interest at the rate determined pursuant to 28 U.S.C. § 1961;

“MSGP-2000” shall mean EPA’s “Storm Water Multi-Sector General Permit for Industrial Activities,” 65 Fed. Reg. 64801 (October 30, 2000), and any state-issued storm water permit issued pursuant to Section 402 of the Clean Water Act by an authorized state;

“MSGP-2008” or “MSGP” shall mean EPA’s “Storm Water Multi-Sector General Permit for Industrial Activities,” 73 Fed. Reg. 56572 (September 29, 2008), any subsequently issued permit which takes the place of MSGP-2008 during the term of this Consent Decree, and any state-issued storm water permit issued pursuant to Section 402 of the Clean Water Act by an authorized state;

“New England” shall mean the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut or Rhode Island;

“New Facility” shall mean any facility producing Construction Materials in New England that Aggregate-NE first acquires a leasehold interest, or acquires operational control or ownership of, during the term of this Consent Decree;

“Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

“Parties” shall mean the United States and Aggregate-NE;

“Section” shall mean a portion of this Decree identified by a roman numeral;

“United States” shall mean the United States of America, acting on behalf of EPA;

“Violating Facilities” shall mean those facilities owned or operated by Aggregate-NE which are listed in the Complaint and identified in Appendix B.

VI. CIVIL PENALTY

6. Within thirty (30) Days of the Effective Date of this Decree, Aggregate-NE shall pay the sum of two million seven hundred fifty thousand dollars (\$2,750,000) as a civil penalty, together with Interest accruing from the date on which this Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging. Aggregate-NE shall make payment by electronic funds transfer, in accordance with written instructions to be provided by the United States Attorney’s Office, Financial Litigation Unit, Boston, Massachusetts.

Defendant shall make payment by FedWire Electronic Funds Transfer (“EFT”) in accordance with current EFT procedures, referencing USAO File Number _____, EPA Region I, and DOJ Case Number 90-5-1-1-08932. The costs of such electronic funds transfer shall be the responsibility of Aggregate-NE. A copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and any transmittal letter shall be sent to the United States in the manner specified in Section XVII (Form of Notice); by email to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

7. Aggregate-NE shall not deduct any penalties paid under this Decree pursuant to this Section or Section XIII (Stipulated Penalties) in calculating its federal income tax.

VII. COMPLIANCE MEASURES

8. By the date of lodging of this Decree, with respect to each of the Covered Facilities, Aggregate-NE shall achieve and thereafter maintain compliance with the CWA and the MSGP-2008. For each such facility, compliance with the MSGP-2008 shall include without limitation: (i) preparing, achieving and maintaining compliance with a Storm Water Pollution Prevention Plan or Plans (“SWPPP”) which fully comply with the MSGP-2008; (ii) maintaining up-to-date site diagrams; selecting, installing, and maintaining adequate best management practices (“BMPs”); (iii) conducting annual comprehensive site inspections; (iv) conducting visual monitoring, analytical benchmark and/or numeric monitoring as applicable; and (v) conducting inspections. If, at any such facility, storm water discharges associated with industrial activity are eliminated, or if Aggregate-NE has obtained coverage for such facility under an alternative permit, Aggregate-NE shall promptly file a Notice of Termination (“NOT”) in accordance with the MSGP-2008, shall submit a copy of the NOT to EPA Region I, and shall comply with all terms and conditions of such alternate permit, if applicable.

9. Aggregate-NE shall amend all BMPs and control measures for the Covered Facilities and update all SWPPPs whenever required by the MSGP and also when:

a. there is a change in conditions, design, construction, operation or maintenance at the facility that has or could have an effect on the discharge of pollutants to waters of the United States and that has not been previously addressed in the SWPPP; or

b. a BMP, or a combination of BMPs, is ineffective in eliminating or significantly minimizing pollutants in storm water and run-off from the facility; or

c. there is a change in or update of the information required to be in the SWPPP.

10. Upon lodging of this Consent Decree, Aggregate-NE agrees to begin monitoring its storm water discharges at its facility at 48 Coolidge Avenue, Watertown, Massachusetts, as provided in Section X below (Monitoring), to evaluate whether prior modifications made by Defendant are sufficient to ensure that storm water discharges from that facility meet applicable benchmark concentrations. If any samples collected at the Watertown facility pursuant to Section X (Monitoring) do not meet any applicable benchmark concentrations during the first six (6) rounds of sampling completed after the Effective Date of this Consent Decree, Aggregate-NE shall provide EPA, for review and approval, a corrective action plan and schedule for the development and implementation of additional BMPs to promptly satisfy the benchmark concentrations. Such plan shall be provided to EPA within thirty (30) Days following Aggregate-NE's receipt of laboratory results indicating a storm water discharge from the Watertown facility exceeded a relevant benchmark concentration. Aggregate-NE shall commence implementation of such corrective action plan within fifteen (15) Days following receipt of EPA's final written approval of the corrective action plan, and in accordance with the schedule therein.

11. Within three (3) months of the Effective Date of this Consent Decree, at the Chelmsford, Massachusetts facility, Aggregate-NE shall eliminate Outfall 001 by pumping storm water to a retention basin, with the goal of eliminating discharges to surface waters. As of lodging of this

Consent Decree, Aggregate has secured all necessary state, federal and local permits for the improvements for the foregoing work and has commenced construction.

12. By the Effective Date of this Consent Decree, Aggregate-NE shall achieve and thereafter maintain compliance with the limitations and conditions of its NPDES permit # MA0001830 at the Swampscott, Massachusetts facility.

13. Aggregate-NE shall not discharge pollutants to waters of the United States at any of its facilities, except in compliance with all applicable federal and state statutes, regulations and permits.

VIII. STORM WATER COMPLIANCE ASSESSMENTS

14. Within sixty (60) Days of the Effective Date of this Decree, Aggregate-NE shall complete and submit to EPA an Initial Comprehensive Facility Compliance Evaluation (“ICFCE”) for each Construction Materials facility located in New England that it owns or operates as of the Effective Date. Defendant may elect to combine such ICFCE with the annual Comprehensive Site Inspection required by the MSGP for any facility, as long as the requirements of this Section are met in addition to the requirements of the MSGP.

15. The ICFCE may be in the form of a fact sheet, annotated maps, the SWPPP, and supplementary information. The ICFCE for each facility shall include, without limitation:

a. A review of the applicability of the MSGP to the facility, an assessment of whether a Notice of Intent (“NOI”) for coverage under the MSGP has been or should be filed, and an identification of all industrial sectors at the facility to which the MSGP applies. If an NOI has been filed for the facility, the review shall provide a narrative description of how and

when storm water discharges were terminated, including diagrams of relevant BMPs. If the facility has a process water discharge, the review shall provide a description of waste waters, discharges and NPDES permit compliance status.

b. Identification of all discharges of pollutants from the facility to waters of the United States, including but not limited to point sources such as outfalls, basins, pumps, swales, gullies, etc., and discharges to municipal separate storm sewer systems (“MS4s”) and/or publicly-owned treatment works (“POTWs”).

c. Identification of all BMPs in place at the facility to address discharges of storm water.

d. An evaluation of whether a SWPPP is in place and meets permit requirements. A copy of the SWPPP for each facility and operation shall be included in the ICFCE.

e. An explanation of how the BMPs and controls called for in the MSGP and SWPPP are installed, implemented and maintained.

f. An evaluation of whether the SWPPP includes a complete site map reflecting on the ground conditions. A copy of the site map for each facility and operation shall be included in the ICFCE.

g. An evaluation of the efficacy of the controls in addressing discharges of pollutants from truck and equipment washing operations, vehicle maintenance activities, and fueling stations.

h. For stone and gravel operations, an evaluation of the efficacy of the controls in addressing discharges of pollutants from material stockpile operations; stone washing and rock crushing operations; and quarry dewatering operations.

i. For asphalt operations, an evaluation of the efficacy of the controls in addressing discharges of pollutants from material stockpile operations and loading areas, and from application of releasing agents.

j. For ready mix concrete operations, an evaluation of the efficacy of the controls in addressing discharges of pollutants from concrete up-loading areas and operations; drum washout operations; concrete washout pits and operations; and waste concrete processes. In addition, Aggregate-NE shall evaluate the capacity of all concrete washout pits in relation to current and future planned production.

k. An identification of surface waters and wetlands at the facility, and a description and map depicting hydrologic connections from point sources to surface waters or wetlands.

l. An evaluation of whether site compliance inspections, visual monitoring and pollutant monitoring have been conducted during the previous twelve (12) months as required under the MSGP.

m. A statement indicating whether the facility has met, over the previous twelve (12) months, benchmark concentrations identified for the appropriate sector under the MSGP, and if not, a plan for immediately modifying the SWPPP and implementing BMPs to achieve benchmark concentrations.

n. A statement indicating whether the facility has met, over the previous twelve (12) months, numeric limits required under the MSGP or an applicable NPDES permit, including a discussion of all violations of numeric limits, their causes, and a plan for immediately remedying the violations.

o. A description of any on-going non-compliance with the CWA, the MSGP or applicable NPDES permit, and presentation of a plan for promptly bringing the facility into compliance.

16. Within forty-five (45) Days of acquiring a leasehold interest in any new Construction Materials facility in New England or acquiring any new Construction Materials facility in New England, in addition to complying with permit requirements of the MSGP, Aggregate-NE shall begin to implement its environmental management system at the new facility and, pursuant thereto, shall complete and submit to EPA a New Facility Comprehensive Compliance Evaluation (“NFCCE”). In the event that Aggregate-NE acquires a leasehold interest in or acquires more than five (5) Construction Materials facilities in New England as part of a single transaction, it may provide to EPA, for approval, an alternative schedule for completing the NFCCEs for those facilities, along with a statement of reasons supporting its request, within ten (10) business days of completing such transaction, and shall complete such NFCCEs according to the schedule as approved by EPA. The NFCCE may be in the form of a fact sheet, annotated maps, the SWPPP, and supplementary information, and shall include without limitation:

a. An inspection of the facility, and a detailed description of its operations, size, and activities.

b. A statement indicating whether the facility has or should seek coverage under the MSGP, and identification of appropriate industrial sectors. If the facility has or should have a permit for the discharge of process waters, a description of waste water discharges and NPDES permit compliance status.

c. An identification of surface waters and wetlands at the facility, and a description and map depicting hydrologic connections from point sources to surface waters or wetlands.

d. Verification that an NOI has been filed according to permit regulations, that a SWPPP and detailed site plan have been prepared, and submission to EPA of the SWPPP, including a detailed site plan.

e. A description of all discharges of pollutants from the facility (including, e.g., discharges from outfalls, basins, pumps, swales, gullies, and discharges to MS4s or POTWs).

f. Identification of all BMPs in place at the facility to address discharges of storm water, and an evaluation of how and whether BMPs and controls have been installed, implemented and maintained.

g. A description of any recommended or needed improvements to BMPs and controls, and a plan and schedule for their prompt implementation.

h. A written certification that Aggregate-NE has reviewed the results of all inspections and monitoring, if conducted, during the twelve (12) months prior to submission of the NFCCE. Such review shall include an evaluation of the causes of exceedances of benchmark concentrations and numeric limits.

i. A written certification that Aggregate-NE has reviewed any records of inspections required by the SWPPP and spill records prepared during the twelve (12) months prior to submission of the NFCCE, including a review of maintenance and spill prevention programs.

j. If Aggregate-NE determines that the facility has been in violation of any requirement of the CWA, regulations or permits issued thereunder during the twelve (12) months prior to submission of the NFCCE, but that it is in compliance as of the required date of the submission of the NFCCE, Aggregate-NE shall provide a written certification that corrective measures have been implemented at the facility and that the facility is now in compliance.

k. If Aggregate-NE determines that, as of the required date of submission of the NFCCE, the facility is violating or is not in compliance with any requirement of the CWA, its regulations, and/or permits issued thereunder, Aggregate-NE shall describe such non-compliance, identify the requirement(s) with which the facility is not in compliance, and present to EPA for review and approval a plan and schedule for promptly bringing the facility into compliance with such requirements. Consistent with EPA's policy on "*Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*," disclosure of such noncompliance or violations pursuant to this Paragraph 16 will not in itself preclude EPA's consideration of a request by Aggregate-NE for mitigation of civil penalties pursuant to EPA's "*Interim Approach to Applying the Audit Policy to New Owners*," 73 Fed. Reg. 44991 (August 1, 2008).

IX. STORM WATER COMPLIANCE PROGRAM

17. Within ninety (90) Days of the Effective Date of this Decree, Aggregate-NE shall establish and fill the position of regional Storm Water Compliance Manager (hereinafter, the "SWCM"), who shall be responsible for ensuring compliance with the MSGP, other applicable storm water permits, and the SWPPP for all Covered Facilities. The job responsibilities of the SWCM shall include: (i) properly preparing, amending and signing SWPPPs for all facilities to which the MSGP applies; (ii) conducting quarterly inspections required by the MSGP and this Decree, including preparing reports and determining appropriate actions to achieve compliance;

(iii) supervising the installation, maintenance and improvement of BMPs; (iv) conducting Annual Comprehensive Site Evaluations in accordance with the MSGP; (v) determining if appropriate actions have been timely made to address compliance violations or to make improvements to BMPs; and (vi) submitting reports to EPA pursuant to the MSGP and Section X (Monitoring) below. In addition, the SWCM shall supervise the Storm Water On-Site Operations Managers (described in Paragraph 19 below) with respect to storm water compliance matters.

18. The SWCM shall have the following minimal requirements: (a) a bachelor's degree in environmental engineering, civil engineering or environmental science; (b) three years experience in the field of storm water management, including erosion and sedimentation control; and (c) successful completion of a training and certification program conducted by CPESC, Inc., or other organization to be approved by EPA, in the field of storm water quality, sediment and erosion control. The SWCM shall report directly to Aggregate-NE's Environmental and Estates Manager, and in addition shall submit all reports required herein to the Regional President of Aggregate-NE. Within ninety (90) Days of the Effective Date of this Decree, Aggregate-NE shall notify EPA of the selection and qualifications of the SWCM. Aggregate-NE may also choose to designate an alternate SWCM, with equivalent qualifications, in order to act in the SWCM's absence. If the SWCM must be replaced and Aggregate-NE replaces him or her within sixty (60) Days of the vacancy, the gap in designation shall not be considered a violation of Paragraph 17. However, the gap in designation shall not excuse non-compliance with any other requirement of this Decree. Aggregate-NE shall notify EPA of any change in the SWCM, including the credentials of any new SWCM, within fifteen (15) Days of such personnel change.

19. Within ninety (90) Days of the Effective Date of this Decree, Aggregate-NE shall hire or designate an employee as the Storm Water On-Site Operations Manager (hereinafter, “SWOOM”) for each Covered Facility. The SWOOM for each Covered Facility shall be responsible for ensuring compliance with the MSGP, other applicable storm water permits, and the SWPPP for the entire facility to which he or she is assigned, regardless of how many particular operations (e.g. ready-mix concrete, asphalt batching, sand and gravel operations) are conducted at such facility. Each SWOOM shall: (i) be assigned to no more than three facilities; (ii) be on-site at each facility to which he or she is assigned for at least eight (8) hours during each week that the facility is in operation; (iii) be responsible for the proper operation and maintenance of structural and non-structural BMPs; (iv) have the authority to direct employees and others at the facility in order to achieve compliance with the Act, including the ability to stop work if necessary; (v) conduct and document routine facility inspections as required by the MSGP, the facility’s SWPPP, and this Decree; (vi) conduct visual monitoring of storm water discharges as required by the MSGP, the facility’s SWPPP, and this Decree; (vii) conduct benchmark monitoring and compliance monitoring of storm water discharges as required by the MSGP, the facility’s SWPPP, and this Decree; (viii) identify and implement corrective actions needed to achieve compliance as soon as problems are identified; (ix) on at least a monthly basis, in coordination with the SWCM, report such actions to Aggregate-NE’s Environmental and Estates Manager, and to the Regional President; and (x) maintain all documentation on-site as required by the MSGP, the facility’s SWPPP, and this Decree.

20. Each SWOOM shall have at least one year's experience in at least one of the operations conducted at the Covered Facility for which he or she is responsible pursuant to Paragraph 19. In addition, each SWOOM shall be trained and certified in storm water management or erosion and sediment control pursuant to Paragraph 22 below. Within one hundred and twenty (120) Days of the Effective Date of this Decree, Aggregate-NE shall notify EPA of the selection and qualifications of each SWOOM. Aggregate-NE may also choose to designate an alternate SWOOM at a Covered Facility, with equivalent qualifications, in order to act in the SWOOM's absence. If a SWOOM must be replaced and Aggregate-NE replaces him or her within sixty (60) Days of the vacancy, the gap in designation shall not be considered a violation of Paragraph 19. However, the gap in designation shall not excuse non-compliance with any other requirement of this Decree. Aggregate-NE shall notify EPA of any change in SWOOM, including the qualifications of any new SWOOM, within fifteen (15) Days of such personnel change.

21. Aggregate-NE may have benchmark and analytical monitoring conducted by a qualified third-party consultant instead of by the SWOOM. All other activities identified in Paragraph 19 above must be conducted by the SWOOM or the alternate SWOOM described in Paragraph 20.

22. Within one hundred twenty (120) Days of the Effective Date of this Consent Decree, Aggregate-NE shall develop and implement storm water training programs for the following employees:

a. For the SWOOMs: Each SWOOM shall be trained and certified in storm water management or erosion and sediment control by (i) successful completion of a training and certification program conducted by CPESC, Inc., or other organization to be approved by EPA;

(ii) by successful completion of a training program conducted by Aggregate-NE covering the topics listed in the syllabus attached as Appendix C; or (iii) successful completion of another training program approved by EPA in writing. If Aggregate-NE develops its own internal training program, EPA will review and comment on the training program and materials in advance to determine if they adequately address the topics listed in Appendix C. Successful completion of the SWOOM training program shall require attainment of a grade of 75% or higher on a written test administered at the conclusion of the program, and shall be evidenced by a Certificate of Completion issued by Aggregate-NE or the training organization. The certification of each SWOOM shall be maintained by the successful completion of a refresher training course, either through an in-person session or a computer-based course, on an annual basis.

b. For all employees with operational responsibilities (excluding purely administrative staff) at Covered Facilities:

(i) Commencing in 2010, each employee with operational responsibilities shall be trained in storm water management or erosion and sediment control through successful completion of a training program conducted by Aggregate-NE in the spring of each year covering the topics listed in the syllabus attached as Appendix D. Any employees with operational responsibilities who are hired after the training program has been given for that year shall be provided with written materials covering the topics listed in Appendix D as part of new employee orientation. If Aggregate-NE develops its own internal training program and materials, those materials shall be submitted to EPA in

accordance with the requirements of Section XII (Review and Approval) prior to their use to determine if they adequately address the topics listed in Appendix D. Each such employee shall, on an annual basis, complete a refresher training course, either through an in-person session or a computer-based course.

(ii) With respect to training conducted in 2009, within thirty (30) Days of the Effective Date of this Consent Decree, Defendant shall provide written documentation to EPA that all employees with operational responsibilities employed by Defendant as of March 31, 2009, successfully completed a training program conducted by Aggregate-NE covering the topics listed in the syllabus attached as Appendix D. Defendant shall also provide the United States with copies of training materials used in 2009 to train the employees with operational responsibilities regarding storm water management or erosion and sediment control. Any employees with operational responsibilities who are hired between April 1, 2009 and January 1, 2010 shall be provided with a copy of the written training materials referenced in the preceding sentence as part of new employee orientation

c. Within one hundred eighty (180) Days of the Effective Date this Consent Decree, Aggregate-NE shall provide written documentation to EPA of the satisfactory completion of the training requirements by each of the SWOOMs. Aggregate-NE shall provide written documentation to EPA of the satisfactory completion of the training requirements for non-administrative employees at the Covered Facilities, within thirty (30) Days of completing such annual training program. In addition, Aggregate-NE shall evaluate the training courses required

in Subparagraphs a. and b. above on an annual basis. The evaluation shall include a written evaluation of the training programs, and a description of any significant proposed revisions to the training programs or the syllabi. The evaluation shall be submitted to EPA within thirty (30) Days of its completion in accordance with the requirements of Section XII (Review and Approval). Aggregate-NE may revise the training programs without receiving EPA's approval as long as the programs conform to the approved syllabi. Any changes to the syllabi may be made only with the consent of EPA. In the event of EPA approval of changes to the syllabi, Aggregate-NE shall conform the training programs required in Subparagraphs a. and b. above within sixty (60) Days, or such other time as may be agreed to by the Parties.

X. MONITORING

23. a. For three years following the Effective Date of this Consent Decree, in addition to the requirements of the MSGP, Aggregate-NE shall at all Covered Facilities conduct: (i) monthly facility BMP inspections and (ii) monthly visual monitoring of storm water discharges. In addition, until the corrective actions required in Paragraphs 10 and 11 are completed at the Watertown, Massachusetts and Chelmsford, Massachusetts facilities, Aggregate-NE shall conduct monthly analytical sampling of storm water discharges. Upon EPA's receipt of Defendant's written certification that the corrective actions at the Watertown, Massachusetts and Chelmsford, Massachusetts facilities have been completed as required in Paragraphs 10 and 11, analytical sampling shall be conducted at these facilities on a quarterly basis. The analytical sampling and visual monitoring required by this Paragraph 23 shall be conducted during discharges that constitute "Measurable Storm Events" as defined in MSGP-2008. Such

monitoring and sampling shall be conducted according to the protocols specified in the MSGP. Monitoring, inspections and sampling required in this paragraph may be combined, if feasible, with the monitoring, inspections and sampling required under the MSGP.

b. The assigned SWOOM at each facility, with the SWCM, shall review the results of the monthly BMP inspections, monthly visual monitoring, and the monthly (in the case of the Watertown, Massachusetts and Chelmsford, Massachusetts facilities) or quarterly analytical sampling, as well as other relevant information, to determine if the BMPs and storm water controls are adequate and effective, and (to the extent required) shall identify any action not already taken which may be needed to bring the facility into compliance with the MSGP. The SWCM shall provide a monthly report containing a description of the sampling results and action items to Aggregate-NE's Environmental and Estates Manager and to the Regional President.

24. For three (3) years following the Effective Date of this Consent Decree, in addition to the requirements of the MSGP, the SWCM or the alternate SWCM described in Paragraph 18 shall conduct inspections and analytical sampling during each calendar quarter at the Covered Facilities for the parameters required for the relevant industrial sector under the MSGP, and in addition, at ready-mix concrete plants, for pH. With respect to the analytical sampling identified in the preceding sentence, the SWCM may designate any SWOOM or other Aggregate employee who has been trained in accordance with Paragraph 22(a) to conduct such sampling. The reduced schedule for benchmark monitoring provided in Part 6.2.1.2 of MSGP-2008 shall not apply to the analytical sampling during the first two (2) years of this sampling obligation. If, after eight (8) samples are taken at a particular facility during eight (8) quarterly events as required by this

Paragraph 24, the analytical data show that such facility would qualify under Part 6.2.1.2. of MSGP-2008 to reduce benchmark monitoring, then that facility shall no longer be subject to the analytical sampling requirements of this Paragraph 24.a.; provided however, that all requirements of MSGP-2008 shall continue to apply to that facility.

b. The quarterly inspections and sampling required in Paragraph 24.a. may be combined, if feasible, with monitoring, inspections and analytical sampling required by the MSGP. Where quarterly analytical sampling is required, such sampling shall be based on calendar quarters, and shall commence on July 1, 2009, so that it is synchronized with benchmark monitoring required under MSGP-2008.

c. Quarterly inspection reports and recommended action items, if required, shall be prepared and signed by the SWCM and provided to the Aggregate-NE Environmental and Estates Manager and the Regional President.

XI. ADDITIONAL REPORTING OBLIGATIONS

25. Aggregate-NE shall submit to the Water Technical Unit, EPA, Region I, in the manner specified in Section XVII (Form of Notice), copies of the following documents, according to the following schedules:

a. In addition to any other reporting requirements required under the CWA or this Consent Decree, Aggregate-NE shall, for three (3) years following the Effective Date of this Consent Decree, within thirty (30) Days after the end of each calendar quarter, (commencing with the quarter starting on July 1, 2009) provide to EPA Region I a region-wide quarterly inspection summary, for the Covered Facilities, including, without limitation, reports of visual

monitoring, analytical monitoring, benchmark monitoring and numerical monitoring required by the applicable portions of the MSGP and this Consent Decree, and (to the extent required) recommended action items, a schedule for their implementation, and a report describing the storm water management improvements implemented for the facilities to which the MSGP has applied during the reporting period;

b. For three (3) years following the Effective Date of this Consent Decree, within thirty (30) Days after completion, Aggregate-NE shall provide copies to EPA Region I of all reports of Comprehensive Site Inspections of the Covered Facilities, including without limitation recommended action items, a schedule for their implementation, and a report describing the improvements implemented. Aggregate-NE shall also provide copies of such Comprehensive Site Inspections to EPA Headquarters as required under the MSGP.c. During the term of this Consent Decree, Aggregate-NE shall forward to EPA Region I copies of all inspection reports and sampling results regarding process water or storm water conducted by a state environmental agency at any Aggregate-NE facility, within ten (10) Days of their receipt by Aggregate-NE.

26. Upon receiving written notice from EPA identifying any deficiencies in the documents submitted in accordance with Paragraph 25, in the implementation of any SWPPP, or any non-compliance with any permit obtained pursuant to the Act or its implementing regulations, Aggregate-NE shall make revisions to correct deficiencies within thirty (30) Days of receipt of notice of the deficiencies or such other time as the Parties agree to in writing. If the deficiencies identified by EPA are not timely cured as provided in the previous sentence, the Defendant will

be subject to Stipulated Penalties pursuant to Section XIII (Stipulated Penalties). This thirty-day period to cure applies only to deficiencies identified by EPA in accordance with this Paragraph. Failure to act by EPA is not a defense to failing to comply with Defendant's obligations under this Decree. Notwithstanding this Paragraph, Aggregate-NE shall also comply with all deadlines in the MSGP.

27. The obligations under Paragraphs 25 and 26 shall commence upon lodging of the Decree and shall terminate three (3) years after the Effective Date of the Decree, except if Defendant has not yet cured any deficiencies that EPA has identified to Defendant pursuant to Paragraph 26 to the satisfaction of EPA. If EPA has identified any such deficiencies, the obligations of Paragraphs 25 and 26 shall terminate upon the Defendant's resolution of such deficiencies to EPA's satisfaction. Termination of the Defendant's obligations under Paragraphs 25 and 26 shall have no effect on the Defendant's obligation to comply with all other requirements of this Decree and all applicable statutory and regulatory requirements.

28. The reporting requirements in this Section do not relieve Aggregate-NE of its obligation to submit any other reports or information required by the Act, or by the regulations promulgated or any permit issued thereunder including, but not limited to, the reporting requirements set forth in the MSGP, or by any applicable state or local requirements.

29. Any information provided under the reporting requirements of this Consent Decree may be used by the United States as an admission of fact by the Defendant in any proceeding to enforce the provisions of this Consent Decree or the Act. Defendant reserves the right to contest

whether the terms of this Consent Decree, applicable statutes or regulations, or MSGP have been violated.

XII. REVIEW AND APPROVAL

30. After review of any plan, report or other item that is required to be submitted for approval by EPA pursuant to this Consent Decree, EPA shall in writing: (i) approve, in whole or in part, the submission; (ii) approve, in whole or in part, the submission upon specified conditions; (iii) modify, in whole or in part, the submission to cure the deficiencies; (iv) disapprove, in whole or in part, the submission, directing that the Defendant modify the submission; or (v) any combination of the above.

31. In the event of approval, approval upon conditions, and/or modification by EPA pursuant to Paragraph 30, the plan, report, or other item, or portion thereof, as approved, approved with conditions, and/or modified by EPA shall be enforceable under this Consent Decree, and Aggregate-NE shall implement such plan, report, or other item, or portion thereof, in accordance with the approval, approval with conditions, and/or modification issued by EPA.

32. Upon receipt of a written notice of disapproval pursuant to Paragraph 30, Aggregate-NE shall, within thirty (30) Days or such other time as the Parties agree in writing, correct the deficiencies and resubmit the plan, report, or other item, or portion thereof, for approval.

33. Any resubmitted plan, report, or other item, or portion thereof, shall be subject to EPA's review and approval as provided under this Section. If Aggregate-NE fails to resubmit a plan, report, or other item, or portion thereof after disapproval, or if, upon resubmission, the plan, report, or other item, or portion thereof, is disapproved or modified by EPA, Aggregate-NE shall

be deemed to have failed to submit such plan, report, or other item, or portion thereof, timely and adequately, unless Aggregate-NE invokes the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) and EPA's action is overturned. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 30, Aggregate-NE shall proceed, at the direction of EPA, as appropriate, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Aggregate-NE of any liability for Stipulated Penalties under Section XIII (Stipulated Penalties) for the deficient portions.

XIII. STIPULATED PENALTIES

35. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree, unless excused under Section XIV (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree and within the specified time schedules established by or approved under this Decree.

36. Late Payment of Civil Penalty.

If Aggregate-NE fails to pay the civil penalty required to be paid under Section VI (Civil Penalty) of this Decree when due, Aggregate-NE shall pay a Stipulated Penalty of \$2,000 per Day for each Day that payment is late.

37. Major Compliance Milestones

- a. The following Stipulated Penalties shall accrue per violation per Day for each violation of the requirements identified in Subparagraph b.:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th Day	\$750
31st Day and beyond	\$1,500

b. (i) Failure to prepare an ICFCE for each Construction Materials facility in New England meeting the requirements of, and within the time period set out in, Section VIII (Storm Water Compliance Assessments);

(ii) Failure to prepare an NFCCE for any Construction Materials facility leased or acquired in New England after the Effective Date of this Consent Decree, meeting the requirements of, and within the time period set out in, Section VIII (Storm Water Compliance Assessments);

(iii) Failure to establish, staff and maintain the position of SWCM as set out in Section IX (Storm Water Compliance Program);

(iv) Failure to establish, staff and maintain the position of SWOOM, as set forth in Section IX (Storm Water Compliance Program), at any facility to which the MSGP applies;

(v) Failure to conduct annual storm water training programs for SWOOMs and all employees with operational responsibilities at Covered Facilities, as set forth in Paragraph 22;

(vi) Failure to conduct quarterly inspections and analytical sampling required pursuant to Paragraphs 23 and 24, or to submit reports regarding such inspections to management of Aggregate-NE;

(vii) Failure to submit to EPA the region-wide quarterly inspection summaries required under Paragraph 25.a.;

(viii) Failure to submit to EPA the annual Comprehensive Site Inspection reports of the Covered Facilities required under Paragraph 25.b.; and

(ix) Failure to implement corrective actions at the facilities in Chelmsford, Massachusetts and/or Watertown, Massachusetts, as provided in Paragraphs 10 and 11.

38. Other Milestones and Reporting Violations. For any other requirement of this Consent Decree, including but not limited to failure to achieve and maintain compliance with the MSGP and any SWPPPs required by Paragraph 8, Stipulated Penalties of five hundred dollars (\$500) per violation per Day shall accrue during the first fifteen (15) Days of the failure to comply, and then one thousand dollars (\$1,000) per violation per Day thereafter, until such violation is cured.

39. All Stipulated Penalties begin to accrue on the Day after complete performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree.

40. Defendant shall pay any Stipulated Penalty within thirty (30) Days of receiving the United States' written demand.

41. Stipulated Penalties shall continue to accrue as provided in Paragraphs 37 and 38 during any Dispute Resolution, but payment thereof is subject to the following:

a. If the dispute is resolved by agreement or by a decision of EPA in favor of EPA that is not appealed to the Court, Defendant shall pay any accrued penalties determined to

be owing, together with Interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing by the court, together with Interest, within fifteen (15) Days of receiving the final appellate court decision.

42. Defendant shall pay Stipulated Penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 6, except that the transmittal letter shall state that the payment is for Stipulated Penalties and shall state for which violation(s) the penalties are being paid.

43. If Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, Defendant shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any Stipulated Penalties.

44. Subject to the provisions of Section XIX of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

45. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive in writing any portion of Stipulated Penalties that have accrued pursuant to this Consent Decree.

XIV. FORCE MAJEURE

46. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendant, including its consultants, contractors, and subcontractors, and any other entities controlled by the Defendant, that delays or prevents the timely performance of any obligation under this Consent Decree, notwithstanding the Defendant’s best efforts to avoid the delay. Stipulated Penalties shall not be due for the number of Days of noncompliance caused by a Force Majeure event as defined in this Paragraph, provided that the Defendant complies with the terms of this Section. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the extent possible. “Force Majeure” does not include the financial inability of Defendant to perform any obligation under this Consent Decree.

47. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the Defendant shall notify EPA orally or via fax within seventy-two (72) hours after the Defendant first knew or should have known that the event might cause a delay. Within five (5) working days thereafter, the Defendant shall provide to the United States, in the manner specified in Section XVII (Form of

Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the Defendant to prevent or minimize the delay, a proposed schedule for the implementation of such measures, the Defendant's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim, and a statement as to whether, in the opinion of the Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Notwithstanding the foregoing, the Defendant shall notify EPA orally or via fax within two (2) hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within twenty-four (24) hours. Failure to give timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

48. If EPA agrees that a delay or anticipated delay is attributable to a Force Majeure event, the Parties shall stipulate in writing to an extension of time for the performance of the affected requirements of this Consent Decree, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated Penalties shall not be due for the number of Days of noncompliance caused by such circumstances. An extension for the time of performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for the performance of any other obligation.

49. If the Parties are unable to agree whether the Defendant's failure to comply with a provision of this Consent Decree is attributable to a Force Majeure event, or on the number of Days of noncompliance that were caused by a Force Majeure event, the matter shall be subject to Section XV (Dispute Resolution). The Defendant shall notify EPA of its request to invoke Dispute Resolution within ten (10) Days of receipt of written notice from EPA that it disagrees with the Defendant's position either (i) that a delay is attributable to a Force Majeure event, or (ii) as to the number of Days of non compliance caused by the Force Majeure event. Such notice shall constitute the notice required under Paragraph 53. Thereafter, the provisions of Section XV (Dispute Resolution) shall apply. If the Court then determines that the failure to comply was caused by circumstances beyond the control of the Defendant and any entity controlled by the Defendant, including the Defendant's consultants, contractors and subcontractors, and it is determined that the Defendant or any entity controlled by the Defendant could not have foreseen and prevented such noncompliance, the Defendant shall be excused as to the failure to comply for the period of time the noncompliance continued due to such circumstances, and no Stipulated Penalties shall apply.

50. In any such determination to be made by the Court pursuant to Paragraph 49, the Defendant shall bear the burden of proving: (i) that the noncompliance was caused by circumstances beyond the control of the Defendant and any entity controlled by the Defendant, including its consultants, contractors and subcontractors; (ii) that the Defendant or any entity controlled by the Defendant could not have foreseen and prevented such violation; and (iii) the number of Days of noncompliance that were caused by such circumstances. If the Defendant

fails to sustain its burden of proof under this Paragraph, Stipulated Penalties shall be paid for each Day of noncompliance beginning with the first Day of such noncompliance, including Interest at the rate provided for in 28 U.S.C. § 1961 from the date that the Stipulated Penalties were originally due. The time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the Parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

51. Compliance with any requirement of this Consent Decree by itself shall not constitute compliance with any other requirement. Defendant must make an individual showing of proof regarding each requirement for which an extension is sought.

XV. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree. The pendency of any negotiations or petitions under this Section shall not operate as a stay of any obligation of this Decree, except by consent.

53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute.

Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is extended by agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

55. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

56. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVII of this Consent Decree (Form of Notice), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph.

The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

57. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

58. In any dispute brought under Paragraph 54, Defendant shall bear the burden of demonstrating that its position clearly complies with, and furthers the objectives of, this Consent Decree and the Clean Water Act. In all disputes under this Section, the Defendant shall have the burden of proving, based upon the administrative record, that the United States' position is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. EPA shall maintain the administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

59. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 41 above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XIII (Stipulated Penalties).

XVI. RIGHT OF ENTRY

60. Until termination of this Decree, EPA and its contractors, subcontractors, consultants, and attorneys shall have authority to enter any Aggregate-NE facilities that are the subject of the Consent Decree, at all reasonable times, upon proper identification, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

61. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken at the Covered Facilities by Defendants. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

62. Until one (1) year after the termination of this Consent Decree ("Retention Period"), Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or

procedures. At any time during the Retention Period, upon written request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. This Paragraph does not limit, and shall not excuse any noncompliance with, any document retention requirements of the MSGP.

63. At the conclusion of the Retention Period, Defendant shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon written request by the United States, Defendant shall deliver any such documents, records, or other information to EPA.

Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

64. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, it shall follow the procedures set forth in 40 C.F.R. Part 2.

65. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or any State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVII. FORM OF NOTICE

66. Submissions required by this Consent Decree to be made to the United States or an agency thereof shall be made in writing to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions:

As to the Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
D.J. # 90-5-1-1-08932

As to the United States Attorney

United States Attorney
District of Massachusetts
One Courthouse Way
John Joseph Moakley Courthouse
Boston, Massachusetts 02210
Attention: George B. Henderson, II

As to the EPA

Joseph Canzano
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100, Mail Code SEW

Boston, Massachusetts 02114-2023
Telephone: 617-918-1763

and

Margery Adams, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100, Mail Code SEL
Boston, Massachusetts 02114-2023
Telephone: 617-918-1733

Notice to the Defendant under this Consent Decree shall be made in writing to the following addressees, unless written notice is given that another individual has been designated to receive the submissions:

Roberto Huet,
Regional President, Aggregate Industries - Northeast Region, Inc.
1715 Broadway
Saugus, Massachusetts 01906

and

Scott Colby
Aggregate Industries - Northeast Region, Inc.
1715 Broadway
Saugus, Massachusetts 01906

and

H. Hamilton Hackney, III, Esq.
Greenberg Traurig, LLP
One International Place
Boston, Massachusetts 02110
Telephone: 617-310-6090

XVIII. CERTIFICATION

67. All written notices, reports or any other submissions required by this Consent Decree shall contain the following certification by a representative in senior management of Aggregate-NE:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

XIX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

68. This Consent Decree resolves the civil claims of the United States for the violations alleged at Aggregate-NE’s twenty-three (23) facilities identified in the Complaint through the date of lodging of this Consent Decree.

69. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 68. This Consent Decree shall not be construed to limit the rights of the United States or any State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 68. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant’s facilities, whether related to the violations addressed in this Consent Decree or otherwise.

70. This Consent Decree expressly does not limit any rights or remedies available to the United States for any criminal violation.

71. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 68 of this Section.

72. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

73. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against Defendant, except as otherwise provided by

law. This Consent Decree does not limit the standing of any person under Section 505 of the Clean Water Act to sue for any future violation of the Act not addressed by this Decree.

74. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XX. COSTS

75. Each Party shall bear its own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendant.

XXI. EFFECTIVE DATE

76. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXII. RETENTION OF JURISDICTION

77. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XXIII. MODIFICATION

78. Any material modification of this Consent Decree shall be by agreement of the Parties and in writing and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be by agreement of the Parties and in writing and shall not take effect until filed with the Court.

XXIV. TERMINATION

79. No sooner than three (3) years after the Effective Date of this Decree, Defendant may request, in writing, Plaintiff's consent to terminate this Decree. In seeking such consent, Aggregate-NE shall demonstrate that:

- i. All monies, civil penalties, Interest, Stipulated Penalties due under this Decree have been paid;
- ii. There are no unresolved Notices of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to Dispute Resolution pursuant to Section XV (Dispute Resolution);
- iii. No enforcement action under this Decree is pending; and
- iv. The requirements set forth in Sections VII- XI, XVI and XX have been fully satisfied.

Plaintiff shall notify Aggregate-NE in writing within thirty (30) Days of receiving Aggregate-NE's request, whether Plaintiff objects to the request to terminate or that it does not object to the termination of the Decree. If Plaintiff objects to such request, Aggregate-NE may either invoke the provisions of Section XV (Dispute Resolution) or alternatively move the Court to terminate the Decree, in which case Plaintiff may file an opposition to such motion. In either event, the Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

XXV. APPENDICES

80. The following appendices are attached hereto and incorporated into this Consent Decree:
"Appendix A" is the list of Covered Facilities.

“Appendix B” is the list of Violating Facilities.

“Appendix C” is the syllabus for training the SWOOMs.

“Appendix D” is the syllabus for training employees with operational responsibilities.

XXVI. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

81. Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Defendant agrees to accept service by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXVII. PUBLIC COMMENT

82. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if the comments regarding the Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

83. If, for any reason, this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party, and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XXVIII. FINAL JUDGMENT

84. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

85. Headings in this Decree are provided for the convenience only and shall not affect the substance of any provision.

86. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that in entering this Decree they have not relied upon any promises, representations, agreements or understandings other than those expressly contained in this Decree.

SO ORDERED THIS ____ DAY OF _____, 2009.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Aggregate Industries - Northeast Region, Inc.

June 5, 2009

Date

/s Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship, Region I
U.S. Environmental Protection Agency
One Congress Street
Boston, Massachusetts 02114-2023

June 5, 2009

Date

/s Margery L. Adams

Margery L. Adams
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 Mail Code SEI
Boston, Massachusetts 02114-2023
(617) 918-1733

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Aggregate Industries - Northeast Region, Inc.

FOR AGGREGATE INDUSTRIES - NORTHEAST REGION, INC.

May 29, 2009
Date

_____/s Roberto Huet
Roberto Huet, President
Aggregate Industries - Northeast Region, Inc.
1715 Broadway
Saugus, Massachusetts 01906

Agent for Service of Process:

H. Hamilton Hackney, III, Esq.
Greenberg Traurig, LLP
One International Place
Boston, MA 02110

Appendix A

LIST OF COVERED FACILITIES

16 & 17 Oak St., Chelmsford, MA
85 Greeley St., Hudson, NH
80 and 149 Ayer Rd., Littleton, MA
888 Dunbarton Road, Manchester, NH
55 Russell St., Peabody, MA
650 Peverly Hill Rd., Portsmouth, NH
91 Chester Rd., Raymond, NH
1831 Broadway, Saugus, MA
651 Lake St., Shrewsbury, MA
1101 Turnpike St., Stoughton, MA
30 Danvers Rd., Swampscott, MA
203 Fremont St., Taunton, MA
537 South St., Waltham, MA
48 Coolidge Ave., Watertown, MA
611 Pleasant St., Weymouth, MA
400 Green St., Wrentham, MA

Appendix B

LIST OF VIOLATING FACILITIES

43 Old Coldbrook Road, Barre, MA
771 Donald Lynch Highway, Berlin/Marlboro, MA
16 & 17 Oak St., Chelmsford, MA
290B Rover St., Everett, MA
Yemma Road, Groveland, MA
24 Lowland Street. Holliston, MA
85 Greeley St., Hudson, NH
1586 Hyde Park Ave. Hyde Park, MA
80 and 149 Ayer Rd., Littleton, MA
888 Dunbarton Road, Manchester, NH
55 Russell St., Peabody, MA
650 Peverly Hill Rd., Portsmouth, NH
91 Chester Rd., Raymond, NH
1831 Broadway, Saugus, MA
651 Lake St., Shrewsbury, MA
1101 Turnpike St., Stoughton, MA
30 Danvers Rd., Swampscott, MA
203 Fremont St., Taunton, MA
537 South St., Waltham, MA
48 Coolidge Ave., Watertown, MA
105 Coolidge Hill Ave., Watertown, MA
611 Pleasant St., Weymouth, MA
400 Green St., Wrentham, MA

Appendix C

SWOOM Training Syllabus

Federal Industrial Storm Water Permitting

Permit History

Major Events

Lake Erie

Cuyahoga River

NPDES Programs

Industrial Sectors

Permit Coverage

Permit and Fact Sheet

Covers

Websites

Permit Dates

Issue Date

Expiration Date

Coverage

Discharges

Allowable Stormwater Discharges

Allowable Non-stormwater Discharges

Limitations on Coverage

Who Obtains the Permit

Operator

Partial Control

Authorization to Discharge

Notice of Intent

Signature

When Can You Start Discharge

Storm Water Pollution Prevention Plan (SWPPP)

When and How a SWPPP is Prepared

What Goes in a SWPPP

Potential Pollutant Sources

Best Management Practices

Terms and Conditions

Paperwork

Site Map

Site Inspections

How Often

Maintaining and Updating the SWPPP

SWPPP Availability

SWPPP Sign

Best Management Practices

Total Maximum Daily Load

Releases or Spills

Termination of the Permit

When Can You Terminate

How Do You Terminate the Permit

Retention of Records

Standard Permit Conditions

Penalties

Allow Access

Signatory Requirements

Reporting Requirements

24-Hour Reporting

Bypass

Upset

Appendices

Definitions and Acronyms

EPA Regions

Endangered Species Act

Small Construction Waivers

TEST

NER Program-Specific Roles and Responsibilities

Introduction to Consent Decree Responsibilities

NER SWPPPs

Training Responsibilities

Who must be trained

Testing

Recurrent training

Inspections

Use small site map as tool

Completion of inspection report form

Certification

Transmittal

Corrective Action Log

NOT Inspection Process

TEST

How to Inspect a Site

The Permit

What is Required

The SWPPP

SWPPP and paper work inspection

Permit

Text

Best Management Practices

Site Maps

Forms

Inspections

The BMPs

Installation

Repairs from previous inspections

Modifications or additions

SWPPP

- Updates
- Details

Filling out the inspection form

TEST

BMPs I -- Basics of Erosion and Sediment Control

What is Erosion?

Impacts of Erosion

- Environmental
- Economic

Erosion and Sedimentation Process

- Types of Erosion
- Dust
- Factors of Erosion

Ten Basic Principles of Erosion and Sediment Control

The Controls

- Erosion Controls
- Sediment Controls
- Stormwater Management Controls

Building a System

References

TEST

BMPs II -- Erosion Control

Erosion Control Methods

- Surface Roughening
- Maintaining Existing Vegetation or Buffer Strips

Soil Stabilization with Vegetation

- Types of Grass

- Topsoil
- Fertilizer
- Sod
- Seed

- Mulch and Compost
 - Straw vs. Hay
 - Compost
 - Hydromulch
 - Bonded Fiber Matrix

- Erosion Control Devices
 - Rolled Erosion Control Products
 - Temporary Soil Stabilization

- Dust Control
 - Water Trucks
 - Polymers

TEST

BMPs III - Sediment Control

- Straw or Hay Bales

- Diversions

- Silt Fence
 - Installation Methods
 - Proper Placement
 - Where Not to Place

- Wattles

- Check Dams
 - Design
 - Types

- Inlet Protection

- Traps and Ponds

Outlet Structures

Flocculants

Dewatering

Turbidity Barriers

Oil/Water Separators

TEST

BMPs IV -- Pollution Prevention

Good Housekeeping

 Solid Waste

 Sanitary Waste

 Petroleum and Hazardous Waste

Concrete Washout

Construction Exits

 How It Works

 Types

 Tire Wash

TEST

Appendix D

PPT Training Syllabus

Overview

The Permit

- What is Required
- The SWPPP

SWPPP and paper work inspection

- Permit
- Text
- Best Management Practices
- Site Maps
- Forms

Inspections

- The BMPs
 - Installation
 - Repairs from previous inspections
 - Modifications or additions

SWPPP

- Updates
- Details

Filling out the inspection form

BMPs I -- Basics of Erosion and Sediment Control

Ten Basic Principles of Erosion and Sediment Control

The Controls

- Erosion Controls
- Sediment Controls
- Stormwater Management Controls

References

BMPs II -- Erosion Control

Erosion Control Methods

Soil Stabilization with Vegetation

Mulch and Compost

Erosion Control Devices

Dust Control

Water Trucks

Polymers

BMPs III - Sediment Control

Straw or Hay Bales

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Silt Fence

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Proper Placement

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Design

Types

Inlet Protection

Traps and Ponds

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Dewatering

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BMPs IV -- Pollution Prevention

Good Housekeeping

 Solid Waste

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TEST