

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEWPORT SAND & GRAVEL CO., INC.,
and CARROLL CONCRETE CO., INC.

Defendants

CIVIL ACTION NO. 2:11-CV-228

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 Defendants Newport Sand & Gravel Company, Inc. and Carroll Concrete Company, Inc. ("NSG" or "Defendants") violated Sections 301 and 308 of the Clean Water Act (the "Act"), 33 U.S.C. §§ 1311 and 1318;

WHEREAS, NSG owns or operates, or has owned or operated, construction materials facilities, including ready-mix concrete operations, and/or sand and gravel operations in Massachusetts, New Hampshire and Vermont. The Complaint relates to five facilities, namely: 8 Reeds Mill Road, Newport, New Hampshire; 53 Aspen Road, Newport, New Hampshire; 379 Granger Rd., Berlin, Vermont; 429 Breault Road, Guildhall, Vermont; and 126 First Street, Swanton, Vermont.

WHEREAS, the Complaint alleges that NSG discharges or has discharged wastewater, including process water and/or storm water, at the five facilities identified above into waters of the United States;

WHEREAS, the Complaint alleges that NSG discharged process water without a National Pollutant Discharge Elimination System ("NPDES") permit at facilities in Newport (Aspen Rd.), New Hampshire and Berlin, Vermont; in violation of Section 301(a) of the CWA, 33U.S.C. § 1311(a), for various periods of time from at least November 2004 through December 2007 ;

WHEREAS, the Complaint alleges that, in violation of Sections 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, NSG discharged "storm water associated with industrial activity"

from various point sources into waters of the United States without NPDES permits at its facilities in Newport (Aspen Rd.), New Hampshire; Berlin, Vermont; Guildhall, Vermont; and Swanton, Vermont; and that NSG failed to apply for an NPDES permit for each such discharge for various periods of time when the facilities were operational between November 2004 through October 2007;

WHEREAS, the Complaint also alleges that NSG violated the conditions of the applicable Multi-Sector General Permit for Industrial Activities (the "MSGP") at the Newport, New Hampshire (8 Reeds Mill Rd.) facility, and therefore, violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for various periods of time when the facility was operational between June 2004 through March 2007;

WHEREAS, the Complaint also alleges that NSG violated the conditions of the applicable Vermont Multi-Sector General Permit for Industrial Activities (the "Vermont MSGP") at facilities in Berlin, Vermont; and Guildhall, Vermont; and therefore, violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for various periods of time when the facilities were operational between December 2006 through October 2008.

WHEREAS, NSG filed a Notice of Termination ("NOT") of its storm water discharges for its facility located at 8 Reeds Mill Rd. in Newport, New Hampshire, on December 22, 2008; and for its facility located in Swanton, Vermont, on October 28, 2010;

WHEREAS, NSG 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 79, law, or of any wrongdoing on the part of the Defendants;

WHEREAS, the penalty in this matter is based on the statutory factors in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including, in particular, “the economic impact of the penalty on the violator” as Defendants have provided information to EPA documenting their financial resources and inability to pay a more substantial penalty;

WHEREAS, the Parties agree, and the Court finds, 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 claims alleged in the Complaint, 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 NSG 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 obligations of this Consent Decree apply to and are binding upon the United States and upon Defendants, jointly and severally, and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of any Covered Facility, as defined in Section V (Definitions), whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligations to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendants shall provide a copy of this Consent Decree to any proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 1, and the United States Department of Justice, in accordance with Section XVII of this Decree (Form of Notice). Any attempt to transfer ownership or operation of any Covered Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Until termination of this Consent Decree, Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. OBJECTIVES

7. 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

8. 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:

“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 ready-mix concrete, and/or sand and gravel operations, and any operations associated therewith;

“Construction Materials Facility” shall mean any facility owned or operated by NSG that is engaged in Construction Materials operations, and any operations associated therewith;

“Covered Facility” means those facilities listed in Appendix A hereto, any NSG 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, as applicable, MSGP-2008 or Vermont MSGP 3-9003, and any New Facility subject to the MSGP-2008 or Vermont MSGP 3-9003;

“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” shall mean, as applicable, “MSGP-2008” or the “Vermont MSGP,” as defined hererin;

“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 and Rhode Island;

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

“NSG” shall mean Newport Sand & Gravel Co, Inc. and Carroll Concrete Co., Inc.;

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

“Parties” shall mean the United States and NSG;

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

“Subject Facilities” shall mean those facilities owned or operated by NSG which are listed in the Complaint and identified in Appendix B;

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

“Vermont MSGP” shall mean the Vermont Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, MSGP 3-9003, NPDES Number VTR050001 (August 18, 2006), and any subsequently issued permit which takes the place of the Vermont MSGP during the term of this Consent Decree;

VI. CIVIL PENALTY

9. Defendants shall pay a total penalty of \$200,000, plus interest (calculated at 4%) on any penalty payment amounts not paid within 30 days of the Effective Date of this Decree, pursuant to 28 U.S.C. § 1961, according to the following schedule:

- a. \$50,000 shall be due within 30 days of the Effective Date of this Decree;
- b. \$56,000 (i.e. \$50,000 principle, plus \$6,000 in interest) shall be due within 12 months of the Effective Date of this Decree;
- c. \$54,000 (i.e. \$50,000 principle, plus \$4,000 in interest) shall be due within 24 months of the Effective Date of this Decree;
- d. \$52,000 (i.e. \$50,000 principle, plus \$2,000 in interest) shall be due within 36 months of the Effective Date of this Decree;

10. Acceleration Clause: if Defendants fail to make any payment as described in Paragraph 9 above, all remaining installments shall become immediately due and payable as of the missed payment date. Interest on such unpaid penalty amounts shall accrue from the missed payment date.

11. NSG shall make all penalty payments by electronic funds transfer, in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, Burlington, Vermont. 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 90-5-1-1-09769. The costs of such electronic funds transfer shall be the responsibility of NSG. 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 XVIII (Form of Notice); by email to acctsreceivable.CINWD@epa.gov, and by mail to:

U.S. EPA Region I
U.S. Environmental Protection Agency Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

12. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section XIV (Stipulated Penalties) in calculating its federal income tax.

VII. COMPLIANCE MEASURES

13. Within 30 Days of the Effective Date of this Decree, with respect to each of the Covered Facilities, NSG shall achieve and thereafter maintain compliance with the CWA and the MSGP-2008 and the Vermont MSGP, as applicable. For each such facility, compliance with the MSGP-

2008 or the Vermont MSGP 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 or the Vermont MSGP; (ii) maintaining up-to-date site diagrams; (iii) selecting, installing, and maintaining adequate best management practices (“BMPs”); (iv) conducting annual comprehensive site inspections; (v) conducting visual monitoring, analytical benchmark and/or numeric monitoring as applicable; and (vi) conducting inspections. If, at any such facility, storm water discharges associated with industrial activity are eliminated, or if NSG has obtained coverage for such facility under an alternative permit, NSG shall promptly file a Notice of Termination (“NOT”) in accordance with the MSGP-2008 or the Vermont MSGP, 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.

14. NSG shall amend all BMPs and control measures for the Covered Facilities and update all SWPPPs pursuant to the requirements of the MSGP 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.

15. NSG 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

16. Within 60 Days of the Effective Date of this Decree, NSG 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. This is not limited to the Covered Facilities as defined in Section V (Definitions) of the Decree.

Defendants may elect to combine such ICFCE with the annual Comprehensive Site Inspection required by the MSGP for any such facility, as long as the requirements of this Section are met in addition to the requirements of the MSGP.

17. Each such facility's 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. An initial 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 may apply. 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. If the initial review indicates that the MSGP applies to a facility, the ICFCE for that facility shall include the following:

(i) Identification of discharges, if any, 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., if any, and discharges, if any, to municipal separate storm sewer systems (“MS4s”) and/or publicly-owned treatment works (“POTWs”).

(ii) Identification of all BMPs in place at the facility to address discharges of storm water.

(iii) 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.

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

(v) 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.

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

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

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

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

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

(xi) A statement indicating whether, if applicable, 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.

(xii) A statement indicating whether, if applicable, 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.

(xiii) 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.

18. Within 60 Days of acquiring a leasehold interest in any New Facility or acquiring any interest in any New Facility, or otherwise beginning to operate any New Facility, in addition to complying with permit requirements of the MSGP, if applicable, NSG shall complete and submit to EPA a New Facility Comprehensive Compliance Evaluation ("NFCCE"). 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 or near the facility, and a description and map depicting hydrologic connections from point sources to surface waters or wetlands.
- d. Verification that, if applicable, 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 NSG has reviewed the results of any inspections and monitoring conducted during the 12 months prior to submission of the NFCCE, provided that the results such inspections and/or monitoring were made available to NSG. Such review shall include an evaluation of the causes of exceedances (if any) of benchmark concentrations and numeric limits.

i. A written certification that NSG has reviewed any records of inspections conducted pursuant the SWPPP and any spill records prepared during the 12 months prior to submission of the NFCCE, including a review of any maintenance and spill prevention programs records, provided that such records were made available to NSG.

j. If NSG determines that the facility has been in violation of any requirement of the CWA, regulations or permits issued thereunder during the 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, NSG shall provide a written certification that corrective measures have been implemented at the facility and that the facility is now in compliance.

k. If NSG 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, NSG 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, and thereafter implement the plan according to the plan and schedule approved by EPA. 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 NSG 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

19. Within 90 Days of the Effective Date of this Decree, NSG shall establish and fill the position of 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 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 21 below) with respect to storm water compliance matters.

20. The SWCM shall have the following minimal qualifications: (a) three years experience in the field of storm water management, including erosion and sedimentation control; and (b) successful completion of a training and certification program conducted by an organization to be approved by EPA, in the field of storm water quality, sediment and erosion control. The SWCM shall report directly to NSG's President. Within 90 Days of the Effective Date of this Decree, NSG shall notify EPA of the selection and qualifications of the SWCM. NSG 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 NSG replaces him or her within 30 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. NSG shall notify EPA of any change in the SWCM, including the credentials of any new SWCM, within 15 Days of such personnel change.

21. Within 90 Days of the Effective Date of this Decree, NSG 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, sand and gravel operations) are conducted at such facility. Each SWOOM shall:

- (i) be assigned to no more than two 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 NSG's

President; and (x) maintain all documentation on-site as required by the MSGP, the facility's SWPPP, and this Decree.

22. Each SWOOM shall have at least one year's experience in the operations conducted at the Covered Facility for which he or she is responsible pursuant to Paragraph 21. In addition, each SWOOM shall be trained and certified in storm water management or erosion and sediment control pursuant to Paragraph 24 below. Within 120 Days of the Effective Date of this Decree, NSG shall notify EPA of the selection and qualifications of each SWOOM. NSG 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 NSG replaces him or her within 30 Days of the vacancy, the gap in designation shall not be considered a violation of Paragraph 21. However, the gap in designation shall not excuse non-compliance with any other requirement of this Decree. NSG shall notify EPA of any change in SWOOM, including the qualifications of any new SWOOM, within fifteen 15 Days of such personnel change.

23. NSG may have benchmark and analytical monitoring conducted by a qualified third-party consultant instead of by the SWOOM. All other activities identified in Paragraph 21 above must be conducted by the SWOOM or the alternate SWOOM described in Paragraph 22.

24. Within one hundred twenty 120 Days of the Effective Date of this Consent Decree, NSG 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 to be approved by EPA in writing. 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 NSG 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 2012, 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 NSG by May 31st of each year covering the topics listed in the syllabus attached as Appendix C. 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 C as part of new employee orientation. If NSG 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 C. Each such employee shall, on an annual basis thereafter, complete a refresher training course, either through an in-person session or a computer-based course.

(ii) With respect to training conducted in 2012, no later than May 31, 2012, Defendants shall provide written documentation to EPA that all employees with operational responsibilities employed by Defendants as of that date, successfully completed a training program conducted by NSG covering the topics listed in the

syllabus attached as Appendix C. Defendants shall also provide the United States with copies of training materials used in 2011 up to the Effective Date of this Consent Decree to train the employees with operational responsibilities regarding storm water management or erosion and sediment control. Any employees with operational responsibilities who are hired in 2011 shall be provided with a copy of the written training materials referenced in the preceding sentence as part of new employee orientation.

c. Within 180 Days of the Effective Date this Consent Decree, NSG shall provide written documentation to EPA of the satisfactory completion of the training requirements by each of the SWOOMs. NSG shall provide written documentation to EPA of the satisfactory completion of the training requirements for employees with operational responsibilities at the Covered Facilities, within 30 Days of completing such annual training program. In addition, NSG 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 syllabi. The evaluation shall be submitted to EPA within 30 Days of its completion in accordance with the requirements of Section XII (Review and Approval). NSG 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, NSG shall conform the training programs required in Subparagraphs a. and b. above within 60 Days, or such other time as may be agreed to by the Parties.

X. MONITORING

25. a. For three years following the Effective Date of this Consent Decree, in addition to the requirements of the MSGP, NSG shall at the Covered Facilities to which the MSGP applies, conduct: (i) monthly facility BMP inspections and (ii) monthly visual monitoring of storm water discharges. Such inspections and visual monitoring must be performed by the SWOOM for each facility. The inspections and visual monitoring required by this Paragraph 25 shall be conducted during discharges that constitute "Measurable Storm Events" as defined in MSGP-2008 or as required by Vermont MSGP. Such inspections and monitoring shall be conducted according to the protocols specified in the MSGP. Monitoring and inspections required in this paragraph may be combined, if feasible, with the monitoring and inspections 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 any 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 inspections and monitoring (and on a quarterly basis sampling results) and action items to NSG's President.

26. a. 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 20 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 NSG employee who has been trained in accordance with Paragraph 24(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 26, the analytical data show that such facility would qualify under Part 6.2.1.2. of MSGP-2008 or Section 3.2.2.3 of the Vermont MSGP to reduce benchmark monitoring, then that facility shall no longer be subject to the analytical sampling requirements of this Paragraph 26.a.; provided however, that all requirements of MSGP-2008 or Vermont MSGP, as applicable, shall continue to apply to that facility.

b. The quarterly inspections and sampling required in Paragraph 26.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, 2011, 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 NSG's President.

XI. ADDITIONAL REPORTING OBLIGATIONS

27. NSG 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, NSG shall, for three (3) years following the Effective Date of this Consent Decree, within 30 Days after the end of each calendar quarter, (commencing with the quarter starting on July 1, 2011) provide to EPA Region I a quarterly inspection summary, for all the Covered Facilities, including, without limitation, reports of visual monitoring, analytical monitoring, and benchmark 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 30 Days after completion, NSG shall provide copies to EPA Region I of any annual reports of Comprehensive Site Inspection required under the MSGP for the Covered Facilities, including without limitation recommended action items, a schedule for their implementation, and a report describing the improvements implemented. NSG shall also provide copies of such Comprehensive Site Inspections to EPA Headquarters if required under the MSGP.

c. During the term of this Consent Decree, NSG 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 NSG facility, within 15 Days of their receipt by NSG.

28. Upon receiving written notice from EPA identifying any deficiencies in the documents submitted in accordance with Paragraph 27, in the implementation of any SWPPP, or any non-compliance with any permit obtained pursuant to the Act or its implementing regulations, NSG

shall make revisions to correct deficiencies within 30 Days of receipt of notice of the deficiencies or such other time as the Parties agree to in writing. If the deficiencies are not timely cured as provided in the previous sentence, the Defendants 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 Defendants' obligations under this Decree.

Notwithstanding this Paragraph, NSG shall also comply with all deadlines in the MSGP.

29. The obligations under Paragraphs 27 and 28 shall commence upon the Effective Date of the Decree and shall terminate three (3) years after the Effective Date of the Decree, except if Defendants have not yet cured any deficiencies that EPA has identified to Defendant pursuant to Paragraph 28 to the satisfaction of EPA. If EPA has identified any such deficiencies, the obligations of Paragraphs 27 and 28 shall terminate upon the Defendants' resolution of such deficiencies to EPA's satisfaction. Termination of the Defendants' obligations under Paragraphs 27 and 28 shall have no effect on the Defendants' obligation to comply with all other requirements of this Decree and all applicable statutory and regulatory requirements.

30. The reporting requirements in this Section do not relieve NSG 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.

31. 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 Defendants in any proceeding to enforce the provisions of this Consent Decree or the Act. Defendants reserve the right to contest

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

XII. REVIEW AND APPROVAL

32. 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 Defendants modify the submission; or (v) any combination of the above.

33. In the event of approval, approval upon conditions, and/or modification by EPA pursuant to Paragraph 32, 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 NSG 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.

34. Upon receipt of a written notice of disapproval pursuant to Paragraph 32, NSG shall, within 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.

35. 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 NSG 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, NSG shall be deemed to have failed to submit such plan, report, or other item, or portion thereof, timely and adequately, unless

NSG 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 32, NSG 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 NSG of any liability for Stipulated Penalties under Section XIII (Stipulated Penalties) for the deficient portions.

XIII. STIPULATED PENALTIES

36. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree, unless excused by EPA 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.

37. Late Payment of Civil Penalty.

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

38. 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 Per Facility</u>
1st through 30th Day	\$500
31st Day through 60 th Day	\$1,000
61 st 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 24;

(vi) Failure to conduct quarterly inspections and analytical sampling required pursuant to Paragraphs 25 and 26, or to submit reports regarding such inspections to management of NSG;

(vii) Failure to submit to EPA the quarterly inspection summaries required under Paragraph 27.a.;

(viii) Failure to submit to EPA the annual Comprehensive Site Inspection reports of the Covered Facilities required under Paragraph 27.b.;

(ix) Failure to provide the certification required by Paragraph 69; and

(x) Failure to provide any Notice required by Paragraph 5 and 6.

39. 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 15 Days of the failure to comply per facility, and then seven-hundred and fifty dollars (\$750) per violation per Day, per facility, thereafter, until such violation is cured.

40. 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 per Covered Facility.

41. Defendants shall pay any Stipulated Penalty within 30 Days of receiving the United States' written demand.

42. Stipulated Penalties shall continue to accrue as provided in Paragraphs 38 through 40 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 that is not appealed to the Court, Defendants shall pay any accrued penalties determined to be owing, together with Interest, to the United States within 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, Defendants shall pay all accrued penalties determined by to be owing, together with Interest, within 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, Defendants shall pay all accrued penalties determined to be owing, together with Interest, within fifteen 15 Days of receiving the final appellate court decision.

43. Defendants shall pay Stipulated Penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, 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.

44. If Defendants fail to pay Stipulated Penalties according to the terms of this Consent Decree, Defendants 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 Defendants' failure to pay any Stipulated Penalties.

45. 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 Defendants' violation of this Consent Decree or applicable law.

46. 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

47. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendants, including its consultants, contractors, and subcontractors, and any other entities controlled by the Defendants, that delays or prevents the timely performance of any obligation under this Consent Decree, notwithstanding the Defendants' 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 Defendants comply with the terms of this Section. The requirement that Defendants 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 Defendants to perform any obligation under this Consent Decree.

48. 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 Defendants shall notify EPA verbally or via fax within 72 hours after the Defendants first knew or should have known that the event might cause a delay. Within five (5) working days thereafter, the Defendants 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 Defendants to prevent or minimize the delay, a proposed schedule for the implementation of such measures, the Defendants' rationale for attributing such delay to a Force Majeure event if Defendants intend to

assert such a claim, and a statement as to whether, in the opinion of the Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Defendants 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 Defendants shall notify EPA verbally 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 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.

49. 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.

50. If the Parties are unable to agree whether the Defendants' 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 Defendants shall notify EPA of its request to invoke Dispute Resolution within 10 Days of receipt of written notice from EPA that it disagrees with the Defendants' 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 Defendants and any entity controlled by the Defendants, including the Defendants' consultants, contractors and subcontractors, and it is determined that the Defendants or any entity controlled by the Defendants could not have foreseen and prevented such noncompliance, the Defendants 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.

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

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

XV. DISPUTE RESOLUTION

53. 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. The Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants 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.

54. Invoking Dispute Resolution. In the event that Defendants elect to invoke Dispute Resolution according to this Section, Defendants shall do so by giving the United States written Notice of Dispute, as described in Section XVII (Form of Notice), of the existence of the dispute within 15 days after receipt of a written notice of disapproval, or approval with conditions or modification, a written Force Majeure determination by EPA, or a written demand for payment of stipulated penalties. If Defendants fail to give such notice, it shall be deemed to have waived any right to invoke the Dispute Resolution procedures regarding such dispute, and EPA's position shall be considered binding.

55. 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 Defendants send 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 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 20 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

56. Formal Dispute Resolution. Defendants 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 Defendants' position and any supporting documentation relied upon by Defendants.

57. The United States shall serve its Statement of Position within 45 Days of receipt of Defendants' 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 Defendants, unless Defendants files a motion for judicial review of the dispute in accordance with the following Paragraph.

58. Defendants 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 15 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' 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.

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

60. In any dispute brought under Paragraph 56, Defendants 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 Defendants 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.

61. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants 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 42 above. If Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section XIII (Stipulated Penalties).

XVI. RIGHT OF ENTRY

62. Until termination of this Decree, EPA and its contractors, subcontractors, consultants, and attorneys shall have authority to enter any NSG 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 Defendants or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

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

64. Until one (1) year after the termination of this Consent Decree ("Retention Period"), Defendants 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 Defendants' 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,

Defendants 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.

65. At the conclusion of the Retention Period, Defendants shall notify the United States at least 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, Defendants shall deliver any such documents, records, or other information to EPA. Defendants 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 Defendants assert 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.

66. Defendants 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 Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

67. 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

Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVII. FORM OF NOTICE

68. 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
DOJ #90-5-1-1-09769
Attention: David L. Gordon

As to the EPA

Joseph Canzano
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
Telephone: 617-918-1763

and

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
Telephone: 617-918-1796

Notice to the Defendants 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:

Shaun P. Carroll, President
Newport Sand & Gravel Co., Inc/Carroll Concrete Co, Inc.
8 Reeds Mill Rd.
Newport, NH 03773

and

Sharon G. Newman
PretiFlaherty
Post Office Box 9546
Portland, ME 04112-9546
Telephone: 207-791-3241

XVIII. CERTIFICATION

69. 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 NSG:

“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

70. This Consent Decree resolves only the civil claims of the United States for the violations alleged at NSG's five facilities identified in the Complaint, and identified as the Subject Facilities, listed in Appendix B, through the date of lodging of this Consent Decree.

71. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 70. 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 70.

Where a violation of this Consent Decree is also a violation of the Act or implementing regulations, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation. 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, Defendants' facilities, whether related to the violations addressed in this Consent Decree or otherwise.

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

73. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief, Defendants 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 70 of this Section.

74. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' 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 Defendants' 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.

75. This Consent Decree does not limit or affect the rights of Defendants 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 Defendants, 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.

76. 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

77. 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 the cost of time of attorneys' and Regional program employees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendants.

XXI. EFFECTIVE DATE

78. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXII. RETENTION OF JURISDICTION

79. 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

80. 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

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

- i. All monies, civil penalties, Interest, and 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, VIII, IX, X, and XI have been fully satisfied.

82. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree. If the United States does not agree that the Consent Decree may be terminated, Defendants may invoke Dispute Resolution under Section XV of this Consent Decree (Dispute Resolution)

XXV. APPENDICES

83. The following appendix is attached hereto and incorporated into this Consent Decree:

"Appendix A" is the list of Covered Facilities.

"Appendix B" is the list of Subject Facilities.

"Appendix C" is the syllabus for training employees with operational responsibilities.

XXVI. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

84. Defendants 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. Defendants agree 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

85. This Consent Decree shall be lodged with the Court for a period of not less than thirty 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. Defendants consent to the entry of this Consent Decree without further notice and agree 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 Defendants in writing that it no longer supports entry of the Consent Decree.

86. 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

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

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

89. 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 _____, 2011.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Newport Sand & Gravel Co., Inc., and Carroll Concrete Co., Inc.

FOR THE UNITED STATES OF AMERICA

9/19/11
Date

[REDACTED]

ELLEN M. MAHAN
Deputy Section Chief
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

9/19/11
Date

[REDACTED]

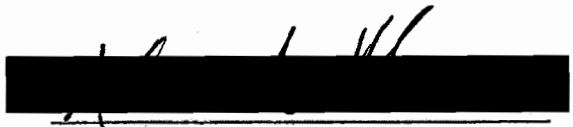
DAVID L. GORDON, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

TRISTRAM J. COFFIN
United States Attorney

JAMES J. GELBER
Assistant United States Attorney
District of Vermont
P.O. Box 570
Burlington, Vermont 05402-0570

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Newport Sand & Gravel Co., Inc., and Carroll Concrete Co., Inc.

9-25-11
Date



ADAM M. KUSHNER, Director
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

9-13-11
Date



MARK POLLINS, Director
Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

9-13-11
Date



MELISSA K. RAACK, Attorney Advisor
Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Newport Sand & Gravel Co., Inc., and Carroll Concrete Co., Inc.

09/06/11
Date




SUSAN STUDLIEN, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Newport Sand & Gravel Co., Inc., and Carroll Concrete Co., Inc.

FOR NEWPORT SAND & GRAVEL CO., INC., and CARROLL CONCRETE CO., INC.

8-30-2011
Date


Shaun P. Carroll, President
Newport Sand & Gravel Co., Inc. and Carroll
Concrete Co., Inc.

Agent for Service of Process:

Name: Sharon G. Newman
PretiFlaherty
P.O. Box 9546
Portland, ME 04112-9546

Appendix A

LIST OF COVERED FACILITIES

379 Granger Road, Berlin, VT
429 Breault Road, Guildhall, VT

Appendix B

LIST OF SUBJECT FACILITIES

8 Reeds Mill Road, Newport, NH
53 Aspen Road, Newport, NH
379 Granger Road, Berlin, VT
429 Breault Road, Guildhall, VT
126 First Street, Swanton, VT

Appendix C

Training Syllabus For Employees with Operational Responsibilities

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

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

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