

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MISSOURI HIGHWAYS AND )  
 TRANSPORTATION COMMISSION, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Civil Action No.

CONSENT DECREE

**CONSENT DECREE**

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Whereas, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) has filed a complaint in this action concurrently with this Consent Decree, asserting claims under Sections 301 and 402 of the Clean Water Act (“Act”), 33 U.S.C. §§ 1311 and 1342, against Defendant Missouri Highway and Transportation Commission violated, arising from violations of its NPDES Stormwater Permit at the Highway 54 and Highway 67 road construction projects in 2010 and 2011.

Whereas, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

Whereas, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. Venue lies in this District pursuant to 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391 and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant is doing business as a state agency in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court’s jurisdiction over this Decree and any such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

## **II. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Defendant shall provide an electronic copy of this Consent Decree to all 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. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendant 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.

6. The requirements of this Consent Decree apply to all Projects. To the extent that a Project includes locations outside of the State of Missouri, this Consent Decree does not apply to such locations.

## **III. DEFINITIONS**

7. 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:

a. “BMPs” shall mean Best Management Practices used to control pollutants in stormwater runoff, as described in an Applicable NPDES SW Permit, SWPPP or any other applicable law or regulation.

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

c. “Clean Water Act” or “the Act” shall mean 33 U.S.C. §§ 1251-1387.

d. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto listed in Section XXII.

e. “Contractor” shall mean anyone working on a Project that is not directly employed by Defendant including the Prime Contractor and subcontractors of the Prime Contractors or other Contractors.

f. “Construction Activity” or “Construction Activities” shall mean the disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.

g. “Date of Lodging” shall mean the date on which this Consent Decree is lodged with the Court for public comment.

h. “Day” shall mean a calendar day unless expressly stated to be a business 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 business day.

i. “Defendant” or “MHTC” shall mean the Missouri Highway Transportation Commission including its employees and agents and the Missouri Department of Transportation (“MoDOT”), a state agency that operates under the direction of the MHTC.

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

k. “Effective Date” shall have the definition provided in Section XIV.

l. “Final Stabilization” shall mean that perennial vegetation, pavement, buildings, or structures using permanent materials cover all areas of the Project that have been disturbed. With respect to areas that have been vegetated, vegetation cover shall be at least 70% plant density over 100% of the site.

m. “Interest” shall mean the rate specified in 28 U.S.C. §1961.

n. “NPDES SW Permit” or “Applicable NPDES SW Permit” shall mean any Missouri State Operating Permit authorizing stormwater discharges from construction or land disturbance activities issued to Defendant under the Missouri Clean Water Law and/or the National Pollutant Discharge Elimination System of the federal Clean Water Act.

o. “Oversight Inspector” shall mean the Defendant employee or Third-Party Consultant who conducts Oversight Inspections pursuant to Paragraph 31 of this Decree.

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

q. “Parties” shall mean the United States and Defendant.

r. “Prime Contractor” shall mean the contractor that is awarded the contract and receives payment from Defendant for work at a Project.

s. “Project” shall mean any location in the State of Missouri where Defendant engages in land disturbance activities of greater than one (1) acre.

t. “Project-specific SWPPP” shall mean a Stormwater Pollution Prevention Plan (SWPPP) that is specific to the land disturbance activities at the Project and specifies

Project-specific practices including appropriate structural and non-structural BMPs that will be implemented to best minimize the soil exposure, soil erosion and the amount of pollutants in stormwater runoff at the Project.

- u. “Section” shall mean a portion of this Decree identified by a roman numeral.
- v. “State” shall mean the State of Missouri.
- w. “Statewide SWPPP” shall mean the Defendant’s Stormwater Pollution Prevention Plan that applies to all Defendant’s Projects under an NPDES SW Permit.
- x. “Stormwater Deficiency” shall mean any condition at a Project that (a) constitutes non-compliance with Stormwater Requirements, (b) threatens potential non-compliance with Stormwater Requirements, or (c) requires corrective action to maintain compliance with Stormwater Requirements.
- y. “Stormwater Requirements” shall mean all requirements (in their current form or as may be modified in the future) set forth in: (i) Applicable NPDES SW Permits; (ii) a SWPPP, (iii) any federal law or state law; or (iv) this Consent Decree that relate to stopping, preventing or minimizing pollutants in stormwater runoff from Construction Activity.
- z. “SWPPP” shall mean the Stormwater Pollution Prevention Plan required by the NPDES SW Permit for a Project, including the Statewide SWPPP and Project-specific SWPPP.
- aa. “United States” shall mean the United States of America, acting on behalf of EPA.

#### **IV. CIVIL PENALTY**

8. Within sixty (60) Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$750,000 as a civil penalty, together with Interest accruing from October 14, 2014.

9. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following the Effective Date of this Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Missouri, 400 East 9th Street, Kansas City, MO 64106. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Missouri Department of Transportation, and shall reference the civil action number and DOJ case number 90-5-1-1-10421, to the United States in accordance with Section XIII of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268  
and  
Cynthia Sans  
U.S. EPA Region 7  
Water, Wetlands & Pesticides Division  
11201 Renner Blvd.  
Lenexa, KS 66219

10. Payments to be Made Solely by Defendant. Defendant shall pay the civil penalty called for in the prior Paragraph, out of its own funds or state appropriations and shall not seek payments, reimbursement, indemnification or insurance coverage for this civil penalty from any Contractor, third party or agency of the United States including, but not limited to, the Federal

Highway Administration (“FHWA”). Defendant shall not seek any litigation-related costs or its attorney fees (both private and internal), in this action or in anticipation of this action from any agency of the United States including, but not limited to, the FHWA. If any such costs or fees have previously been paid by reimbursement or otherwise from the FHWA to Defendant, these costs or fees shall be refunded by Defendant to FHWA.

11. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Paragraph 8 of this Decree when due, Defendant shall pay a stipulated penalty of \$1,000.00 per Day for each Day that the payment is late.

#### **V. COMPLIANCE REQUIREMENTS**

12. Defendant shall complete the requirements of Paragraphs 13 through 34 pursuant to this Consent Decree.

13. Designation of Stormwater Compliance and Environmental Specialist. Defendant shall designate one individual as its Stormwater Compliance and Environmental Specialist not later than thirty (30) days after the Effective Date of this Decree. The Stormwater Compliance and Environmental Specialist shall have overall responsibility for Defendant’s compliance with Stormwater Requirements and this Consent Decree and shall:

- a. Be an employee of Defendant;
- b. Have training and knowledge regarding Stormwater Requirements through CPESC certification or certification through a course that meets or exceeds the requirements set out in Appendix A and field experience with NPDES Permits and SWPPPs;
- c. Oversee the development and maintenance of the Stormwater Training Program and annual reports;

d. Oversee Defendant's employees and Contractors at all Projects to ensure compliance with this Consent Decree and applicable Stormwater Requirements such as the NPDES SW Permits, and SWPPPs;

e. Have the authority and responsibility to issue stop work orders on a Project if necessary to ensure compliance with Stormwater Requirements and this Consent Decree;

f. Have the authority and responsibility to order the taking of measures to cease, correct, prevent, or minimize the consequences of, non-compliance with Stormwater Requirements and this Consent Decree where the cost of each such measure is under \$100,000 or, if the Stormwater Compliance and Environmental Specialist has spending authority higher than \$100,000, under the amount of that spending authority. Where the measures to cease, correct, prevent, or minimize the consequences of non-compliance with Stormwater Requirements and this Consent Decree exceed \$100,000 or a higher Stormwater Compliance and Environmental Specialist's spending authority, the Stormwater Compliance and Environmental Specialist shall immediately recommend to the Defendant's officials with the necessary spending authority, that they expediently authorize such spending on a Project to cease, correct, prevent, or minimize the consequences of non-compliance with Stormwater Requirements and this Consent Decree and document this recommendation in writing;

g. Be responsible for providing all written reports required under Section VI (Reporting Requirements);

h. Supervise the Oversight Inspection process and procedures required under Paragraph 31;

i. Review at least every fourteen (14) days the Stormwater Compliance Database list of all Stormwater Deficiencies not addressed within thirty (30) days pursuant to Paragraph 32, document each such review, and undertake and document appropriate follow-up action for each identified uncorrected Stormwater Deficiency to ensure it is addressed; and

j. Serve as Defendant's point of contact for the State and EPA for matters related to Defendant's compliance with Stormwater Requirements.

14. During absences of the Stormwater Compliance and Environmental Specialist from work (e.g. vacation, illness or other approved leave), he or she may temporarily delegate these authorities and responsibilities to another person provided that this person meets the qualifications set forth in Paragraph 13 and has the authority to carry out the responsibilities set forth in Paragraph 13.

15. Designation of Stormwater Resident Engineers. For each Project, Defendant shall designate an individual as the Stormwater Resident Engineer prior to commencement of construction or within sixty (60) days of the Effective Date, whichever is later. Each Stormwater Resident Engineer shall:

- a. Be an employee of Defendant;
- b. Complete stormwater training pursuant to Paragraph 20;
- c. Review and sign (thereby indicating agreement with) the Project-specific SWPPP (including updates thereto), be responsible for implementing and updating the Project-specific SWPPP, and maintain familiarity with the Project-specific SWPPP;
- d. Be on-site as necessary until Final Stabilization to supervise compliance with Stormwater Requirements and this Consent Decree and at least once every thirty (30) days;

e. Have the authority and responsibility to issue stop work orders on a Project if necessary to ensure compliance with Stormwater Requirements and this Consent Decree;

f. Have the authority and responsibility to order the taking of, measures to cease, correct, prevent, or minimize the consequences of, non-compliance with Stormwater Requirements and this Consent Decree where the cost of each such measure is under \$50,000 or, if the Stormwater Resident Engineer has spending authority higher than \$50,000, under the amount of that spending authority. Where the measures to cease, correct, prevent, or minimize the consequences of non-compliance with Stormwater Requirements and this Consent Decree exceed \$50,000 or a higher Resident Engineer's spending authority, the Resident Engineer shall immediately recommend to the Defendant's officials with the necessary spending authority, that they expediently authorize such spending on a Project to cease, correct, prevent, or minimize the consequences of non-compliance with Stormwater Requirements and this Consent Decree and document this recommendation in writing;

g. Review and sign (thereby indicating agreement with) each inspection report for each Project within his or her supervision within four (4) days of receiving each report to ensure it conforms with report requirements in the NPDES SW Permit and this Consent Decree and ensure that all Stormwater Deficiencies are corrected in a timely manner;

h. Update the Project-specific SWPPP as necessary to reflect changes in site conditions and BMPs;

i. Review at least every seven (7) days the Stormwater Compliance Database list of all Stormwater Deficiencies not addressed in seven days pursuant to Paragraph 32,

document each review, and undertake and document appropriate follow-up action for each identified Stormwater Deficiency to ensure it is addressed;

j. Attend the Stormwater Erosion Control Preconstruction Conference pursuant to Paragraph 27; and

k. Be the point of contact for the Project for Defendant's employees, the Prime Contractor, Contractors and consultants regarding Stormwater Requirements and this Consent Decree.

16. During absences of a Stormwater Resident Engineer from work (e.g. vacation, illness or other approved leave), he or she may temporarily delegate these authorities and responsibilities to another person provided that this person meets the qualifications set forth in Paragraph 15 and has the authority to carry out the responsibilities set forth in Paragraph 15.

17. Designation of Environmental Construction Inspectors. Before commencement of Construction Activities at any Project, Defendant shall designate one or more employee(s) or consultants working directly for Defendant as the Environmental Construction Inspector(s) for that Project. At ongoing Projects, Defendant shall designate one or more employee(s) or consultant(s) working directly for Defendant as an Environmental Construction Inspector for that Project within thirty (30) days of the Effective Date of this Decree. The Environmental Construction Inspector(s) shall report to the Stormwater Resident Engineer or the Stormwater Compliance and Environmental Specialist. The Environmental Construction Inspectors shall:

a. Complete the stormwater training pursuant to Paragraph 20.;

b. Attend the Stormwater Erosion Control Preconstruction Conference pursuant to Paragraph 27;

c. Be on-site at least three days per week until all areas of the Site have been permanently seeded and mulched in accordance with the Missouri Standard Specifications defined in Sections 801, 802 and 805, and further referenced in the SWPPP under Section 806.8.6.3.8.2, Permanent Seeding and Mulching, and then one day every seven (7) Days until Final Stabilization is achieved;

d. Conduct all inspections in accordance with Stormwater Requirements at the Project;

e. Create, update, and distribute inspection reports as set forth in Paragraph 29 below and enter information into the Stormwater Compliance Database as set forth in Paragraph 32 below.

f. Update the Project-specific SWPPP, or expediently recommend such updates, as are necessary to reflect changes in site conditions and/or BMPs and document this recommendation in writing.

18. During absences of an Environmental Construction Inspector from work (e.g. vacation, illness or other approved leave), he or she may temporarily delegate these authorities and responsibilities to another person provided that this person meets the qualifications set forth in Paragraph 17 and has the authority to carry out the responsibilities set forth in Paragraph 17.

19. Stormwater Training Program. Within thirty (30) days of the Effective Date, Defendant shall implement a stormwater training program that trains attendees on at least all of the issues listed in Appendix A. This training program may be created and/or run by Defendant or a third party with expertise in stormwater training.

20. Stormwater Training for Defendant Employees. During the term of this Decree, the following Defendant employees shall complete stormwater training within sixty (60) days of

the Effective Date or of assuming their position if not employed by Defendant on the Effective Date and thereafter at least once every other year:

- a. All Stormwater Resident Engineers;
- b. All Environmental Construction Inspectors or other Defendant personnel involved in inspections or oversight inspections pursuant to Paragraphs 29 - 31;
- c. All employees with authority to stop work, and/or order measures to cease, correct, prevent, or minimize the consequences of non-compliance with Stormwater Requirements; and
- d. All employees who routinely participate in SWPPP development or updates.

21. Stormwater Training for Contractors. During the term of this Decree, the following employees of Defendant's consultants, the Prime Contractor and all other Contractors shall complete the stormwater training for Defendant employees set forth in Paragraph 20 within ninety (90) days of the Effective Date or of assuming their position if not employed by Defendant's consultant, the Prime Contractor or other Contractor on the Effective Date and thereafter at least once every other year:

- a. Project Managers or Superintendents;
- b. Water Pollution Control Managers;
- c. Environmental Construction Inspectors;
- d. Persons with authority to order Contractor employees to stop work and/or take measures to cease, correct, prevent, or minimize the consequences of non-compliance with Stormwater Requirements; and

e. Contractors and consultants identified in Paragraph 27 who are required to participate in the Stormwater Erosion Preconstruction Conference.

22. The stormwater training requirements set forth in Paragraphs 20 - 21 above, are fulfilled if the person required to be trained has had stormwater training conforming to Appendix A one hundred and eighty (180) days prior to the Effective Date.

23. Defendant shall retain records documenting the stormwater training of its employees and shall require that its consultants and Contractors retain training records documenting stormwater training of their employees.

24. Defendant shall require as a term of its contracts for all Projects let after the Effective Date that prior to initiating any Construction Activities at a Project, the Prime Contractor, shall designate a "Water Pollution Control Manager ("WPCM"). The WPCM shall:

- a. Be familiar with Stormwater Requirements including the NPDES SW Permit, SWPPP and this Consent Decree;
- b. Complete the stormwater training set forth in Paragraph 21;
- c. Attend the Stormwater Erosion Control Pre-construction Conference or, if hired after the conference has occurred, be familiar with the conference decisions;
- d. Review and sign the Project-specific SWPPP and all updates thereto;
- e. Visit the Project at least once per week until final stabilization is achieved;
- f. Be authorized by the Prime Contractor to supervise all work performed by the Prime Contractor and other Contractors that involves compliance with Stormwater Requirements, including the authority to order work be stopped on a Project, and approve spending more money on, and order the taking of, measures to cease, correct, prevent, or minimize the consequences of non-compliance with Stormwater Requirements;

g. Review and sign (thereby indicating agreement with) each inspection report for the Project within four (4) days of receiving each report to ensure it conforms with report requirements in the NPDES SW Permit, SWPPP and this Consent Decree and ensure that all Stormwater Deficiencies noted on the report are corrected in a timely manner;

h. Expediently recommend that the Project-specific SWPPP is updated as necessary to reflect changes in site conditions and BMPs and document this recommendation in writing; and

i. Be the point of contact relating to Stormwater Requirements and this Consent Decree at the Project between the Prime Contractor and other Contractors and Defendant.

25. SWPPP Requirements. For each Project, Defendant shall have a Project-specific SWPPP that complies with its NPDES SW Permit and the Statewide SWPPP. The Project-specific SWPPP shall:

a. Be specific to the land disturbance activities at the Project;

b. Evaluate and detail the Project-specific practices that will be implemented to best minimize the soil exposure, soil erosion and the amount of pollutants in stormwater runoff associated with land disturbance activities, describe and document the selection, design, specification, sequencing, installation and maintenance of BMPs at the Project, including explaining why required BMPs were infeasible and how the BMPs chosen are equally protective; and

c. Be updated by Defendant to reflect current site conditions or necessary changes to BMPs.

26. The Stormwater Resident Engineer and Water Pollution Control Manager assigned to the Project shall review and sign the SWPPP to indicate their concurrence with it.

27. Stormwater Erosion Preconstruction Conference. At each Project, Defendant shall conduct an on-site Stormwater Erosion Control Preconstruction Conference before the commencement of Construction Activities.

a. For purposes of this Paragraph, the commencement of Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of BMPs that are not sediment basins, provided none of these activities involve significant soil disturbance or require a federal, state, or local permit.

b. This preconstruction conference shall be attended in person by the Stormwater Resident Engineer(s), Environmental Construction Inspector(s); and Water Pollution Control Manager for the Project and any project manager for any Contractors expected to be involved in land disturbance or erosion control activities. Parties at the conference shall physically inspect the Project site, review the SWPPP, ensure all initial BMPs required by the SWPPP are appropriate, in place and installed correctly, and discuss issues relating to compliance with Stormwater Requirements that could arise in the course of Construction Activity at the Project. Minutes of the conference shall be recorded and kept at the Project office. Where a Project involves Construction Activity at multiple locations in a widespread area, the Preconstruction Conference need not be held at each location where Construction Activity will occur, but may be held at one or a subset of such locations.

28. Compliance with the NPDES SW Permit and SWPPP. At all Projects, Defendant and Contractors shall comply with all applicable Stormwater Requirements including but not limited to:

a. Designing, implementing, managing, and maintaining BMPs or other control measures to prevent or minimize sediment and other pollutants in stormwater runoff in accordance with any relevant manufacturer specifications and good engineering practices, including but not limited to the manuals listed in Appendix B and any other applicable standards for sedimentation basins, stabilization, rock dams, brush checks, construction entrances, and other BMPs;

b. Installing all BMPs at the locations and relative times specified in the SWPPP; and

c. Complying with the Missouri Water Quality Standards and with effluent limitations in the NPDES SW Permit

29. Inspections. Within thirty (30) days of the Effective Date, Defendant shall establish an Inspection Protocol for all Projects that complies with the terms of the NPDES SW Permit and this Consent Decree. Defendant shall memorialize this Inspection Protocol in a written guidance or similar document, and distribute the document to its Stormwater Resident Engineers, Environmental Construction Inspectors, Defendant field offices, and the Water Pollution Control Managers and Prime Contractors for each Project. Defendant and all Contractors shall adhere to the Inspection Protocol at all Projects.

30. At a minimum, the Inspection Protocol shall require that:

a. Each Project be inspected at the frequencies required by the NPDES SW Permit by a trained Environmental Construction Inspector;

b. All installed BMPs and other pollution control measures be inspected for proper and timely installation, operation and maintenance in accordance with Stormwater Requirements;

c. All stormwater outfalls be inspected for evidence of erosion or sediment deposition; and, when practicable, all receiving streams be inspected for 50 feet downstream of the outfall;

d. The Environmental Construction Inspector shall complete an inspection report for each inspection within twenty-four (24) hours of the inspection where wireless communication is available, otherwise forty-eight (48) hours using a form substantially similar to the template attached as Appendix C. At a minimum the form shall (1) clearly identify each Stormwater Deficiency observed during the inspection; (2) document all actions that need to be undertaken to correct the noted Stormwater Deficiencies and achieve or maintain compliance, or prevent or minimize non-compliance, with Stormwater Requirements; (3) reflect the date each corrective action is implemented or Stormwater Deficiency otherwise addressed; (4) clearly indicate each Stormwater Deficiency from the current or prior inspection that was not corrected and the reason it was not corrected; (5) indicate whether any updates to the Project-specific SWPPP need to be made to reflect site conditions; (6) confirm whether such SWPPP updates have been made; and (7) be signed by the Environmental Construction Inspector who conducted the inspection.

e. The Environmental Construction Inspector will timely enter into the Stormwater Compliance Database all information required to be entered by Paragraph 32;

f. For each inspection, the Environmental Construction Inspector shall provide a copy of the inspection report to the Project's Stormwater Resident Engineer and Water

Pollution Control Manager within twenty-four (24) hours of the inspection where wireless communication is available, otherwise within forty-eight (48) hours, or as soon as practicable thereafter; and that

g. The Stormwater Resident Engineer and Water Pollution Control Manager shall review and sign each inspection report within three (3) days of receipt.

31. Oversight Inspections in Environmentally Sensitive Areas. For all Projects that disturb five acres or more of soil and that are located in an environmentally sensitive area, Defendant shall designate an independent Oversight Inspector who inspects for compliance with the NPDES SW Permit and SWPPP. These Oversight Inspections are in addition to and not in lieu of the regular inspections required by the NPDES SW Permit, SWPPP and Paragraph 29 of this Consent Decree.

a. For all Projects that disturb three hundred acres or more of soil during the life of the Project and that are located in an environmentally sensitive area, the Oversight Inspector shall be a member of Defendant's Central Office staff or a qualified third-party consultant retained by Defendant. For all Projects that disturb at least five acres but less than three hundred acres of soil and that are located in an environmentally sensitive area, the Oversight Inspector shall be from Defendant Central Office Inspection Staff, Defendant District Inspection Staff, or a qualified third-party consultant retained by Defendant. For projects that are greater than twenty-five acres, Defendant District Staff shall not conduct oversight inspection in the same District in which they are employed.

b. Oversight Inspections shall occur at least once every ninety (90) days during any period where there is active Construction Activity at a Project and shall be

unannounced. If material Stormwater Deficiencies are found, the independent Oversight Inspector will conduct a follow-up inspection within thirty (30) days.

c. The Oversight Inspector shall provide to the Stormwater Resident Engineer, the Water Pollution Control Manager and the Prime Contractor within twenty-four (24) hours where wireless communication is available, otherwise forty-eight (48) hours, of each inspection written findings and recommendations as to the actions needed to correct observed Stormwater Deficiencies. The written findings shall contain at least the information described in Paragraphs 29 and 30 and on the form attached hereto as Appendix C. The Oversight Inspector shall also provide any follow-up written report if changes to the SWPPP or BMPs are necessary within seven (7) days of each inspection. A copy of all such reports shall be provided to the Stormwater Compliance and Environmental Specialist, Stormwater Resident Engineer, Stormwater Water Pollution Control Manager and Prime Contractor and maintained in the file with the SWPPP located at the site, and shall be available for review by EPA during any inspection of the Project.

d. Defendant and the Prime Contractor shall implement all recommendations by the Oversight Inspector, unless infeasible. If Defendant and the Prime Contractor reject a recommendation as infeasible, Defendant shall place in its files on the job site a written description by either the Stormwater Resident Engineer or the Defendant Stormwater Compliance and Environmental Specialist of why the recommendation(s) is infeasible. The written description shall include an explanation of why the recommendation was not necessary to protect water quality or comply with the permit, or an explanation that Defendant has developed an alternative solution that is feasible that protects water quality and complies with the NPDES SW Permit. If the Stormwater Resident Engineer makes an initial determination that a

recommendation is infeasible, he/she will obtain the approval of the Stormwater Compliance and Environmental Specialist to not implement the recommendation. If such approval is given, the Stormwater Resident Engineer will place in the files on the job site the written approval of the Stormwater Compliance and Environmental Specialist.

e. For purposes of this Paragraph, “environmentally sensitive area” means any area which would be directly impacted by Stormwater discharges from the Project, and which is federally designated critical habitat for any federally listed threatened or endangered species, or which contains an immediate downstream water body that is listed as impaired for sediment by the Missouri Department of Natural Resources under Section 303(d) of the CWA.

f. If Defendant believes that an Oversight Inspection would result in no significant environmental benefits at a specific Project, Defendant may seek a waiver of this requirement from EPA. The grant or denial of this waiver by EPA is in the sole discretion of EPA and is not subject to the dispute resolution provisions of this Decree.

32. Stormwater Compliance Database. No later than one hundred and twenty (120) days after Date of Entry, Defendant shall create, implement and maintain an electronic Stormwater Compliance Database that tracks all Stormwater Deficiencies noted in any stormwater inspection or Oversight Inspection and the actions taken to address such deficiencies. The Database must allow the tracking of each Stormwater Deficiency from identification through resolution.

a. As soon as practicable but in no case later than five (5) days after each inspection, the Environmental Construction Inspector or Oversight Inspector shall input into the Stormwater Compliance Database the following information about each Stormwater Deficiency noted in an inspection: (1) a detailed description of the deficiency; (2) the location of the

deficiency; (3) a description of the actions that shall be undertaken to address the deficiency (including actions to correct the deficiency and prevent, minimize or mitigate pollutants in stormwater runoff associated with the deficiency); (4) the dates such actions will be undertaken; and (5) whether the deficiency or proposed actions to address the deficiency requires any changes to the Project-specific SWPPP.

b. As soon as practicable, but not later than five (5) days after an action has been undertaken that in any way addresses a Stormwater Deficiency, the Oversight Inspector, or Environmental Construction Inspector shall input into the Stormwater Compliance Database the following information concerning each action undertaken to address a Stormwater Deficiency (including actions undertaken to correct the deficiency and prevent, minimize or mitigate pollutants in stormwater runoff associated with the deficiency): (1) a description of each action; (2) date each action was implemented; (3) a description of how the actions undertaken addressed the deficiency; (4) a statement as to whether further actions to address the deficiency are needed or intended; (5) a description of the further actions to be undertaken to address the deficiency and the date such actions are expected to occur; and (6) whether the Project-specific SWPPP was updated as a result of the deficiency and or actions taken to address the deficiency and date of such update.

c. At least once every seven (7) days, the Stormwater Resident Engineer for each project shall review all Stormwater Deficiencies entered into the database for which all actions addressing the deficiency are not completed within seven (7) days of the inspection identifying the deficiencies. They shall document each review, and undertake and document appropriate follow-up action for each identified deficiency to ensure it is addressed.

d. At least once every fourteen (14) days the Stormwater Compliance and Environmental Specialist shall review all Stormwater Deficiencies entered into the database for which all actions addressing the deficiency have not been completed within thirty (30) days of the inspection identifying the deficiencies. She or he shall document each review and undertake and document appropriate follow-up action for each identified deficiency to ensure it is addressed.

33. Defendant shall undertake all necessary actions to address all Stormwater Deficiencies, including actions to correct deficiencies, prevent, minimize and mitigate pollutants in stormwater runoff associated with Construction Activity, as soon as possible and no later than seven (7) days after the Stormwater Deficiency was observed in an inspection or otherwise discovered by or made known to a Stormwater Resident Engineer, Water Pollution Control Manager or Environmental Construction Inspector. This time period may be extended only where weather conditions prevent correction of BMPs within seven (7) calendar days. In such circumstances, Defendant must document (including pictures) the reasons for the delay, explaining why the work cannot be accomplished within the seven day time period and the deficiency must be addressed as soon as weather conditions permit.

34. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal or state permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if

Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

## **VI. REPORTING REQUIREMENTS**

35. Defendant must provide to the Chief, Water Enforcement Branch in Paragraph 76 (Notices), written reports anytime the spill or emergency reporting provisions of the NPDES SW Permit(s) are triggered, requiring Defendant to report an event to the Missouri Department of Natural Resources. Each written report shall be submitted within three (3) days after the NPDES Permit reporting deadline, include the name of the Project at which the noncompliance occurred. Certification requirements described in Paragraph 38 do not apply to endangerment reports.

36. Defendant shall submit to EPA an annual report, to be submitted by March 30th, summarizing all actions taken to comply with the terms of this Consent Decree and certifying Defendant's compliance with all requirements of this Consent Decree in the previous year. This summary certification shall address compliance with Paragraphs 13 through 34. As part of the report, Defendant shall submit to EPA a statement identifying each known violation of any of the terms of the NPDES SW Permit, SWPPP or this Consent Decree by Defendant or its contractor(s). This report shall be submitted either in hard copy or electronically on a compact disc.

37. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

38. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

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.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

39. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

40. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## **VII. STIPULATED PENALTIES**

41. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

42. Stipulated Penalty Amounts. If EPA determines that Defendant has failed to comply fully and timely with the requirements of this Decree, Defendant shall pay stipulated penalties in the following amounts:

<b>Violation</b>	<b>Stipulated Penalty Amount</b>
Failure to Designate or Maintain Stormwater Compliance and Environmental Specialist in Accordance with Paragraph 13 or a Stormwater Resident Engineer in Accordance with Paragraph 15.	\$1000 for the initial violation (person not designated) and then \$750 for each fourteen (14) day period that person is not designated.
Failure to Designate or Maintain at least one Environmental Construction Inspector at Each Project in Accordance with Paragraph 17 at each Project and/or Failure to Designate or Maintain Water Pollution Control Manager at each Project in Accordance with Paragraph 24.	\$750 for the initial violation (each person not designated) and then \$750 for each fourteen (14) day that person is not designated.
Failure to Train an Individual Required to be Trained in Accordance with Paragraphs 20 -21.	\$750 per person for each missed training. This \$750.00 per person violation shall continue to accrue for each fourteen (14) day period that the person fails to timely receive the applicable training.
Failure to Hold Stormwater Erosion Pre-Construction Conference in Accordance with Paragraph 27.	\$750 for failing to hold the Conference by the due date and then \$250 Per Day after Construction Activity begins until the conference is held.
Failure to Create or Distribute Written Inspection Protocol In Accordance with Paragraphs 29 - 30.	\$750 per day late.
Failure to Conduct Inspection in Accordance with the NPDES SW Permit, SWPPP, or Inspection Protocol as set forth in Paragraphs 29 - 30.	\$500 per inspection missed and then \$100 per day until next inspection performed..
Failure to Document Inspection in Report in Accordance with NPDES SW Permit, SWPPP or Inspection Protocol as set forth in Paragraphs 29 - 30.	\$100 per day Report is late until next Report made.
Failure of Resident Engineer or WPCM to Review and Sign Inspection Report in Accordance with Inspection Protocol as set forth in Paragraphs 29 - 30.	\$250 per inspection report not reviewed or signed.

Failure to Conduct an Oversight Inspection in Accordance with Paragraph 31.	\$1,500 per inspection not timely performed then \$250 per day until inspection performed.
Failure to Comply with Any NPDES SW Permit or SWPPP Requirement.	\$1000 per violation for the first ten (10) days of the violation; \$2500 per violation for days 11-20; \$3500 per violation for days 21 and beyond.
Failure to Correct a Stormwater Deficiency Identified in an Inspection or Otherwise Discovered by Defendant, an Environmental Construction Inspector or the Water Pollution Control Manager, within the Time Required by the NPDES SW Permit or SWPPP.	\$1000 per deficiency for the first ten (10) days after correction was required; \$2500 per deficiency for days 11-20 after correction was required; \$3500 per deficiency for days 21 and beyond after correction was required.
Failure to enter an item into Stormwater Compliance Database in Accordance with Paragraph 32.	\$200 per Deficiency per day not entered into Database.
Failure of Stormwater Environmental Compliance Specialist, Stormwater Resident Engineer, or Water Pollution Control Manager to Review Compliance Database in Accordance with Paragraph 32.	\$200 per day review is late.
Failure to Submit a Report or Information in Accordance with the Requirements of Paragraphs 35 - 38.	\$750 per report/information not submitted and then an additional \$750 for every fourteen (14) day period that passes without the report or information being submitted.
Any other Violation of this Consent Decree not specified above.	\$100 per violation per day it continues to be uncorrected.

43. Stipulated penalties under this Section shall begin to accrue on the Day after 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.

44. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

45. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

46. Stipulated penalties shall continue to accrue as provided in Paragraph 42 (Stipulated Penalty Amounts), during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay 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 and the United States prevails in whole or in part, 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, together with Interest, within fifteen (15) Days of receiving the final appellate court decision.

47. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, 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.

48. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for Interest on such 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.

49. Nothing in this Consent Decree prevents Defendant from collecting stipulated penalties from Defendant's Contractor for the Contractor's failure to comply with its contractual obligations to Defendant. Defendant shall not seek payments, reimbursement, indemnification or insurance coverage for any stipulated penalty from any agency of the United States including, but not limited to, the Federal Highway Administration ("FHWA").

50. Subject to the provisions of Section XI 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 including but not limited to mitigation of stormwater discharges that occur in violation of this Consent Decree. Where a violation of this Consent Decree is also a violation of Section 301 or 402 of the Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

### **VIII. FORCE MAJEURE**

51. "Force Majeure" for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. 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

greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to Chief, Water Enforcement Branch, within seventy-two (72) hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; 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 Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant’s contractors knew or should have known.

53. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force

majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

54. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

55. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than thirty (30) days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of this Paragraph and Paragraphs 51 through 54 above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **IX. DISPUTE RESOLUTION**

56. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of 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.

57. 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 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

58. 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 need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

59. 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 need not 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.

60. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) 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.

61. 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.

62. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 60 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 60, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

63. 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 46. If

Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

**X. INFORMATION COLLECTION AND RETENTION**

64. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, 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.

65. Until three years after the termination of this Consent Decree, 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 to Defendant's performance of its obligations under this Consent Decree or to Defendant's Contractor'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 this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this

Paragraph. Defendant may collect and retain all Contractor documentation rather than requiring Defendant's Contractor to retain the documentation for the prescribed period.

66. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall retain documents pursuant to Defendant's document retention policy. 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 by Defendant. 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.

67. 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, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

68. 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 pursuant to applicable federal 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.

## **XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

69. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

70. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 69. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 69.

71. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant's violations, 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 69 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 and 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, 33 U.S.C. §§1311 and 1342 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

73. Except as expressly set forth herein, 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.

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.

## **XII. COSTS**

75. The Parties shall bear their own costs of this action, including attorney's fees, except that the United States shall be entitled to collect the costs (including attorney's fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

## **XIII. NOTICES**

76. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-10420

Chief, Water Enforcement Branch  
Water, Wetlands & Pesticides Division  
U.S. EPA, Region 7  
11201 Renner Blvd.  
Lenexa, Missouri 66219

Sarah Laboda  
Senior Assistant Regional Counsel  
U.S. EPA, Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

Susan Bruce  
U.S. EPA  
Office for Enforcement and Compliance Assurance  
Water Enforcement Division  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

To Defendant:

Chief Engineer  
Missouri Department of Transportation  
105 W. Capitol, P.O. Box 270  
Jefferson City, Missouri 65102

77. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

78. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**XIV. EFFECTIVE DATE**

79. 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.

**XV. RETENTION OF JURISDICTION**

80. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

**XVI. MODIFICATION**

81. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

82. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 62 (Standard of Review), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

**XVII. TERMINATION**

83. No sooner than three (3) years after Effective Date of this Decree, Defendant may request the United States' consent to termination of this Decree. In seeking such consent, Defendant shall demonstrate that:

- a. Defendant has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
- b. Defendant has substantially complied with all requirements of Section V (Compliance Requirements).
- c. As of the date Defendant provides any notice or request to terminate this Decree, EPA has not provided Defendant with any Notice of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section IX (Dispute Resolution); and
- d. No enforcement action under this Decree is pending.

84. The United States shall notify Defendant in writing within thirty (30) days of receiving any request to terminate by Defendant whether the United States does or does not object to the request. If the United States agrees, then the parties shall jointly file a motion to terminate with the Court. If the United States objects to such request it shall include in its notification the reasons why it objects to the request. The parties will work together for a period of at least thirty (30) days in an effort to informally resolve any disputes. If the United States does not respond to Defendant's request to terminate, or a dispute over whether the Decree can be terminated cannot be informally resolved, Defendant may file a motion with the Court pursuant to Paragraph 60 to terminate the Consent Decree and the requirements of Paragraphs 61 - 62 shall thereafter govern resolution of Defendant's termination request... The Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.

### **XVIII. PUBLIC PARTICIPATION**

85. This Consent Decree shall be lodged with the Court for a period of not less than 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 if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court 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 Decree.

**XIX. SIGNATORIES/SERVICE**

86. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XX. INTEGRATION**

88. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement,

agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

**XXI. FINAL JUDGMENT**

89. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

**XXII. APPENDICES**

90. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is the Stormwater Training Requirements

“Appendix B” is List of Good Practice Manuals

“Appendix C” is the Inspection Report Template

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2015.

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UNITED STATES DISTRICT JUDGE  
Western District of Missouri

FOR PLAINTIFF UNITED STATES OF AMERICA:

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THOMAS MARIANI  
Deputy Section Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division

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ELIZABETH L. LOEB  
Senior Counsel  
Environmental Enforcement Section  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
Elizabeth.Loeb@usdoj.gov  
(202) 616-8916

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United States Attorney  
Western District of Missouri

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Assistant United States Attorney

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KARL BROOKS  
Regional Administrator  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard.  
Lenexa, Kansas 66219

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DAVID COZAD  
Regional Counsel

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SARAH LABODA  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard.  
Lenexa, Kansas 66219

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SUSAN SHINKMAN

Director

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

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MARK POLLINS

Director, Water Enforcement Division

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

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U.S. Environmental Protection Agency

FOR DEFENDANT MISSOURI HIGHWAYS AND TRANSPORTATION  
COMMISSION

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# Appendix A

## **MoDOT Stormwater Training Program [Land Disturbance Training] Content Requirements**

- I. Overview of Sediment Control Compliance Policy and Enforcement
  - A. Policy and Enforcement
  - B. Consent Decree Requirements
    - 1. Positions and Responsibilities
      - a. Stormwater Compliance and Environmental Specialist
      - b. Stormwater Resident Engineers
      - c. Environmental Construction Inspectors
      - d. Contractor Water Pollution Control Managers
    - 2. Training Requirements
      - a. MODOT employees
      - b. Contractors
    - 3. Stormwater Erosion Pre-Construction Conference
    - 4. Inspection Requirements
      - a. Stormwater Deficiency Database
      - b. Timeframes for Providing Inspection Reports
    - 5. Oversight Inspections in Environmentally Sensitive Areas
      - a. Definition of Environmentally Sensitive Areas
      - b. Size thresholds and who conducts inspections
      - c. Frequency
      - b. Deadlines for Inspection Reports
      - e. Follow-up
- II. Introduction to Clean Water Act and NPDES
- III. MDNR General Operating Permits for Land Disturbance
  - A. Applicability
  - B. Exemptions
  - C. General Requirements
  - D. Prohibited Acts
- IV. Storm Water Pollution Prevention Plans (SWPPP)
  - A. Requirements
  - B. Project Specific Form
  - C. Enforcement
  - D. Site Maps and Erosion Control Plans
  - E. Updating and Revising SWPPPS
  - F. Temporary and Permanent Non-Structural BMPs
  - G. Buffer and Preservation Areas
  - H. Temporary and Permanent Structural BMPs
    - a. Written justification in site-specific SWPPP when installation of a basin(s) is infeasible, and
    - b. Identification of alternative BMP(s) and explanation of why the selected BMPs are equally protective.

- I. Other BMP Requirements in the SWPPP
  - J. Disturbed Areas versus Erodible Areas
  - K. Temporary Stabilization
  - L. Final Stabilization
  - M. Permanent Seeding
  - N. Timing
- V. Installation
- A. Perimeter and Outfall BMPs
  - B. Missing BMPs
  - C. Outfall BMPs
  - D. Sediment Basins
  - E. Pollution Prevention Measures
  - F. Dewatering
  - G. Roadways
- VI. Good Housekeeping and Materials Storage and Handling
- A. Solid and Hazardous Waste Management
  - B. Fueling Facilities
  - C. Materials Storage
- VII. Amendments to the SWPPP
- VIII. Inspections
- A. MODOT Inspection Protocol
  - B. Frequency
  - C. Inspection Record
  - D. Inspection Report Log
  - E. Information/Procedures for the Stormwater Deficiency Database
  - F. Site Inspection Items
  - G. Outfalls
  - H. Receiving Streams
  - I. Other Inspection Concerns
- IX. Public Notification
- X. Record-Keeping Requirements
- XI. Preconstruction Conference with Contractors
- A. Discuss Erosion and Sediment Control and SWPPP
  - B. Limit Clearing if Possible
- XII. Erosion versus Sediment Control

- XIII. Erosion Control BMPs
  - A. Existing Vegetation
  - B. Surface Roughening
  - C. Mulching
  - D. Temporary Seeding
  - E. Permanent Seeding and Mulching
  - F. Slopes
  - G. Slope Drains
  - H. Erosion Blankets/Mats
  - I. Other Alternatives
    - a. Channel and Slope Armoring
    - b. Energy Dissipaters
  
- XIV. Sediment Control BMPs
  - A. Establishing a Perimeter
  - B. Vegetation Buffers
  - C. Filter Strips
  - D. Silt Fence
  - E. Rock/Mesh Control Fence
  - F. Ditch Checks
  - G. Inlet Protection Devices
  - H. Sediment Trap
  - I. Other BMPs
  - J. Sediment Basin
  
- XV. In-Stream BMPs
  - A. Rock Filter Berm
  - B. Sediment Basins
  - C. Sediment Traps
  - D. Brush Pile and Sediment Trap Combo
  - E. Ditch Checks
  - F. Triangular Silt Dike
  - G. Sediment Control Socks/Logs
  
- XVI. Discharge Points BMPs
  - A. Rock Ditch Check
  - B. Sediment Trap or Basin
  
- XVII. Perimeter Silt Fences
  - A. Geotextile Silt Fence
  - B. Silt Fence
  - C. Mulch
  - D. Rock/Mesh Sediment Control Fence
  
- XVIII. Inlet Protection

- XIX. Proper Operation and Maintenance
  - A. Inspect, Maintain, Replace and Remove BMP's
  - B. Removing Temporary BMP's
  
- XX. Additional Considerations for BMP's
  - A. Choosing Correct BMP
  - B. Correct Installation of BMP
  - C. Lined Concrete Washout Slurry
  - D. Preparing Soil for Vegetation
  - E. Clay Soil and Flocculants
  - F. Sediment Drop Curtains
  - G. Temporary Stream Crossings
  - H. Borrow and Excess Disposal Areas
  
- XXI. Conclusion
  
- XXII. Questions and Answers

# Appendix B

EPA's SWPPP Guidance:

[http://water.epa.gov/polwaste/npdes/stormwater/upload/sw\\_swppp\\_guide.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/sw_swppp_guide.pdf)

EPA's Menu of BMPs

<http://water.epa.gov/polwaste/npdes/swbmp/Construction-Site-Stormwater-Run-Off-Control.cfm>

Link to EPA's Road-Related Stormwater Page

<http://water.epa.gov/polwaste/npdes/stormwater/Road-Related-MS4s.cfm>

Link to EPA page with links to most stormwater documents/guidance

[http://cfpub1.epa.gov/npdes/docs.cfm?program\\_id=6&view=allprog&sort=name](http://cfpub1.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name)

A link to MDNR's construction stormwater page:

<http://dnr.mo.gov/env/wpp/stormwater/sw-land-disturb-permits.htm>

# Appendix C

MISSOURI DEPARTMENT OF TRANSPORTATION  
LAND DISTURBANCE INSPECTION RECORD

MISSOURI DEPARTMENT OF TRANSPORTATION  
LAND DISTURBANCE INSPECTION RECORD

Inspection Date: _____	Inspection Record No.: _____	
Project Number: _____	County: _____	Route: _____

Inspection Type: Weekly _____ Final _____	Post-Runoff _____ (Total Precip (in.) _____/Precip Duration (hrs) _____) Other _____
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Total Disturbed Acreage on the Project _____	Total Authorized Acreage on the Project _____
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Are there BMP deficiencies/other matters requiring corrective action, modification or installation within this report?  Yes  No

Land Disturbance Inspection Checklist

		Yes	No	N/A
1	Current and updated SWPPP/site map on site when the erosion & sediment control inspector is on site and a copy given to the contractor?			
2	Permit public notification sign(s) posted and visible to the public?			
3	Are all erosion and sediment control BMPs properly installed, maintained, functioning as intended according to the SWPPP and depicted on the site map? If "No", explain deficiencies below (use add. pages if needed).			
4	Are BMPs in place to protect streams, wetlands and other environmentally sensitive areas from pollutants? <i>If not, describe each deficiency.</i>			
5	Is trackout controlled at project entrance/exit points? <i>If not, describe each deficiency.</i>			
6	Are active stormwater inlets susceptible to receiving sediment properly protected? If not, describe each deficiency.			
7	Does the project have a dewatering plan?			
8	Are dewatering operations effectively removing pollutants from the water?			
9	Are litter, construction debris, fuels, lubricants and other construction chemicals controlled? <i>If not, describe each deficiency.</i>			
10	Have all temporary BMPs that are no longer necessary been removed and removal depicted on the site map?			
11	Have all deficiencies from the last report been corrected in 7 days? If not, provide an explanation of adverse site conditions and attach photo evidence. <i>Document the date each deficiency was addressed.</i>			
12	<i>Have all outfalls been observed for evidence of erosion and/or sediment deposition? If not, provide an explanation of which outfalls were observed and why others were not. Document the condition of the outfalls and if any corrective actions and/or additional BMPs are needed.</i>			
13	<i>Was the receiving stream(s) observed for 50 feet downstream of the outfall(s)? Are any corrective actions and /or additional BMPs needed?</i>			
14	Other:			

Explanation of checklist items identified above (use additional pages if needed): \_\_\_\_\_

Describe areas where land disturbance activities have temporarily or permanently ceased. (Excluding weather shutdowns) Describe how these areas have been or will be stabilized. \_\_\_\_\_

Provide a brief description of the current project status with regard to erosion and sediment control and the effectiveness of BMPs (use additional pages if needed): \_\_\_\_\_

MISSOURI DEPARTMENT OF TRANSPORTATION  
LAND DISTURBANCE INSPECTION RECORD

Has the job reached final stabilization in accordance with the permit?  Yes  No

Inspector Name: \_\_\_\_\_ Inspector Signature: \_\_\_\_\_ Date: \_\_\_\_\_

RE Name: \_\_\_\_\_ RE Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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