IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
AND THE
COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

ALLAN MYERS, INC.,
ALLAN MYERS, LP,
ALLAN MYERS MD, INC.,
ALLAN MYERS VA, INC.,

Defendants.

Civil Action No. 15-1992

FILED
JUN 3 2015
MICHAEL E. KUNZ, Clerk
By_____ Dep. Clerk

CONSENT DECREE

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A. Whereas, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this matter pursuant to the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§1251-1387, alleging that Allan Myers, Inc. (formerly known as American Infrastructure, Inc.), Allan Myers MD, Inc. (formerly known as American Infrastructure-MD, Inc.), Allan Myers VA, Inc. (formerly known as American Infrastructure-VA, Inc., and before that as R.G. Griffith, Inc.), and Allan Myers, L.P (formerly known as Allan A. Myers, LP), (collectively, "Allan Myers") have violated the requirements of the Act and the regulations promulgated pursuant to that statute, including the conditions and limitations of the Federal General Permit or other Applicable Permit.

B. Whereas the Commonwealth of Virginia ("Commonwealth") has joined in the filing of the Complaint in this matter alleging that Defendants have violated the Virginia Stormwater Management Act, Va. Code §§ 62.1-44.15:24 - 62.1-44.15:50 (2014) (originally codified at Va. Code §§ 10.1-603.1 - 10.1-603.15 (2012)) and the regulations promulgated pursuant to that statute, including the conditions and limitations of the Virginia General Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-70 (originally 4 VAC 50-60-1170).

C. Whereas, the Defendants neither admit nor deny the allegations in the Complaint.

D. Whereas, the Parties have consented to the entry of this Consent Decree ("Decree") without trial of any issues.

E. Whereas, the Parties recognize, and this Court finds by entering this Decree, that the Parties have negotiated this Decree in good faith, that implementation of this Decree will avoid prolonged and complicated litigation between the parties, and that it is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

I. DEFINITIONS

1. Definitions. Terms used in this Decree which are defined in the CWA, 33 U.S.C. §§1251-1387, or in the regulations promulgated under the CWA shall have the meaning assigned to them in the Act or in such regulations. Whenever the terms listed below are used in this Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. Applicable Permit(s) – (i) the Federal Construction Storm Water General Permit if the Ground Disturbing Activities take place in a jurisdiction where the Federal General Permit is applicable; (ii) in the case of an Authorized State, the Authorized State's National Pollution Discharge Elimination System ("NPDES") construction general permit; or (iii) any individual NPDES permit issued by EPA or an Authorized State for storm water discharges associated with construction activities pursuant to 33 U.S.C. § 1342. This term applies to that permit in its current form or as it may be amended in the future.

b. Authorized State - a state with a NPDES Permit Program that has been authorized by EPA under Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), and C.F.R. Part 123 to issue individual or general NPDES permits for storm water discharges associated with construction activity.

c. Best Management Practices ("BMPs") - a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to

prevent or reduce the discharge of pollutants to waters of the United States, and for Sites located in Virginia, to surface waters as that term is defined in the Virginia Stormwater Management Program Regulation, 9 VAC 25-870-10 (originally 4 VAC 50-60-10), as well as treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

d. Business Day - any day other than a Saturday, Sunday, or federal holiday.

e. Clean Water Act - the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

f. Date of Entry – the date this Decree is signed by the Court.

g. Defendant Operating Companies- Allan Myers, L.P., Allan Myers MD, Inc., and Allan Myers VA, Inc.

h. Defendants - Allan Myers, Inc. (formerly known as American Infrastructure, Inc.), Allan Myers MD, Inc. (formerly known as American Infrastructure-MD, Inc.), Allan Myers VA, Inc. (formerly known as American Infrastructure-VA, Inc., and before that as R.G. Griffith, Inc.), and Allan Myers, L.P (formerly known as Allan A. Myers, LP), (collectively, "Allan Myers").

i. Federal General Permit - the federal NPDES General Permit for Stormwater Discharges from Construction Activities issued by EPA on July 14, 2008 (73 Fed. Reg. 40388), or any superseding federal NPDES General Permit, and any subsequent amendments or modifications thereto, except to the extent that any subsequent amendments or modifications are struck down by a court of competent jurisdiction.

j. Ground Disturbing Activities - the disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities causing the disturbance of soils.

k. Notice of Intent - a request for coverage under an Applicable Permit.

l. NPDES - National Pollutant Discharge Elimination System.

m. Parties - the United States, the Commonwealth of Virginia, and Defendants.

n. Plaintiffs - the United States and the Commonwealth of Virginia.

o. State Plaintiff - the Commonwealth of Virginia.

p. Site - any location in the United States for which any Defendant has executed or executes after the Date of Entry, a contract for construction which contract requires any Defendant to perform Ground Disturbing Activities and (a) Defendant either (i) has operational control over the plans and specifications for the Ground Disturbing Activities, including the ability to make modifications to those plans and specifications, or (ii) has day-to-day operational control of those activities which are necessary to ensure compliance with a SWPPP or other conditions of an Applicable Permit (e.g., any Defendant is authorized to direct workers to carry out activities required by the SWPPP or to comply with other conditions of an Applicable Permit) and (b) at which there are or will be Ground Disturbing Activities requiring an Applicable Permit. When Defendants' Ground Disturbing Activities are confined to a certain area within a larger construction activity, the Site for purposes of this Decree is only that area where Defendants conduct Ground Disturbing Activities.

q. Storm Water Trained – shall mean an individual who has successfully completed one of the following methods of Storm Water Training: (i) one who is currently certified by the International Erosion Control Association under the Certified Professional in Erosion & Sediment Control ("CPESC") program; (ii) one who has completed any other program that provides: (a) at least six (6) hours of classroom training on the principles, practices and legislation of erosion and sediment control, including storm water regulations and permits, (b) a written exam designed to measure the proficiency of storm water principles, and (c) annual re-certification; or (iii) one who has completed another storm water training program, either classroom or web-based, agreed to by EPA after a request made to the EPA representative(s) listed in Paragraph 35 (Notification). EPA shall make all reasonable efforts to timely review such request. Any dispute regarding EPA's response to such request shall be addressed through the Dispute Resolution process as set forth in Section VIII (Dispute Resolution). Completion of any Storm Water Training program described in this subparagraph (p) shall require successful passage of any and all comprehension tests included in the program.

r. Subcontractor(s) – any of Allan Myers' subcontractors or consultants at a Site, including any of the employees of such subcontractors or consultants working at a Site.

s. SWPPP – shall mean a Storm Water Pollution Prevention Plan or other plan for controlling pollutants in storm water discharges from Sites that meets the requirements of Paragraph 11 (SWPPPs).

II. PARTIES BOUND

2. Jurisdiction and Venue. The Parties agree that this Court has jurisdiction over the subject matter herein and over the Parties hereto pursuant to 33 U.S.C. §1319(b) and 28 U.S.C. §§1331, 1345, 1355, and 1367 and that venue is proper under 33 U.S.C. §1319(b) and 28 U.S.C. §1391 and 1395. Defendants consent to the Court's jurisdiction over this Decree and over Defendants, consent to venue in this judicial district, and agree that the Complaint states a claim upon which relief may be granted under 33 U.S.C. §§1319 and 1342. Except as expressly provided herein, this Decree shall not create any rights in any party other than the Parties to this Decree. Notice of commencement of this action was given to the States of Pennsylvania, Maryland, and Virginia, pursuant to Section 309(b) of the CWA, 33 U.S.C. §1319(b).

3. Parties Bound. The obligations of this Decree apply to and are binding upon the Plaintiffs and upon Defendants, and any successors, assigns, or other entities or persons otherwise bound by law.

a. Defendants. Defendants shall provide a copy of Section III of this Decree in hard copy or electronic form to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, including the Director of Storm Water Compliance, Compliance Officers, Alternate Compliance Officers, and each Project Superintendent, and their successors as applicable, within thirty (30) days of the Date of Entry. Defendants shall also provide a summary as attached at Appendix A (hereinafter "Subcontractor Compliance Summary") of the portions of Section III of this Decree that are applicable to Subcontractors in hard copy or electronic form, to each Subcontractor hired by Defendants to perform Ground Disturbing Activities at a Site, and shall condition all initial contracts entered into following the Date of Entry between Defendants and any person or entity

performing Ground Disturbing Activities at a Site upon performance of the work in conformity with the terms of the Subcontractor Compliance Summary (Appendix A).

b. Provisions Applicable to the Commonwealth of Virginia. Notwithstanding any other right, duty or responsibility hereinafter set forth, to the extent that any provision of this Decree creates rights, duties, or responsibilities between the Commonwealth and Defendants, such rights, duties, and responsibilities shall only apply to the Commonwealth and Defendants to the extent applicable to Defendants' operations within the Commonwealth of Virginia or generally applicable in all jurisdictions including the Commonwealth of Virginia. This Decree shall not be construed to subject Defendants' activities in any state other than the Commonwealth of Virginia to jurisdiction by the Commonwealth.

4. Responsibility for Acts of Employees. In any action to enforce this Decree, Defendants shall not assert as a defense the failure of its officers, directors, agents, Subcontractors, employees, successors and assigns to take actions necessary to comply with this Decree.

III. ALLAN MYERS' COMPLIANCE PROGRAM

5. Compliance with Applicable Permits. Defendants shall comply with the Act and any applicable provisions of state law as each relates to the discharge of storm water from Sites through its compliance with the requirements of Applicable Permits.

6. Designation of Director of Storm Water Compliance. Within five (5) business days of the Date of Entry, Defendants shall submit in writing a notice to Plaintiffs identifying one Allan Myers employee who will serve as the Director of Storm Water Compliance to oversee storm water compliance activities throughout all Allan Myers companies, and shall submit evidence that the Director of Storm Water Compliance meets the criteria set forth in this

Paragraph. The Director of Storm Water Compliance shall (i) be Storm Water Trained; (ii) have at least five (5) years of construction-related experience; (iii) be able to identify and have the authority to implement BMPs; (iv) have the authority to instruct employees and Subcontractors in the implementation of such practices; and (v) have the authority to develop and implement storm water compliance policies company-wide. The Director of Storm Water Compliance shall maintain his or her certification as current. Allan Myers may change the Director of Storm Water Compliance by providing Plaintiffs with written notice to the addresses specified in Paragraph 35 (Notification), of the change and submitting evidence that the person selected meets the criteria set forth in this Paragraph.

7. Designation of Compliance Officers.

a. Within fifteen (15) business days of the Date of Entry, Defendants shall submit in writing a notice to the Plaintiffs identifying three employees, one per Defendant Operating Company, who will serve as the Compliance Officer for each of the respective Defendant Operating Companies, and shall submit evidence that each Compliance Officer meets the criteria set forth in this Paragraph. The Compliance Officers will be responsible for coordinating oversight of storm water compliance at their respective Defendant Operating Company's Site or Sites. Each Compliance Officer shall (i) be Storm Water Trained; (ii) have at least five (5) years of construction-related experience; and (iii) be able to adequately identify and have the authority to implement BMPs; and (iv) effectively instruct employees and Subcontractors in the implementation of such practices; provided, however, that each Compliance Officer identified by Allan Myers within the first year from the Date of Entry shall have ninety (90) days from the Date of Entry to become Storm Water Trained. Each Compliance Officer shall maintain his or her Storm Water Training as current on an annual basis.

b. If, at any time, Defendants wish to add a new, or change an existing, Compliance Officer, Defendants shall note this in the applicable SWPPPs as set forth in Paragraph 11(SWPPPs) and shall notify EPA and the Commonwealth of Virginia by electronic mail to the addresses specified in Paragraph 35 (Notification) the identity of the new Compliance Officer and that the proposed replacement meets the same requirements as set forth above in Paragraph 7(a).

c. Each time Allan Myers identifies a Compliance Officer, the Director of Storm Water Compliance shall maintain evidence that the person selected meets the criteria set forth above in Paragraph 7(a), including written evidence demonstrating that the individual is Storm Water Trained and that the training is current. Such evidence shall be made available to EPA and the Commonwealth of Virginia within thirty (30) days, upon request.

d. For each Defendant Operating Company, Defendants may designate one or more employees as Alternate Compliance Officers who have the same duties and will fulfill the obligations of the Compliance Officer under this Decree when the Compliance Officer is unable or unavailable to perform his or her duties. The Alternate Compliance Officer(s) shall have the same qualifications as the Compliance Officer, shall maintain his or her Storm Water Training as current, and the Director of Storm Water Compliance shall maintain evidence that the person selected meets the criteria set forth above in Paragraph 7(a).

8. Designation of Project Superintendents.

a. For each Site, Defendants shall designate a Primary Project Superintendent, each of whom is an Allan Myers employee who shall (i) be Storm Water Trained; (ii) have at least five (5) years of construction-related experience; (iii) be responsible for overseeing activities and work at that Site; (iv) have the authority to direct employees and

Subcontractors to undertake and implement storm water sediment and erosion control practices to comply with the Applicable Permit, the Act, and the Site's SWPPP; provided, however, that any Project Superintendent identified by Defendants within the first year after the Date of Entry shall have ninety (90) days from the later of the date of employment of such Project Superintendent or the Date of Entry to meet the qualifications set forth in this Paragraph. If, at any time, Allan Myers wishes to change a Project Superintendent for a specific Site, Defendants shall note this in the SWPPP and confirm that the proposed replacement meets the same requirements as above.

b. Each time Allan Myers identifies a Project Superintendent, the Director of Storm Water Compliance shall maintain evidence that the person selected meets the criteria set forth above in Paragraph 8(a). Such evidence shall be made available to Plaintiffs within thirty (30) days, upon request.

9. Notice of Ground Disturbing Activities. Within forty-five (45) days following the Date of Entry, Defendants shall provide the EPA and the Commonwealth of Virginia by electronic mail to the addresses specified in Paragraph 35 (Notification), a list of all Sites for which Defendants have been awarded a construction contract and for which Ground Disturbing Activities have not been completed and final stabilization has not been achieved, on the Site List Form (Appendix B). On a calendar quarterly basis thereafter, Defendants shall provide within thirty (30) days following the end of each calendar quarter the Plaintiffs with notice by electronic mail at the addresses specified in Paragraph 35 (Notification) by updating the Site List Form (Appendix B) to list all of the Sites for which any Defendant has started Ground Disturbing Activities, or for which any Defendant has entered into a contract to perform Ground Disturbing Activities at a future date. Each report required by this Paragraph shall include the following

information for each Site: (i) Allan Myers' Permit number, if available, (ii) the name of the Site owner where applicable (and, if available, the Site owner's Permit number(s) if different from Allan Myers' Permit number), (iii) the location of the Site including the physical address and the latitude and longitude, (iv) the contact information (including telephone number and/or e-mail) for the Project Superintendent for the Site, (v) the start date of Allan Myers' Ground Disturbing Activities, or if not available, the best estimate for the start date of Defendant's Ground Disturbing Activities, (vi) if the Site is new to the Site List Form (Appendix B), indication that it is a new Site, and (vii) the date of, or if not available, the best estimate for Allan Myers' termination of Ground Disturbing Activities and, if applicable, final stabilization. If any of this information is not available at the time of the preparation of the report required by this Paragraph, Defendants shall update the information in its next quarterly report.

10. Permits. Allan Myers shall not initiate, or allow its employees or Subcontractors to initiate, or direct any employee or Subcontractor to initiate Ground Disturbing Activities at a Site until Applicable Permit coverage is in effect. Defendants shall obtain permit coverage (including through transfer), transfer any permit and terminate permit coverage as required or authorized by the Applicable Permit. When Defendants are not required to obtain permit coverage, Defendants shall obtain a copy of the Applicable Permit. If Defendants are unable to obtain a copy of the Applicable Permit, Defendants shall obtain a copy of the form General Permit issued by the permitting jurisdiction for the Site, which shall thereafter become the Applicable Permit for the Site as to Defendants for the purpose of complying with this Decree. Defendants shall indicate their inability to obtain the Applicable Permit when submitting Notice of Ground Disturbing Activities in accordance with Paragraph 9 of this Decree (Notice of Ground Disturbing Activities).

11. SWPPPs. Prior to Allan Myers or its Subcontractors undertaking any Ground Disturbing Activities at a Site, and in compliance with the submission requirements of the Applicable Permit, Defendants shall (a) obtain a copy of the Site-specific SWPPP that has been prepared for each Site, by or on behalf of its client and follow the requirements set forth therein, or (b) if unable to obtain a copy of the Site-specific SWPPP, prepare a Site-specific SWPPP or utilize the Master SWPPP, attached as Appendix C, as the substitute for a Site-specific SWPPP, and ensure that the Master SWPPP used at a particular Site meets the requirements in the Applicable Permit for that Site. When Defendants obtain a Site-specific SWPPP prepared by or on behalf of Defendants' client, Defendants shall append the information required by Paragraph 14 of this Decree (Notice of Project Superintendent's Phone Number) to the Site-Specific SWPPP.

12. Update of SWPPPs. For each Site where Defendants obtain a Site-specific SWPPP prepared by or on behalf of Defendants' client, prepare the SWPPP, or where Defendants must utilize the Master SWPPP (Appendix C) due to failure to obtain a copy of the Site-specific SWPPP, Defendants shall for each Site revise the SWPPP in accordance with the requirements of the corresponding Applicable Permit. For all Sites, Defendants shall revise, update, and supplement the SWPPP used for that Site and, if necessary, the Site map:

a. If there is a change in design, construction method, operation, or maintenance at the Site that has or could have a significant effect on the discharge of pollutants to surface waters including wetlands and municipal separate storm sewer systems leading to surface waters that has not previously been addressed in the SWPPP; or

b. To record any changes to the BMPs that result from the inspections required by Paragraph 19 (Inspections), or as otherwise identified.

c. Revisions required in subparagraphs 12(a) and (b), above, shall be completed within the time frame established by the Applicable Permit except that revisions to the Master SWPPP shall be completed within ten (10) business days of the change in design or change to BMP, as applicable.

13. Availability of Plan and Permit. During working hours on all Business Days when Defendants or Subcontractors are present on the Site through the date of the Final Site Inspection (Paragraph 24) or until Defendants' Ground Disturbing Activities at a Site conclude, whichever is earlier, Defendants shall ensure that a copy of the Applicable Permit and SWPPP are available at the Site, at a location designated pursuant to the Applicable Permit, or electronically, for review by any Subcontractor or Allan Myers employee, as well as any local, state, or federal inspector in accordance with Paragraph 30 (Right of Entry) or any other permit, law, or regulation then in effect.

14. Notice of Project Superintendent's Phone Number. Defendants shall post a notice conspicuous to its employees and any Subcontractor (a) providing the telephone number of Allan Myers' Project Superintendent in its construction office, or, in the absence of a construction office, in another conspicuous location at each Site and (b) authorizing all employees and Subcontractors to contact the Project Superintendent at each Site with any questions or to report problems relating to sediment and erosion control at any Site. If Allan Myers' designated Project Superintendent is not available to answer the phone at any time, Defendants shall ensure that a person or machine shall be available to record a message and that such messages are retrieved and addressed within a reasonable time.

15. Provision of SWPPP to Managers. Prior to the commencement of Ground Disturbing Activities at a Site by Defendants or its Subcontractors, Defendants shall ensure that

each of its Project Superintendents and appropriate Compliance Officers and Alternate Compliance Officers at the Site, as well as the lead on-site employee for each Subcontractor responsible for Ground Disturbing Activities at the Site, receives the most current version of that Site's SWPPP in hard copy or electronic format.

16. Training/ Training Records.

a. Defendants shall implement an Employee Storm Water Training Program. The Employee Storm Water Training Program shall include annual refresher training. Training and refresher under this program may be live or provided through electronic media. Defendants must submit the Employee Storm Water Training Program and refresher training program for EPA approval, after reasonable opportunity for review and comment by the Commonwealth of Virginia, which shall be required before any such program shall meet the requirements of this Decree.

(i) Defendants shall provide employee storm water training to all Defendants' employees who, in the field at a Site, primarily and directly supervise (or who primarily and directly assist in the supervision of) construction activity at a Site and who are not otherwise required to be Storm Water Trained. These Defendants' employees must complete the employee storm water training no later than sixty (60) days after the Date of Entry, or no later than thirty (30) days after beginning work at a Site, whichever is later. Employee storm water training that meets the requirements of this Decree may be completed prior to the Date of Entry.

(ii) Defendants shall provide no less than one hour of annual refresher training for Employees who were previously trained under subparagraph 16(a)(i)

and those who are required to be Storm Water Trained. Each such person shall complete the annual refresher training and pass a written test. The renewal training shall be valid for up to fifteen (15) months. However, if the initial training required under Paragraph 16(a)(i) was completed greater than 15 months prior to the Date of Entry, such training shall be valid until 60 days after the Date of Entry.

(iii) Defendants shall maintain records of each employee's certification and shall provide such records to the EPA and the Commonwealth of Virginia within thirty (30) days, upon request.

b. To the extent that Defendants implement a training method set forth in Paragraph 1(q)(ii)-(iii) of this Decree and utilize a Defendant employee as an instructor, every instructor presenting Defendants' Employee Storm Water Training Program shall be a Storm Water Trained employee.

c. The Director of Storm Water Compliance shall evaluate Defendants' Employee Storm Water Training Program annually and determine whether any changes to the Employee Storm Water Training Program are necessary. A written evaluation of the Employee Storm Water Training Program and a description of any significant proposed changes for EPA's approval shall, after reasonable opportunity for review and comment by the Commonwealth of Virginia, be appended to the annual Director of Storm Water Compliance Report submitted per year.

17. Pre-Construction Meetings.

a. The Project Superintendent shall hold a pre-construction meeting with Defendants' employees and Subcontractors involved in Ground Disturbing Activities prior to

any Defendants' employees and Subcontractors initiation of Ground Disturbing Activities at the Site. At such meeting, the Project Superintendent shall review the Applicable Permit requirements, the SWPPP and drawings, and the terms of this Decree to the extent required in Paragraph 3 of this Decree. In addition, the Project Superintendent shall distribute the Subcontractor Briefing Sheet (Appendix D) to each attendee. At the conclusion of the Pre-Construction Meeting, the Project Superintendent shall require each attendee to sign an attendance sheet indicating their presence at the Pre-Construction Meeting and that they have read and understand the Subcontractor Briefing Sheet (Appendix D); the signed attendance sheet shall be kept with the SWPPP. If any Allan Myers employee or Subcontractor involved in Ground Disturbing Activities begins work after the Pre-Construction Meeting has occurred and/or has not attended the Pre-Construction Meeting, a Project Superintendent shall review with that individual the required information set forth above in this Paragraph 17(a) before the employee or Subcontractor begins work involving Ground Disturbing Activities at the Site, and shall require each employee or Subcontractor to sign an attendance sheet indicating that the Project Superintendent has reviewed such information with them and that they have read and understand the Subcontractor Briefing Sheet (Appendix D). Project Superintendents may delegate the performance of pre-construction meetings under this Paragraph 17(a) to a Storm Water Trained designee.

b. Prior to the initiation of Ground Disturbing Activities by Defendants' employees or its Subcontractors at any Site, except for activities associated with the installation of perimeter BMPs at a Site, the Project Superintendent shall inspect the Site to determine whether the BMPs required by the SWPPP to be in place at the commencement of Ground Disturbing Activities have been installed correctly and are in the correct locations. The Project

Superintendent shall complete the Pre-Construction Inspection and Review Form (Appendix E) on or before the date of initiation by Defendant of Ground Disturbing Activities and shall certify whether the BMPs required by the SWPPP to be in place at the commencement of Ground Disturbing Activities have been installed correctly and in the correct locations prior to the commencement of Ground Disturbing Activity by Defendants. If BMPs are not installed correctly or are in incorrect locations, Defendants shall so indicate in the Pre-Construction Inspection and Review Form and shall notify the Site's Applicable Permit holder. Defendants shall keep a copy of the completed Pre-Construction Inspection and Review Form (Appendix E) with the SWPPP.

18. Weekly Meetings. In addition to the Pre-Construction Meeting, Project Superintendents shall hold weekly meetings during any week that Defendant or its Subcontractors conduct Ground Disturbing Activities at the Site with all Defendants' employees and the lead on-site employee of any Subcontractors involved in Ground Disturbing Activities at each Site to review the requirements of any Applicable Permits, the SWPPP, and to address any problems that have arisen in implementing the SWPPP or maintaining BMPs. Defendants shall have available to all attendees at these meetings copies of the Subcontractor Briefing Sheet (Appendix D). Defendants shall record the occurrence of the weekly meeting in written records kept in accordance with the provisions of Paragraph 32 (Preservation of Records) of this Decree.

19. Inspections.

The requirements of this paragraph are effective sixty days after the Date of Entry.

a. At a minimum, commencing no later than the date the Pre-Construction Inspection and Review Form (Appendix E) is signed, or the date required by the Applicable Permit, whichever is earlier, the Project Superintendent for each Site shall inspect that Site no

less often than the frequency required by the Applicable Permit. The Project Superintendent shall inspect the Site to (i) determine whether Defendants' Ground Disturbing Activities are being conducted in accordance with the requirements of the SWPPP, the Applicable Permit, and this Decree; (ii) determine whether the SWPPP is being updated and implemented in accordance with the requirements of the Applicable Permit and this Decree; (iii) identify and record any repairs made to, or needed for, existing BMPs to ensure that they are maintained in effective operating condition; (iv) identify and record the need to modify and/or to implement additional BMPs to eliminate or significantly minimize any discharges of pollutants from the Site into waters of the United States, and for Sites located in Virginia, to surface waters as that term is defined in the Virginia Stormwater Management Program Regulation, 9 VAC 25-870-10 (originally 4 VAC 50-60-10); and (v) identify and record any unpermitted discharge of pollutants from the Site into waters of the United States and for Sites located in Virginia, to surface waters as that term is defined in the Virginia Stormwater Management Program Regulation, 9 VAC 25-870-10 (originally 4 VAC 50-60-10), including wetlands and municipal separate storm sewer systems leading to surface waters.

b. Project Superintendents may delegate the performance of inspections under this Paragraph 19 (Inspections) to a designee. Any designee under this Paragraph 19(b) must be Storm Water Trained.

c. For each Site Inspection, the Project Superintendent or designee shall record Site Inspections on the Site Inspection Form (Appendix F), or, as an alternative, the site inspection form required by the Applicable Permit. Defendants shall keep copies of the completed Site Inspection Forms (Appendix F) with the SWPPP.

d. Upon completing the Final Site Inspection in accordance with Paragraph 24 of this Decree, Defendants shall clearly label the final Site Inspection Form (Appendix F) as "Final."

20. BMPs.

a. Defendants must implement all BMPs as required by the SWPPP and the Applicable Permit for the Ground Disturbing Activities that Defendants or their Subcontractors are responsible for performing at a Site.

b. If a missing, ineffective, or breached BMP is identified during a self-inspection required by the Applicable Permit, the Project Superintendent shall record the following information on the Responsive Action Log portion of the Site Inspection Form (Appendix F): a specific reference to the Action Item, including the date it was identified; a description of the Responsive Action taken or to be taken; and the date the Responsive Action was completed or is expected to be completed. All Responsive Actions, regardless of when completed, must be reported on the Responsive Action Log. Each Site Inspection Form (Appendix F) shall be kept on Site as described in Paragraph 19(c). When Defendants do not have the contractual authority to take Responsive Action, Defendants shall identify the missing, ineffective, or breached BMP to the Applicable Permit holder and to Defendants' client, if different from the Applicable Permit holder, and shall request the contractual authority to take Responsive Action.

c. At Sites where Defendants have the contractual authority to do so, Defendants shall (i) correct the missing, ineffective, or breached BMP within the time required by and otherwise in accordance with the terms of the Applicable Permit, (ii) install or modify all required additional or different BMPs in accordance with the terms of the Applicable Permit, and

(iii) modify the SWPPP to reflect those changes in accordance with the terms of the Applicable Permit.

d. The Project Superintendent shall verify whether all identified correction and maintenance activities have in fact been performed and shall so indicate during the next inspection conducted pursuant to Paragraph 19 (Inspections) of this Decree by initialing the Site Inspection Form (Appendix F) on or near the corresponding entry.

21. Temporary Alteration of BMPs. If the temporary removal or alteration of a BMP by Defendants becomes necessary to accomplish the construction activities or to protect health and safety at a Site, the Project Superintendent shall note such removal or alteration on the Exception Report attached to the Site Inspection Form (Appendix F), including specific information regarding the changes made, and the day and time such changes were made. Defendants shall restore the BMP as soon as practicable but in no case later than twenty-four (24) hours after the completion of the activity that required the change. The Project Superintendent shall note the restoration on the Site Inspection Form (Appendix F), including specific information regarding the day and time at which the restoration was begun and completed. If the Project Superintendent is unavailable to initially record the temporary alteration and restoration of BMPs at a Site, another Stormwater Trained employee shall record the temporary alteration and restoration of BMPs, in which case the Project Superintendent must both review the alteration with the Stormwater Trained employee recording such alteration, and verify the restoration of BMPs within a reasonable period of time. Defendants shall take all reasonable measures to prevent discharges from the Site to the waters of the United States, and for Sites located in Virginia, to surface waters as that term is defined in the Virginia Stormwater Management Program Regulation, 9 VAC 25-870-10 (originally 4 VAC 50-60-10), during the

time of the temporary removal or alteration of a BMP. To the extent practicable, reasonable measures shall include, but not be limited to, timing the temporary removal or alteration of a BMP to occur when precipitation is not forecast and/or installing new or alternate BMPs around the affected area. The above activities must either be consistent with the Site's Applicable Permit or approved and documented by the appropriate local, state, or federal inspector, so long as such approval and/or documentation is consistent with the Act and applicable provisions of state law and regulations.

22. Quarterly Compliance Inspection and Review

a. At least once during each calendar quarter, beginning with the first full calendar quarter after the Date of Entry or the first full calendar quarter after the date the Pre-Construction Inspection and Review Form (Appendix E) form is signed, whichever is later, the Compliance Officer shall conduct a Quarterly Compliance Inspection of each Site. Defendants shall record the results on the Site Inspection Form (Appendix F), shall clearly indicate on the Site Inspection Form (Appendix F) that the inspection is a Quarterly Compliance Inspection, and shall keep the completed Quarterly Compliance Inspection form with the SWPPP.

b. No later than twenty (20) days after the Quarterly Compliance Inspection, each Compliance Officer shall complete a Quarterly Compliance Review for each Site for which he or she is designated as the Compliance Officer. The Quarterly Compliance Review shall consist of a review of the results of the Quarterly Compliance Inspection and all Site Inspection Forms and Responsive Action Logs completed since the last Quarterly Compliance Inspection. The Compliance Officer shall complete a Quarterly Compliance Review Form (Appendix G), for each Site. The Compliance Officer shall review the Quarterly Compliance Review Form (Appendix G) with the Project Superintendent for that Site, and both persons shall sign the

Quarterly Compliance Review Form (Appendix G) for the Site. Defendants shall keep the Quarterly Compliance Review Forms (Appendix G) with the SWPPP.

c. The Project Superintendent shall be responsible for managing the completion of Responsive Action for each Action Item identified during the Quarterly Compliance Inspection or Quarterly Compliance Review in the same manner as required under Paragraph 20 (BMPs).

23. Director of Storm Water Compliance Review and Report. Compliance Officers or Alternate Compliance Officers shall submit each Site Inspection Form (Appendix F) prepared during that quarter pursuant to Paragraph 19 (Inspections) and Paragraph 22(a) (Quarterly Compliance Inspection), the Quarterly Compliance Review Form (Appendix G), and each Site Inspection Form (Appendix F) prepared during that quarter pursuant to Paragraph 24 (Final Site Inspection) to the Director of Storm Water Compliance within thirty (30) days of completing the Quarterly Compliance Inspection. The Director of Storm Water Compliance shall review the submitted information and shall prepare and submit an annual report to EPA and the Commonwealth of Virginia by March 1 of each year: (a) identifying any instances of apparent noncompliance during the calendar year by Defendants or their Subcontractors with the Applicable Permit and this Decree, including at a minimum the name and location of the Site, the Subcontractor (if applicable), and a description of the apparent noncompliance; (b) identifying recurring apparent compliance issues and solutions to them that Defendants have implemented or will implement to address them; and (c) attaching copies of any written government enforcement action(s) received by Defendants at any Site during the calendar year related to storm water compliance. The Director of Storm Water Compliance shall provide a copy of the relevant sections of this report to all Project Superintendents, Compliance Officers and Alternate

Compliance Officers. Project Superintendents and Compliance Officers and Alternate Compliance Officers shall take any action required by the Director of Storm Water Compliance to achieve and maintain compliance with this Decree.

24. Final Site Inspection. The Project Superintendent shall perform an inspection of the Site at the conclusion of Defendant's Ground Disturbing Activities at a Site to ascertain whether all areas of the Site that have been subject to Ground Disturbing Activities by Allan Myers or its Subcontractors have been stabilized in accordance with the Applicable Permit and the Site is eligible to terminate permit coverage. If the Site is not eligible to terminate permit coverage, the Project Superintendent shall ascertain the owner and/or entity that has assumed responsibility for Ground Disturbing at the Site. The Project Superintendent shall record the Final Site Inspection on the Site Inspection Form (Appendix F), which shall be signed and certified. The Project Superintendent shall note on the Site Inspection Form (Appendix F) that it is the Final Site Inspection. The certified Final Site Inspection Report shall be retained by Defendants with the SWPPP. If all areas of the Site have been finally stabilized in accordance with Applicable Permit conditions and requirements, and all other conditions for termination of the Applicable Permit have been met, Allan Myers, when a permittee or co-permittee, shall file for termination or inactivation of its portion of the Applicable Permit, in accordance with the requirements of any Applicable Permit. If Defendants temporarily stabilize a Site, or if Defendants' Ground Disturbing Activities conclude prior to permanent or temporary stabilization of the Site, or the Site will be subject to subsequent Ground Disturbing Activities by another entity, Defendants shall so indicate on the Site Inspection Form (Appendix F), and shall also identify the entity that has assumed responsibility for Ground Disturbing Activities at the Site. If

the entity assuming responsibility for Ground Disturbing Activities at the Site is unknown to Defendants, then Defendants shall identify the owner of the Site.

IV. CIVIL PENALTY

25. Civil Penalty Amount. Within thirty (30) days after the Date of Entry of this Consent Decree, Defendants shall pay a civil penalty of $455,000.

26. Method of Payment. Payment of the penalty shall be made by Defendants in the following manner:

a. Payment to the United States. Defendants shall pay $373,750 of the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with current EFT procedures referencing U.S. Department of Justice Case No. 90-5-1-1-09042. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106. The cost of such EFT shall be the responsibility of the Defendants.

b. Notification of Payment to the United States. At the time of payment, Defendants shall send to the U.S. Department of Justice, and the U.S. EPA Region III at the addresses specified in Paragraph 35 (Notification), copies 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 above-captioned Consent Decree and shall reference the Civil Action Number assigned by the Court as well as the U.S. Department of Justice Case No. 90-5-1-1-09042. Defendant shall also send the same information by email to:

acctsreceivable.CINWD@epa.gov;

and by U.S. mail to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Office
PO Box 979007
St. Louis, MO 63197-9000

and

United States Environmental Protection Agency
Region III Docket Clerk (3RC00)
Office of Regional Counsel
1650 Arch Street
Philadelphia, PA 19103-2029

c. Payment to the Commonwealth of Virginia. Defendants shall pay $81,250 of the civil penalty to the Commonwealth of Virginia. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," stating that payment is for deposit into the Virginia Stormwater Management Fund, and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

d. Notification of Payment to the Commonwealth of Virginia. The payment shall be accompanied by a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the above-captioned Consent Decree and shall reference the Civil Action Number assigned by the Court as well as the U.S. Department of Justice Case No. 90-5-1-1-09042.

27. No Federal Tax Deduction. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section IV (Civil Penalty) or Section VI (Stipulated Penalties) in calculating its federal income tax.

V. GENERAL PROVISIONS

28. No Warranty by the Plaintiffs. The Plaintiffs do not, by their consent to entry of this Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Decree will result in compliance with the provisions of applicable federal, state, or local laws, regulations, or permit conditions.

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

30. Right of Entry.

a. Until termination of this Consent Decree, Plaintiffs, their representatives, contractors, consultants and attorneys and their contractors and consultants shall each have the authority to enter, at reasonable times and upon presentation of credentials, any Site or any location at which records relating to this Consent Decree are kept for the purposes of:

i. monitoring Defendants' compliance with this Consent Decree;

ii. verifying any data or information submitted by Defendants pursuant to this Consent Decree and otherwise monitoring the progress of activities required by this Decree;

iii. reviewing and copying any records required to be kept by Defendants.

31. No Limitation on Other Rights of Entry. This 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 the Commonwealth of Virginia 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.

32. Preservation of Records.

a. Until three (3) years after the termination of this Decree, Defendants shall retain all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its possession or control, or that come into its possession or control, or that were created to assist Defendants in satisfying their obligations under this Decree. Documents retained pursuant to this paragraph may be retained in an electronic format. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures.

b. At any time during this information-retention period, upon request by the Plaintiffs, Defendants shall within twenty-one (21) days of receiving the request, or such additional time as may be agreed to by the Parties, provide copies of any documents, records, or other information required to be maintained by it under this paragraph.

c. 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 by Defendants. 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.

33. Confidential Business Information. Defendants may also assert that information required to be provided under this Consent Decree 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 or applicable state law.

34. Signatories/Service. The undersigned representative of Defendants certifies that he is authorized to enter into this Consent Decree and to execute and legally bind all Defendants to the terms and conditions of this Consent Decree and meets the requirements for authorized signatory found in 40 C.F.R. §122.22. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this 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.

35. Notification.

a. Unless otherwise specified herein, whenever written notifications or communications are required by this Consent Decree, such notifications or communications shall be made to the individuals specified below, or to such other individuals as may be designated by a Party on written notice to the other Parties:

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Reference DJ No. 90-5-1-1-09042

As to the EPA:

Chief, NPDES Enforcement Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency
Region III

1650 Arch Street
Philadelphia, PA 19103

Mark Bolender (3RC20)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

R3_AI_Submissions@epa.gov

As to the Commonwealth of Virginia:

David C. Grandis, Assistant Attorney General
Environmental Section
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
dgrandis@oag.state.va.us

Carla Pool
Stormwater Enforcement Manager
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218
Carla.Pool@deq.virginia.gov

As to Defendants:

If using First-Class Mail:

Gary Tiller
Allan Myers
Vice President/General Manager
P.O. Box 1340
Worcester, PA 19490

If using Overnight Mail:

Gary Tiller
Allan Myers
Vice President/General Manager
1805 Berks Road
Worcester, PA 19490

With a copy sent concurrently to:

Jonathan E. Rinde, Esquire
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

b. Notifications to or communications with a Party shall be deemed submitted on the date they are sent by first-class mail or by an overnight delivery service.

36. Entire Agreement. This Consent Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that there are no inducements, promises, representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

37. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Paragraphs 59 (Petitions to the Court) or 38 (Modification), or effectuating or enforcing compliance with the terms of this Decree.

38. Modification. 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. Minor modifications that do not alter Defendants' obligations under this Decree shall be effective upon Defendants' receipt of written approval from EPA.

39. Costs of Suit. Each Party to this action shall bear its own costs, attorneys' fees and consultants' fees incurred prior to entry of this Decree. However, the United States and the Commonwealth of Virginia shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

40. Public Notice. This Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw, modify or withhold its consent to this Decree if the

comments regarding this Decree disclose facts or considerations indicating that this Decree is inappropriate, improper or inadequate.

41. Agreement to Entry of Decree. Defendants consent to entry of this Decree without further notice and agree not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Defendants in writing that it no longer supports entry of this Decree.

42. Conditions of Termination. The following conditions are the exclusive conditions for termination of this Decree and all of Defendants' obligations hereunder. This Decree shall terminate only under the procedures set forth in Paragraph 43 (Termination of Decree) when these Conditions of Termination have been met:

a. the passing of three (3) years since the Date of Entry ("the Third Anniversary");

b. Defendants have paid all civil penalties and related interest due under this Decree;

c. Defendants have paid all stipulated penalties, if any, and related interest demanded through the Third Anniversary by the United States and/or the Commonwealth of Virginia under Section VI (Stipulated Penalties) excluding any stipulated penalties or interest that are subject to Dispute Resolution, as to which this Court shall retain jurisdiction under Paragraph 59, below;

d. Defendants have established and implemented a management system designed to fulfill its obligations under Paragraphs 6, 7, and 8 of this Consent Decree;

e. Defendants have established and implemented a Training and Orientation Program designed to fulfill its obligations under Paragraph 16;

f. Defendants have submitted all Lists of Sites required by Paragraph 9 as of the Third Anniversary;

g. For all Sites existing as of the Third Anniversary, all required coverage under Applicable Permits has been acquired or applied for; and

h. Defendants have submitted to EPA and the Commonwealth of Virginia all Reports required by Paragraph 23, as of the Third Anniversary, including no less than three (3) Annual Reports submitted by the Director of Storm Water Compliance.

43. Termination of Decree. The following procedures for terminating this Decree shall govern (and the Parties intend that this process shall be resolved at the earliest possible time):

a. Any time after the Director of Storm Water Compliance submits the third Annual Report as required under Paragraph 23 of this Decree, Defendants may submit to the United States a written Request for Termination, stating that Defendants have satisfied the Conditions of Termination set forth in Paragraph 42, together with all necessary supporting documentation.

b. 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, after reasonable opportunity for review and comment by State Plaintiff, the United States agrees that the Conditions of Termination have been met, the United States shall timely file, for the Court's approval, a joint stipulation terminating the Decree.

c. If, after reasonable opportunity for review and comment by State Plaintiff the United States does not agree that the Conditions of Termination have been met, the United States shall submit in writing to the Defendants the basis for its disagreement within sixty (60) days of receiving Defendants' Request for Termination. Defendants may thereafter invoke Dispute Resolution under Section VIII of this Decree. Defendants, however, shall not seek Dispute Resolution of any dispute until at least ninety (90) days after service of its Request for Termination.

44. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this Decree shall constitute a final judgment of the Court as to the Plaintiffs and Defendants.

VI. STIPULATED PENALTIES

45. Liability for Stipulated Penalties. Defendants shall be liable for stipulated penalties to the Plaintiffs for violations of this Decree as specified below, unless excused under Section VII (Force Majeure). Failures resulting from a force majeure event shall not be considered a breach of this Decree, and Defendants shall not be liable for any stipulated penalties occurring as a result of the force majeure event. Notwithstanding any statement in this Section VI (Stipulated Penalties), Defendants shall be liable for stipulated penalties for each Site for which Defendants have responsibility under Section III (Allan Myers' Compliance Program) at the time of the violation. The stipulated penalties shall apply to the following actions, or failures to act, by Defendants during the term of this Decree:

a. for failure to submit a Notice of Intent or otherwise obtain the Applicable Permit for any Site in accordance with Paragraph 10 (Permits); $2,000 per violation that occurs prior to the end of the sixth full calendar quarter following the Date of Entry, and $5,000 per violation thereafter;

b. for failure to obtain a Site-specific SWPPP or tailor the Master SWPPP for any Site prior to Defendants' undertaking Ground Disturbing Activities at a Site, in accordance with Paragraph 11 (SWPPPs), $1,000 per day for the first ten days of each violation, $1,500 per day for the next ten days of each violation, and $2,000 per day for each subsequent day of violation.

c. for failure to have the SWPPP or Applicable Permit available at the Site in accordance with Paragraph 13 (Availability of Plan and Permit), $500 per day per violation that occurs prior to the end of the sixth full calendar quarter following the Date of Entry, and $1,000 per day per violation thereafter;

d. for failure to update the SWPPP in accordance with Paragraph 12 (Update of SWPPPs), $250 per day per violation;

e. for discharging from a Site where no Applicable Permit has been obtained, $3,000 per violation;

f. for failure to implement a BMP in accordance with Paragraph 20(a), $250 per day per violation;

g. for failure to designate a Director of Storm Water Compliance, Compliance Officers, Project Superintendents, and otherwise comply with the requirements set forth in Paragraphs 6, 7, or 8 above, as applicable, $1,000 per day per violation;

h. for failure to provide the required Notice of Ground Disturbing Activities in accordance with Paragraph 9 (Notice of Ground Disturbing Activities), $2,000 for each violation;

i. for failure to provide materials to the required individuals in accordance with Paragraph 15 (Provision of Guidance Materials), $500 for each violation;

j. for failure to provide employee storm water training in accordance with Paragraph 16(a)(i), $350 for each untrained employee;

k. for failure to provide annual refresher training in accordance with Paragraph 16(a)(ii), $350 for each untrained employee;

l. for failure to maintain and provide training records in accordance with Paragraph 16(a)(iii), $350 per day per violation;

m. for failure of Storm Water Training instructors to be properly trained and certified as required in Paragraph 16(b), $1,000 for each uncertified instructor;

n. for failure to submit written training program evaluations in accordance with Paragraph 16(c), $350 for each violation;

o. for failure to comply with the requirements of Paragraph 17(a) (Pre-Construction Meetings), $500 per day per violation;

p. for failure to conduct inspections in accordance with Paragraph 17(b) (Pre-Construction Meetings) or Paragraph 24 (Final Site Inspection), $500 for each violation that occurs prior to the end of the sixth full calendar quarter following the Date of Entry, and $1,000 per violation thereafter;

q. for failure to document inspections in accordance with the requirements of Paragraph 17(b) (Pre-Construction Meetings) or Paragraph 24 (Final Site Inspection), $500 for each missed inspection;

r. for failure to conduct weekly meetings in accordance with Paragraph 18 (Weekly Meetings), $250 for each violation;

s. for failure to conduct inspections in accordance with Paragraph 19(a) (Inspections), $250 per missed inspection per Site for the first five missed inspections, $500 per

missed inspection per Site for the next five missed inspections, and $1,000 per missed inspection per Site for each missed inspection thereafter;

t. for failure to take any corrective action in accordance with Paragraph 20(c) (BMPs), $250 per day for the first ten days of each violation, $500 per day for the next ten days of each violation, and $1,000 per day for each subsequent day of each violation;

u. for failure of a Compliance Officer to conduct Quarterly Compliance Inspections in accordance with Paragraph 22(a), $2,000 for each missed inspection;

v. for failure of a Compliance Officer to complete Quarterly Compliance Reviews in accordance with Paragraph 22(b), $4,000 for each violation;

w. for failure to provide a timely and complete annual report to EPA or the Commonwealth of Virginia in accordance with Paragraph 23 (Director of Storm Water Compliance Review and Report), $1,000 per day for the first ten days of each violation, $2,500 per day for the next ten days of each violation, and $5,000 per day for each subsequent day of violation.

46. Payment of Stipulated Penalties. All stipulated penalties owed to Plaintiffs by Defendants under this Section VI (Stipulated Penalties) shall be due and payable within thirty (30) days of Defendants' receipt of Plaintiffs' demand for stipulated penalties unless Defendants invoke the procedures under Section VIII (Dispute Resolution). Any demand for stipulated penalties shall identify: (i) which provision of Paragraph 45 (Liability for Stipulated Penalties) Plaintiffs allege that Defendants have violated; and (ii) the stipulated penalty amount owed to each Plaintiff. Payment of stipulated penalties and notification that the stipulated penalties have been paid shall be made in accordance with the instructions set forth in Section IV (Civil

Penalty) of this Decree, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state the violation(s) for which the penalties are being paid.

47. Accrual of Stipulated Penalties. Stipulated penalties will not begin to accrue until after the end of the first full calendar quarter following the Date of Entry. After that time, stipulated penalties 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 Decree. For violations of the Consent Decree occurring in the Commonwealth of Virginia, with respect to Sites located in the Commonwealth, the United States and the State Plaintiff shall each be entitled to fifty percent (50%) of the accrued stipulated penalty amount.

48. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or a decision of EPA, after reasonable opportunity for review and comment by the Commonwealth, that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States and/or State Plaintiff within thirty (30) days of the effective date of that agreement or its receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States or State Plaintiff prevails in whole or in part, Defendants 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 Paragraph 48(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 thirty (30) days of receiving the final appellate court decision.

49. Interest on Unpaid Stipulated Penalties. If Defendants fail to pay stipulated penalties when due, Defendants shall pay interest at the rate established by the Secretary of the Treasury under 31 U.S.C. §3717 beginning upon the day the stipulated penalties were due.

50. Additional Relief. Subject to Section IX (Effect of Settlement / Reservation of Rights) of this Decree, the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or State Plaintiff for any violation by Defendants of this Decree or applicable law.

VII. FORCE MAJEURE

51. Definition of Force Majeure. For purposes of this Decree, "Force Majeure" is defined as any event arising from a cause beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' Subcontractors, which delays or prevents the performance of any obligation under this Consent Decree despite Defendants' reasonable efforts to fulfill the obligation. The requirement that Defendants exercise "reasonable efforts to fulfill the obligation" includes using all reasonable efforts to address the effects of any such event (a) before it occurs, to the extent it can be reasonably anticipated, (b) as it is occurring and (c) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

52. Required Notification of Force Majeure. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a force

majeure event, Defendants shall provide notice orally or by electronic mail, first-class mail, or by an overnight delivery service to at least one representative of the United States and, if applicable, one representative of the State Plaintiff, named in Paragraph 35 (Notification) as soon as practicable, but not later than five (5) Business Days after the time Defendants, any entity controlled by Defendants, or Defendants' Subcontractor(s) first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event or other event that may delay the performance of Defendants' obligations under this Decree. Within fourteen (14) days thereafter, Defendants shall provide in writing to EPA and the State Plaintiff 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; Defendants' 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 Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants 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 Defendants 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.

53. Procedures for Extension. If EPA, after reasonable opportunity for review and comment by the State Plaintiff, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Decree that are affected by the force majeure event will be extended by EPA, after reasonable opportunity for review and comment by the State Plaintiff, 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 Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

54. EPA Disagreement. If EPA, after reasonable opportunity for review and comment by the State Plaintiff, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision. If Defendants elect to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than thirty (30) days after receipt of EPA's notice. In any such proceeding, Defendants 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 all reasonable efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of this Section VII (Force Majeure). If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Decree identified to EPA, State Plaintiff, and the Court.

55. Effect on other Obligations. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. Defendants shall identify the cause of each delayed incremental step or other requirement for which an extension is sought.

VIII. DISPUTE RESOLUTION

56. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the Dispute Resolution procedures of this Section VIII (Dispute Resolution) shall be the exclusive mechanism to resolve disputes arising under this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by Plaintiffs to enforce Defendants' obligations that have not been disputed in accordance with this Section VIII (Dispute Resolution).

57. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States and, if applicable, State Plaintiff, a written Notice of Dispute. Such Notice of Dispute shall clearly state the matter in dispute. The period of informal negotiations shall not exceed sixty (60) 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 and/or State Plaintiff in a writing transmitted to Defendants prior to the conclusion of the period of informal negotiations shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth in Paragraph 58. (Formal Dispute Resolution).

58. Formal Dispute Resolution.

a. If they wish to invoke formal dispute resolution procedures, Defendants shall do so, within the time period provided above, by serving on the United States and State Plaintiff 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 Defendants' position and any supporting documentation relied upon by Defendants.

b. Within forty-five (45) days of receipt of Defendants' Statement of Position, the United States, after reasonable opportunity for review and comment by the State Plaintiff, shall serve its written Statement of Position upon Defendants. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion, supporting the United States' position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following paragraph.

59. Petitions to the Court. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States and State Plaintiff, in accordance with Paragraph 35 (Notification) of this Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) days of Defendants' 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 this Consent Decree. The United States and/or State Plaintiff shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a written reply memorandum, to the extent permitted by the Court. Defendants consent to the Court's jurisdiction over this Decree, over disputes arising under this Decree, and over Defendants.

60. Standard of Review. Except as otherwise provided in this Decree, in any dispute brought pursuant to Paragraph 59 (Petitions to the Court), Defendants shall have the burden of demonstrating, by a preponderance of the evidence, that the United States' position is arbitrary

and capricious, not in accordance with law, or contrary to the terms of this Decree. The United States' position shall be reviewable only on the administrative record. For purposes of this Consent Decree, the administrative record shall include the Statements of Position exchanged by the Parties pursuant to Paragraph 58 (Formal Dispute Resolution), including any documents attached to or incorporated by reference in those Statements.

61. Effect on Other Obligations. The invocation of dispute resolution procedures under this Section VIII (Dispute Resolution) 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 48 (Effect of Dispute Resolution). If Defendants do not prevail in the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

IX. EFFECT OF SETTLEMENT / RESERVATION OF RIGHTS

62. Claims Resolved. This Decree resolves the civil claims of the Plaintiffs against Defendants for the violations alleged in the Complaint filed in this action through the date of lodging of this Decree in the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania. In consideration of the payment of the penalty required by Section IV (Civil Penalty) and the Entry of this Decree by the Court, the Plaintiffs hereby covenant not to sue or take administrative action against Defendants for the aforementioned civil claims. This paragraph survives the termination of the Decree.

63. Plaintiffs' Reservation of Rights. The Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Decree, except as expressly stated in

Paragraph 62 (Claims Resolved). This Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 62 (Claims Resolved). This Decree shall not be construed to limit the rights of the Commonwealth of Virginia to obtain penalties or injunctive relief under the Stormwater Management Act or its implementing regulations, or under other state laws, regulations, or permit conditions, except as expressly specified in Paragraph 62 (Claims Resolved). The Plaintiffs further reserve all legal and equitable remedies available to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' Sites, whether related to the violations addressed in this Consent Decree or otherwise.

64. Not a Permit. 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 compliance with all applicable federal, State, and local laws, regulations, and permits. 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 Plaintiffs do not, by their 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 the Clean Water Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

65. Third Parties. This Consent Decree does not limit or affect the rights of Defendants or of the Plaintiffs against any third parties, not a party to this Consent Decree, nor does it limit the rights of third parties, not a party to this Consent Decree, against Defendants,

except as otherwise provided by law. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

66. No Admission. This Consent Decree is entered into by the parties without any adjudication or finding of violation or liability of Defendants by the United States, EPA, the State Plaintiff, or this Court. Defendants, by their consent or otherwise, do not admit fault or liability to Plaintiffs or to any third party or parties. This Order of this Court is intended by the Parties to constitute a consensual resolution of the allegations of the complaint(s) without a finding that would form the basis of enforcement orders otherwise within the authority of the EPA or the States.

67. Defendants' Reservation of Rights. Except as expressly provided in this Consent Decree, Defendants reserve all defenses and all rights and remedies, legal and equitable, available to it in any action brought by the United States or State Plaintiff to enforce any Storm Water Requirements. The execution of this Consent Decree is not an admission of liability by Defendants, nor is it an admission or denial of the factual allegations arising out of the transactions or occurrences alleged in the Complaint.

68. Appendices. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A: Subcontractor Compliance Summary
Appendix B: Site List Form
Appendix C: Master SWPPP
Appendix D: Subcontractor Briefing Sheet
Appendix E: Pre-Construction Inspection and Review Form
Appendix F: Site Inspection Form
Appendix G: Quarterly Compliance Review Form

SO ORDERED THIS 3rd DAY OF June, 2015.

United States District Judge

THE UNDERSIGNED PARTIES enter into this consent Decree in the Matter of United States and the Commonwealth of Virginia v. Allan Myers, Inc., et.al.

FOR THE UNITED STATES OF AMERICA:

Date: April 10, 2015

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 6 APRIL 2015

JOSHUA H. VAN EATON
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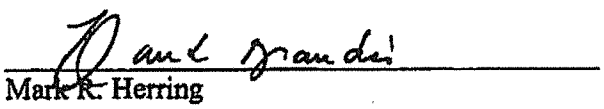

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FOR THE DEFENDANTS:

For ALLAN MYERS, INC.

Dale R. Wilson
President

For ALLAN MYERS, L.P.

Allan B. Myers
Vice President and General Manager

For ALLAN MYERS MD, INC.

Richard W. Dungan
Vice President and General Manager

For ALLAN MYERS VA, INC.

Aaron T. Myers
Vice President and General Manager

COUNSEL TO DEFENDANTS:
MANKO, GOLD, KATCHER & FOX, LLP

Jonathan E. Rinde, Esquire

APPENDIX A

Subcontractor's Compliance with Allan Myers' Stormwater Management Procedures for Construction Projects.

As a material part of its contract with Allan Myers or one of its operating companies (collectively "AM"), _____ ("Subcontractor") shall perform as follows:

(1) Subcontractor shall not initiate, or allow its employees to initiate, Ground Disturbing Activities at the Site until Applicable Permit coverage is in effect.

(2) Subcontractor shall obtain from AM a copy of the Applicable Permit and the Stormwater Pollution Prevention Plan ("SWPPP") for the Site and comply with their terms.

(3) Subcontractor is advised to contact AM if it or any of its employees have any questions or to report problems relating to sediment and erosion control at any Site.

(4) During working hours on all Business Days when Subcontractor is present at any Site and no representative of AM is also present, Subcontractor shall maintain in its possession on the Site a copy of the Applicable Permit and SWPPP.

(5) Subcontractor employees shall attend a Pre-Construction meeting with AM prior to the initiation of Ground-Disturbing Activities at a Site, to review the Applicable Permit requirements, the SWPPP and drawings. The attendees representing the Subcontractor shall also review the Subcontractor Briefing Sheet (attached), and shall sign an attendance sheet indicating their presence at the Pre-Construction Meeting and that they have read and understood the Subcontractor Briefing Sheet. Any employee involved with Ground Disturbing Activities at a Site who did not attend the Pre-Construction Meeting shall review with AM's Project Superintendent the Applicable Permit requirements, the SWPPP and drawings, and the Subcontractor Briefing Sheet before beginning work involving Ground-Disturbing Activities at the Site and sign an attendance sheet indicating that they have reviewed the information and have read and understand the Subcontractor Briefing Sheet.

(6) Subcontractor's lead on-site employee shall attend weekly meetings with AM during any week it's conducting Ground Disturbing Activities at the Site to review the requirements of the Applicable Permit, the SWPPP, and to address any problems that may have arisen in implementing the SWPPP or maintaining BMPs.

(7) Subcontractor shall indemnify, defend and hold AM harmless from and against any and all claims, causes of action, demands, judgments, penalties, violations, including but not limited to notices of violations, enforcement actions or stipulated penalties brought or required by any governmental entity, based in whole or in part on Subcontractor's breach of its obligations as set forth herein.

(8) Definitions:

Applicable Permit. (i) the Federal Construction Storm Water General Permit if the Ground-Disturbing Activities take place in a jurisdiction where the Federal General Permit is applicable; (ii) in the case of an authorized state, the authorized state's National Pollution Discharge Elimination System ("NPDES") construction general permit; or (iii) any individual NPDES permit issued by EPA or an authorized state for storm water discharges associated with construction activities pursuant to 33 U.S.C. § 1342. This term applies to that permit in its current form or as it may be amended in the future.

Best Management Practices ("BMPs"). Best management practices means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States as well as treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Ground-Disturbing Activities. The disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities causing the disturbance of soils.

Site. Any location in the United States for which AM has executed a contract for construction which contract requires AM to perform Ground-Disturbing Activities. When AM's Ground Disturbing Activities are confined to a certain area within a larger construction activity, the Site is only that area where AM conducts Ground Disturbing Activities.

SWPPP. Storm Water Pollution Prevention Plan or other plan for controlling pollutants in storm water discharges from Sites.

Allan Myers
Storm Water Pollution Prevention and Control:
Subcontractor Briefing Sheet

DO:

- **DO** go to the Project Superintendent with any questions regarding storm water pollution prevention or this list.
- **DO** place all trash and debris in the receptacles provided.
- **DO** use designated washout areas for (and only for) cleaning equipment (e.g., concrete trucks must use the designated concrete washout area).
- **DO** immediately report any spills of petroleum or other chemicals to the Project Superintendent.
- **DO** immediately comply with instructions given by the Project Superintendent or other American Infrastructure personnel.

DON'T:

- **DON'T** allow any solvents or chemicals to drain into a street, storm drain, creek, waterway, or other water body.
- **DON'T** disable, damage, or interfere with any silt fence or similar erosion control.
    - For example, **DON'T** run over a silt fence or straw wattle or forget to replace any silt fence or straw wattle you temporarily relocate, damage or dislodge.
- **DON'T** disable, damage, or interfere with any inlet controls.
    - For example, **DON'T** remove inlet controls (unless an action is needed to prevent flooding) or place dirt or debris in or adjacent to inlet controls.
- **DON'T** disable, damage, evade or interfere with any storm water pollution prevention controls at construction entrances.
    - For example, **DON'T** evade stone construction entrances.
- **DON'T** disable, damage, drive over, or interfere with any geotextile, matting, or mulch.
- **DON'T** disable, damage, or interfere with any other storm water pollution prevention controls.

APPENDIX B

Site List

Site Name (*Indicate new site with asterisk)	Permit Number(s) and Permit Holder(s)	Name of Site Owner(s)/ Client(s)	Site Address (including (1) State/County, (2) lat/long coordinates, and (3) primary street which abuts Site, if available)	Name and Contact Information for Project Superintendent (including telephone and/or e-mail)	Date Pre-Construction Inspection and Review Form Signed	Start Date of AM's Ground-Disturbing Activities (GDA)	Estimated Number of Acres to be Disturbed	Date (or Best Estimate) of Termination of AM's GDA and, if applicable, Final Stabilization Date

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APPENDIX C

(Contains Confidential Business Information)

CONFIDENTIAL BUSINESS INFORMATION

STORMWATER POLLUTION PREVENTION PLAN

(INSERT DATE HERE)

Pages 3 through 40, inclusive, of the Stormwater Pollution Prevention Plan set forth in Appendix C are **Confidential Business Information** and not included herein

APPENDIX D

Allan Myers
Storm Water Pollution Prevention and Control:
Subcontractor Briefing Sheet

DO:

- **DO** go to the Project Superintendent with any questions regarding storm water pollution prevention or this list.
- **DO** place all trash and debris in the receptacles provided.
- **DO** use designated washout areas for (and only for) cleaning equipment (e.g., concrete trucks must use the designated concrete washout area).
- **DO** immediately report any spills of petroleum or other chemicals to the Project Superintendent.
- **DO** immediately comply with instructions given by the Project Superintendent or other American Infrastructure personnel.

DON'T:

- **DON'T** allow any solvents or chemicals to drain into a street, storm drain, creek, waterway, or other water body.
- **DON'T** disable, damage, or interfere with any silt fence or similar erosion control.
    - For example, **DON'T** run over a silt fence or straw wattle or forget to replace any silt fence or straw wattle you temporarily relocate, damage or dislodge.
- **DON'T** disable, damage, or interfere with any inlet controls.
    - For example, **DON'T** remove inlet controls (unless an action is needed to prevent flooding) or place dirt or debris in or adjacent to inlet controls.
- **DON'T** disable, damage, evade or interfere with any storm water pollution prevention controls at construction entrances.
    - For example, **DON'T** evade stone construction entrances.
- **DON'T** disable, damage, drive over, or interfere with any geotextile, matting, or mulch.
- **DON'T** disable, damage, or interfere with any other storm water pollution prevention controls.

APPENDIX E

PRE-CONSTRUCTION INSPECTION & REVIEW

GENERAL INFORMATION

Permittee Name: _____

Site (Project) Name: _____

Permit Number: _____ **Project Number:** _____

Site City: _____ **Site County:** _____ **Site State:** _____

SWPPP Compliance Officer: _____

Project Superintendent: _____

Report #: _____ **Inspected By:** _____

PERMIT COVERAGE	YES	NO	N/A	PERMIT NO./IDENTIFIER	DATE OF PERMIT
1. Type of Permit	Federal/State				
2. County					
3. City					
4. Special District (Other)					
5. If there are multiple stormwater management plans for this site, including erosion and sediment control plans, confirm the plans are consistent.					
SWPPP INFORMATION	**YES**	**NO**	**N/A**	**DEFICIENCY IDENTIFIED**	**DATE FIXED**
6. Has a copy of the Site-specific SWPPP been obtained? (if unable to obtain, utilize American Infrastructure Master SWPPP)					
7. If required, is the SWPPP properly certified?					
8. Has the Project Superintendent reviewed the SWPPP?					
9. Does the SWPPP identify the stages of construction and the stormwater controls called for at each stage?					
10. Does the SWPPP identify the site inspection frequency and routine maintenance deadlines required by the Applicable Permit?					
11. Does the SWPPP contain a signed certification statement?					
12. Did the inspection cover the entire site? ☐ Yes ☐ No If it did not, specify what part(s) of the site was inspected? _____					

SITE STATUS	YES	NO	N/A	DEFICIENCY IDENTIFIED	DATE FIXED
13. Has the Project Superintendent received training?					
14. Are the stormwater controls required by the SWPPP to be in place prior to the commencement of ground-disturbing activities properly located and installed?					
15. As applicable, do the installed stormwater controls appear to be working properly and applear to be appropriate for existing conditions at the site?					
16. Has ground-disturbing activity begun at the site?					

CERTIFICATION REQUIREMENTS

The Project Superintendent must review and sign this Pre-Construction Inspection & Review form.

Do not sign this form until a corrective action has been completed for each deficiency identified on the form, and the completion date of the corrective action has been recorded. Do not commence construction activity until this form has been signed.

Ground-disturbing activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetative) salvage, or the initial installation of BMPs that are not sediment basins, provided that none of these activities involve significant soil disturbance.

This form must be kept on site and a copy in the SWPPP.

Name & Title: _____

Signature: _____

Date: _____

APPENDIX F

SITE INSPECTION FORM

GENERAL INFORMATION

Project Name: _____

Job Number: _____

Permit Number: _____

Construction Phase: _____

Construction Phase Consistent with SWPPP & Erosion Control Plan?: ☐ Yes ☐ No

Report #: _____ **Inspected By:** _____

INSPECTION TYPE

☐ Routine (every 7 calendar days) ☐ Quarterly **Date:** _____

☐ Precipitation ☐ Pre-Storm ☐ During Storm ☐ Post-Storm ☐ Final **Time:** _____

INCLEMENT WEATHER SINCE LAST INSPECTION

Storm Date: _____ **Storm Start Time:** _____

Storm Duration: _____ **Approximate Rainfall (inches):** _____

Was there a Discharge during this Storm?: ☐ Yes ☐ No ☐ Unknown

If Yes, Describe Discharge: _____

WEATHER DURING INSPECTION

Conditions: ☐ Clear ☐ Cloudy ☐ Rain ☐ Sleet ☐ Fog ☐ Snow ☐ Wind

☐ Other **Describe:** _____ **Temperature:** _____

Was there a Discharge during this Inspection?: ☐ Yes ☐ No ☐ Unknown

If Yes, Describe Discharge: _____

Notes: _____

GENERAL	YES	NO	N/A	CORRECTIVE ACTION LOG REF. NO.
1. Is the SWPPP on site?				
2. If required, is the Applicable Permit and/or NOI on site?				
3. Is contact information provided on site and is it correct?				
4. Since the last site inspection, has company received notice of a federal, state, or local inspection evaluating compliance with Applicable Permit?				
5. Are Site Inspection Reports being appropriately completed on a basis consistent with the Applicable Permit?				
6. Was the Site Inspection Report for the last inspection signed by the Project Superintendent?				
7. Have action items from last Site Inspection Report been addressed in a timely manner?				
8. Have site staff/subcontractors received proper stormwater training?				
MAINTENANCE	**YES**	**NO**	**N/A**	**CORRECTIVE ACTION LOG REF. NO.**
9. Are other pollutants or excess sediments exiting the site?				
10. Are roads/gutters free of excessive sediment from the site?				
11. Are exit/entrance controls properly located, in working condition, and no repairs necessary?				
12. Are exposed areas stabilized as required?				
13. Are stockpiles located/stabilized as required?				
14. Are BMPs properly located, in working condition, and no repairs necessary?				
15. Are washouts properly located, in working condition, and no repairs necessary?				
16. Are non-storm water and hazardous materials managed as required?				
17. Are trash, construction debris, and other solid wastes managed as required?				
18. Are portable toilets provided/properly located?				
19. Are site stormwater BMPs and the SWPPP consistent with each other?				
20. Are there any signs of erosion caused by stormwater (i.e.: inadequate BMPs)?				

CERTIFICATION STATEMENT

"I certify under a penalty of perjury that I personally conducted this inspection and I personally prepared this inspection summary report noting the deficiencies in BMPs and the corrective actions taken. I certify that the information in this report is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations."

Name of Inspector: _____

Title of Inspector: _____

Inspector's Signature: _____

Comp	Project Number	Project Name	Project Manager	SWPPP Inspector	SWPPP Inspt	Project Address	Project State	Project County	Open Date	Description	Resolution Date	Resolution Description	Issue ID	Issue Type	ISSUE RES ALERT	Days to Resolution

User Instructions for Appendix F - Site Inspection Form

IMPORTANT

- This form consists of the Site Inspection Report and Responsive Action Log. These are legal documents.
- Only the Site Storm Water Project Superintendent or a Storm Water Compliance Officer is permitted to undertake the inspection required by this form. If you are not this person, you must contact the Storm Water Compliance Officer immediately.
- Each Action Item must have one or more corresponding Responsive Action. An Action Item is a condition (or conditions) that requires action to be taken to achieve or maintain compliance with the Storm Water Requirements. A Responsive Action is an action taken or that is necessary to be taken to achieve or maintain compliance with Storm Water Requirements.
- Before proceeding with any inspection, you must first verify whether all Responsive Actions identified from the prior inspection, if any, were undertaken within the time period allowed by the Applicable Permit and whether the applicable and relevant information is recorded for the prior inspection.
- You must restate or carry over to the current Responsive Action Log any Responsive Action not completed since the last inspection regardless of the time period allowed by the Applicable Permit.
- You must sign and date the completed Site Inspection Form.
- A copy of each completed Site Inspection Form and Responsive Action Log must be kept with the SWPPP.

PROCEDURES

Site Inspection Form

- You must record the following information on each and every Site Inspection Form:

  √ Site Name. Insert the name that is recorded on the Notice of Intent.

  √ Permittee. Enter the name(s) that appears on the Applicable Permit or the Notice of Intent.

  √ Company. Insert the name of the Defendant Operating Company responsible for the Site identified on the form.

  √ Inspection Date and Time. Insert the date and time on which the inspection is being performed.

  √ Inspector. Enter the name of the person performing the inspection.

√ Weather Conditions. Circle the appropriate description that best describes current weather conditions. Enter the date and amount of the most recent precipitation event.

√ Inspection Type. Circle the inspection type that represents the purpose of the inspection. Only one inspection type may be circled. A Regular inspection is one conducted according to the regular schedule of inspections for a Site. A Precipitation inspection is one conducted, when required by the Applicable Permit, after a rainfall event specified in the Applicable Permit. A Quarterly inspection is one conducted in conjunction with the quarterly oversight for the Site. A Final inspection is the last inspection planned prior to filing a Notice of Termination.

- You must check "Yes," "No," or "N/A" for each lettered question.
- If you check "No" for any question, you must provide one or more reference number under the "Responsive Action Log Reference #" column for each Action Item identified. Reference numbers have a letter and a number. The first character matches the letter designation of the applicable question. The second character is numerical starting with number 1. Responsive Action reference numbers shall be successive thereafter as to the numerical portion, for example, F-I, F-2, F-3,..., G-I, G-2,..., H1, I1, etc.

Questions

You must respond to all of the following questions on each and every Site Inspection Form:

General

A. **Is the SWPPP on Site?** You must verify that the SWPPP is either at the construction office if the Site has one, or that the location of the SWPPP is posted along with, or adjacent to, the contact information of the Site Storm Water Project Superintendent.

B. **Is the Applicable Permit on Site?** You must verify that the Applicable Permit and notification letter (if applicable) are on Site.

C. **Is the correct contact information provided on Site?** You must verify that the name and phone number of the Site Storm Water Project Superintendent are located in a conspicuous place on Site and are legible.

D. **Since the last site inspection, has the company received any notice of a federal, state, or local inspection evaluating compliance with the Applicable Permit?** The notice contemplated by this question is written notice from a federal, state, or local entity regarding a storm water inspection evaluating compliance with the Applicable Permit. Local inspections related to post-construction storm water management or locally approved erosion and sediment control plans which have not been incorporated into the Applicable Permit do not require an affirmative response to this question. If, however, Builder has received written notice of a federal, state, or local inspection evaluating compliance with the Applicable Permit, you must record the name of the agency that performed the inspection, the name and position of the person that performed the inspection for the agency, and the date of the inspection. Further, you must include on the Responsive Action Log a description of alleged violations based on the federal,

state, or local inspection, whether or not Builder intends to challenge the alleged violations.

E. **Are Site Inspection Forms being appropriately completed on a basis consistent with the permit?** You must verify that Site Inspection Forms are consistent with the requirements of the Applicable Permit including the frequency of inspections.

F. **Was the Site Inspection Form for the last inspection signed by the Site Storm Water Project Superintendent?** You must verify that the Site Inspection Form for the prior inspection was signed and certified by the person undertaking that inspection.

G. **Have Action Items from the last Site Inspection been timely addressed?** You must verify whether or not all Responsive Actions recorded on the prior Responsive Action Log have been completed. If not, explain the reasons why these actions have not been accomplished, what actions remain to be taken and whether our response to date satisfies applicable permit requirements. Do not leave any blanks in a prior Responsive Action Log.

H. **Have the employees at the Site received storm water training?** You must verify that all employees who primarily and directly supervise ground-disturbing activities at the Site have completed the storm water training program no later than 20 days after beginning work at the Site.

Maintenance

Assign a separate reference number to each Action Item identified within the following categories and briefly describe the Responsive Action required to address the Action Item. Each condition necessitating a Responsive Action requires a separate reference number.

I. **Is there more than minimal sediment or any amount of other pollutants exiting the Site?** You must verify that no excess sediment or any pollutants in any quantity are exiting the Site. You should check applicable BMPs such as outfalls, exit/entrance controls, site perimeter controls, receiving water courses and adjacent offsite areas for excessive sediment or other pollutant discharges. You should determine and record the source of excessive sediment or other pollutants. You should also verify and record whether excessive sediment or other pollutants are being discharged onto the Site from off-Site properties, and whether the off-Site sources is contributing to excessive discharge from the Site.

J. **Are roads/gutters free of accumulated sediment?** You must verify that the roads adjacent to the Site are free of accumulated sediment. You should determine and record the source of any excessive sediment. You should verify and record whether the source of sediment is from off-Site properties.

K. **Are exit/entrance controls properly located, in working condition, and no repairs necessary?** You must verify that exit/entrance controls properly located, in working condition, and no repairs necessary. You should check that exit/entrance controls such as stone pads, rumble grates, and the like for the construction entrances and other access points are in place and are maintained pursuant to the SWPPP.

L. **Are exposed areas stabilized as required?** You must verify that exposed areas are stabilized as required. You should check that areas where construction activity has ceased or has been temporarily suspended are stabilized in accordance with the SWPPP.

M. **Are stockpiles located and stabilized as required?** You must verify that stockpiles located and stabilized as required. You should check that stockpiles are located in areas where they may minimize the potential for discharging excessive sediment from the Site or onto any road or gutter and that they have been stabilized in accordance with the SWPPP.

N. **Are BMPs properly located, in working condition, and no repairs necessary?** You must verify that BMPs are properly located and in working condition and that no repairs are necessary. You should check that BMPs (including by way of illustration, linear barriers, soil stabilization techniques, sediment ponds/traps and inlet protection) are properly placed, appear to be working, and are maintained in accordance with the SWPPP.

O. **Are washouts properly located, in working condition, and no repairs necessary?** You must verify that concrete, paint, and other washouts are properly placed, appear to be working, and are maintained in accordance with the SWPPP.

P. **Are non-storm water and hazardous materials identified on the SWPPP and managed as required?** You must verify that non-storm water and hazardous materials are managed as required. You should check that storage and containment areas and controls and that management of non-storm water and hazardous materials (including leaks and spills) are implemented in accordance with the SWPPP.

Q. **Are trash, construction debris, and other solid wastes managed as required?** You must verify that trash, construction debris, and other solid wastes managed as required. You should check that controls for the collection and storage of trash, construction debris and other solid wastes are properly placed, appear to be effective, and are maintained in accordance with the SWPPP.

R. **Are portable toilets provided and properly located?** You must verify that portable toilets are provided and properly located. You should check that portable toilets are located off roads and away from gutters and inlets and are properly anchored and maintained.

S. **Are the Site Storm Water BMPs and the SWPPP consistent with each other?** You must verify that Site BMPs and the SWPPP are consistent with each other. You should check that the BMPs shown on the SWPPP for the current stage of construction exist on Site and that the BMPs that exist on Site are shown on the SWPPP. In particular, you must make sure that any map or figure within the SWPPP is consistent with what has been installed on the ground. Even if we have installed additional BMPs not originally called for in the SWPPP, the additional BMPs must be shown on the map.

T. **Are there signs of erosion not adequately addressed by the existing BMPs?** You must verify that the Site Storm Water BMPs are adequate for minimizing erosion in the Site.

Responsive Action Log

- You must record each reference number from the first page of the Site Inspection Form under "Responsive Action Log Reference #" onto the Responsive Action Log under the first column "RAL Ref #." Each reference number must be listed on a separate line.

- If a condition relates to a storm water control, you must identify the applicable storm water control by type, specify the location of the control, describe the condition observed, and state the action necessary to achieve or maintain compliance with the SWPPP. If a condition relates to anything other than a storm water control, you must briefly describe the condition that requires action and the action necessary to achieve or maintain compliance with the SWPPP.

- For each recorded reference number, you must identify in the "Responsive Action" column the Responsive Action taken or to be taken.

- You must record the date the Action Item was first identified in the "Date Noted" column.

- The date recorded for a Responsive Action under the "Date Noted" column will not change, even if the Responsive Action is carried over to subsequent Responsive Action Logs. When a Responsive Action is restated or carried over to a new Responsive Action Log, you must restate or carry over the date for the Responsive Action as identified on the first Responsive Action Log on which the Responsive Action appeared.

- Upon completing each Responsive Action, the date on which action was taken to address the Action Item must be recorded under the "Date Responsive Action Completed" column. The Site Storm Water Project Superintendent may initial the date on which the Responsive Action was completed, either having performed the Responsive Action or having investigated and confirmed when it was completed.