

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 COOPER LAND DEVELOPMENT, INC.)
)
 Defendant.)
 _____)

Civ. Action. No. 08-0709-CV-W-SOW

CONSENT DECREE

TABLE OF CONTENTS

I. GENERAL PROVISIONS 5

- 1. Definitions 5
- 2. Jurisdiction and Venue 12
- 3. Parties Bound 13
- 4. Responsibility for Acts of Others and Delegation of Responsibilities 13
- 5. Public Notice 13
- 6. Agreement Not to Challenge Decree 14
- 7. No Warranty by Plaintiff 14
- 8. Not a Permit Modification 14
- 9. Headings 14
- 10. Computation of Time 14
- 11. Final Judgment 14
- 12. Purpose of Decree 15
- 13. Access 15
- 14. Preservation of Storm Water Records 16
- 15. Authority to Sign Decree 16
- 16. Service and Answer 16
- 17. Notices 17
- 18. Certification of Reports and Submissions 18
- 19. Entire Agreement 18
- 20. Modification 18
- 21. Costs of Suit 18
- 22. Termination of this Consent Decree 18
- 23. Appendices 20

II. COMPLIANCE PROGRAM 20

- 24. Application of Compliance Program 20
- 25. Compliance 21
- 26. Storm Water Compliance Managers 21
 - a. Site Storm Water Compliance Manager 21
 - b. Company Storm Water Compliance Manager 24
- 27. Contractor Compliance and Designation of Contractor Storm Water Supervisors . 25
- 28. List of Sites 25
- 29. Permits 27
- 30. Storm Water Plan and Records 27
- 31. Requirements Concerning Best Management Practices (“BMPs”) 30
- 32. Stabilization Requirements 30
- 33. Criteria for Grading and Clearing 30
- 34. Criteria for Sediment Basis 31
- 35. Requirements for Construction Entrances and Exits 31
- 36. Pre-Construction Inspection and Review 32
- 37. Inspections 33

38. Maintenance	34
39. Transfer of Ownership	34
40. Site Storm Water Compliance Review and Oversight	34
41. Compliance Summary Reports	35
42. Public Notification Signs	35
43. Storm Water Training Program	36
44. Corporate Acquisition	41
45. Submission of Storm Water Records to Plaintiff	41
III. CIVIL PENALTY	41
46. Civil Penalty	41
47. Method of Payment	41
IV. STIPULATED PENALTIES	43
48. Stipulated Penalty Amounts	43
49. Payment of Stipulated Penalties	48
51. Accrual of Stipulated Penalties	49
52. No Effect on Obligation to Comply	49
53. Effect of Dispute Resolution	49
54. Interest on Late Payment	50
V. FORCE MAJEURE	51
56. Required Notification for Force Majeure	51
57. Procedures for Extension	52
58. Effect on Other Obligations	52
VI. DISPUTE RESOLUTION	52
59. Exclusive Remedy	52
60. Informal Dispute Resolution	53
61. Formal Dispute Resolution	53
62. Petitions to the Court	54
63. Effect on Other Obligations	55
VII. EFFECT OF SETTLEMENT	55
64. Covenant Not to Sue by Plaintiff	55
65. Plaintiff's Reservations of Rights	55
66. No Effect on Third Parties	56
67. Defendant's Covenant Not to Sue	56
68. Defendant's Reservations of Right	56
69. Waiver of Certain Defenses	56
70. No Waiver of Sovereign Immunity	57

A. Whereas, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA") has filed the Complaint in this matter alleging that Cooper Land Development, Inc. has violated the Clean Water Act and the regulations promulgated pursuant to that statute, including the conditions and limitations of storm water discharge permits issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

B. Whereas, the Defendant neither admits nor denies the allegations in the Complaint, and is entering into this Decree solely to avoid the costs of litigation and nothing in this Decree shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of the Defendant.

C. Whereas, the Parties have consented to the entry of this Decree without trial of any issues.

D. Whereas, the Parties recognize, and this Court finds by entering this Decree, that the Parties have negotiated this Consent 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, except as expressly provided herein, and upon consent and agreement of the Parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

I. GENERAL PROVISIONS

1. Definitions. Except as specifically provided in this Decree, the terms used in this Decree shall be defined in accordance with definitions in the Clean Water Act and the regulations promulgated pursuant to the Clean Water Act. Whenever the terms listed below are used in this Decree, the following definitions apply:

a. Action Item – a condition that requires action to be taken to achieve or maintain compliance with Storm Water Requirements.

b. Applicable Permit – (i) the Federal General Permit if the Construction Activity takes place in a jurisdiction where the Federal General Permit is applicable; (ii) the Authorized State’s NPDES construction general permit in the case where the Construction Activity takes place in an Authorized State; or (iii) an individual NPDES permit issued by EPA or an Authorized State for storm water discharges associated with construction, where such individual permit has been issued for the Construction Activity.

c. Authorized State – a state with an NPDES Program that has been authorized by EPA under 33 U.S.C. 1342(b) and 40 C.F.R. Part 123.

d. Best Management Practices ("BMPs") – the definition in 40 C.F.R. § 122.2, in its current form or as it may be amended in the future. That definition currently is “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the Waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.”

e. Bella Vista Village – the housing development located along U.S.

Highway 71 and Arkansas State Highways 340 and 279 in northern Benton County, Arkansas, including the incorporated area of the City of Bella Vista, Arkansas.

f. Business Day – any day other than a Saturday, Sunday, or State or Federal legal holiday.

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

h. Company Storm Water Compliance Manager – the person designated pursuant to Paragraph 27 (Designation of Storm Water Compliance Managers) to oversee storm water compliance activities for Defendant and Defendant Related Companies.

i. Compliance Summary Report – a report in the form attached at Appendix E and as required by Paragraph 41 (Compliance Summary Report).

j. Construction Activity – includes: (1) clearing, grading, excavation and any other activity that results in land disturbance of equal to or greater than one acre; (2) the clearing, grading, excavation and any other activity that results in land disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; or (3) any other construction activity designated by EPA or an Authorized State, based on the potential for contribution to a violation of a water quality standard or for contribution of pollutants to Waters of the United States pursuant to 40 C.F.R. § 122.26(b)(15)(ii).

k. Contractor – any person or entity, except Defendant or Defendant Related Company (“DRC”) employees, who the Defendant or a DRC has hired to perform work at a Site.

l. Contractor Storm Water Supervisor – the person identified under Paragraph 28 (Contractor Compliance and Designation of Contractor Storm Water Supervisors).

- m. Creekmoor – the housing development located at 155th Street and North Foxridge Drive in Raymore, Missouri 64083.
- n. Date of Entry – the date this Decree is signed by the Court.
- o. Day – a twenty-four hour period commencing at midnight.
- p. Date of Lodging – the date this Decree is lodged with the Court for the public comment period pursuant to Paragraph 5.
- q. Decree – This Consent Decree, including all Appendices.
- r. Defendant – Cooper Land Development, Inc., its successors and subsidiaries.
- s. Defendant Related Company or “DRC” – any one of the following entities: (i) any partnerships in which Cooper Land Development, Inc. has a controlling interest; (ii) any limited partnership where Cooper Land Development, Inc. is a general partner; or (iii) any corporation or limited liability company in which Cooper Land Development, Inc. has an interest of twenty-five percent or greater.
- t. Defined Water Drainage Course – any non-enclosed waterway or conveyance with the potential to carry run-off from any Site to the Waters of the United States including but not limited to streams and creeks.
- u. EPA – the U.S. Environmental Protection Agency or any successor department or agency.
- v. Federal General Permit – the federal NPDES General Permit for Storm Water Discharges from Construction Activities issued by EPA on July 1, 2003 (68 Fed. Reg. 39087), as modified and amended, and any subsequent amendments or modifications thereto or

other permits subsequently issued by EPA to implement the requirements of 40 C.F.R. Parts 122, 123 and 124 for storm water discharges from Construction Activities.

w. Force Majeure Event – any event beyond the control of the Defendant, its contractors, or any entity controlled by the Defendant or a DRC that prevents or delays the performance of any obligation under this Decree despite the Defendant’s or a DRC’s reasonable efforts to fulfill the obligation. "Reasonable efforts" includes using all reasonable efforts to anticipate any potential force majeure event and address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay or failure to perform any obligation under this Decree to the greatest extent possible. A "Force Majeure Event" does not include: (i) the Defendant’s or a DRC’s financial inability to perform any obligation under this Decree; (ii) the Defendant’s or a DRC’s failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Decree; or (iii) failure of the Defendant or a DRC to approve contracts.

x. Glade Springs Village – the housing development located at U.S. Highway 19 and Lake Drive at unincorporated Daniels, Raleigh County, West Virginia.

y. Hot Springs Village – the housing development located at Arkansas State Highways 5 and 7 and Desoto Boulevard in Garland and Saline Counties, Arkansas.

z. Listed Contractor – any individual or entity that contracts with Defendant or a DRC, or with a Contractor, to conduct the specified types of work listed in Appendix F at a Site except for (i) employees or contractors of a governmental or certificated public utility; or (ii) a cable company that has been awarded a franchise to operate in that jurisdiction.

aa. Local Law – all ordinances, regulations or other laws pertaining to land

disturbance, storm water or erosion control to the extent they impose requirements relating to land disturbance, storm water or erosion control of a local governmental entity when the subject activity occurs within the boundaries of that local governmental entity.

bb. Major SWPPP Modification – any change to a SWPPP that extends the geographic boundaries covered by the SWPPP to additional areas or phases of construction not previously covered by the SWPPP or that relates to a significant engineering change in the project. A significant engineering change is any change that requires computations or engineering design for sediment basins, water conveyance, grading or drainage system features not contemplated in previous design documents, or any other change for which a federal, state, or local authority requires the seal of a licensed professional engineer.

cc. NPDES – National Pollutant Discharge Elimination System.

dd. Notice of Intent – a request for coverage under an Applicable Permit other than an individual NPDES permit.

ee. Notice of Termination – notification that coverage under the Applicable Permit is ready for termination.

ff. Operator – any person or entity associated with Construction Activity that meets either of the following two criteria: (1) the person or entity has operational control over the plans and specifications, including the ability to make modifications to those plans and specifications; or (2) the person or entity has day-to-day operational control of those activities which are necessary to ensure compliance with a SWPPP for the Site or other conditions of an Applicable Permit.

gg. Parties – Plaintiff and Defendant.

hh. Plaintiff – the United States acting on behalf of EPA.

- ii. Pre-Construction Inspection and Review – the inspection and review required by Paragraph 36 (Pre-Construction Inspection and Review).
- jj. Pre-Construction Inspection and Review Form – the form attached at Appendix B and as required by Paragraph 36 (Pre-Construction Inspection and Review).
- kk. Quarterly Compliance Inspection – an inspection of a Site, as required by Paragraph 40 (Site Storm Water Compliance Review and Oversight).
- ll. Quarterly Compliance Review – a compliance review of a Site as required by Paragraph 40 (Site Storm Water Compliance Review and Oversight).
- mm. Quarterly Compliance Review Form – the form attached at Appendix D (Quarterly Compliance Review Form) and as required by Paragraph 40 (Site Storm Water Compliance Review and Oversight).
- nn. Responsive Action – an action taken or that is necessary to be taken to address an Action Item.
- oo. Sediment Basin – an engineered temporary ponding basin formed by an embankment or excavation identified in the SWPPP for a Site as a BMP to capture sediment.
- pp. Sienna Lake – the housing development located at Crystal Valley Road and Sienna Lake Drive in western Little Rock, Arkansas.
- qq. Site – means any land or water area at which Construction Activities occur during the time period that (i) the Defendant is an Operator; (ii) the Defendant owns a twenty-five percent or greater interest; or (iii) at which any DRC owns a 25% or greater interest or is an Operator. The term Site includes, but is not limited to, the Creekmoor, Bella Vista Village, Glade Springs Village, Hot Springs Village and Sienna Lake.

- rr. Site Inspection – an inspection of a Site, as required by Paragraph 37 (Inspections).
- ss. Site Inspection Report and Responsive Action Log – a form attached at Appendix C and as required by Paragraph 37 (Inspections).
- tt. Site Storm Water Compliance Manager – the person designated pursuant to Paragraph 26 (Storm Water Compliance Managers) to oversee storm water compliance activities at a Site.
- uu. State – the State in which any Site is located.
- vv. Storm Water Compliance Managers – Either a “Site Storm Water Compliance Manager” or “Company Storm Water Compliance Manager.” A “Storm Water Compliance Manager” is either of these managers.
- ww. Storm Water Records – any record, report, information, document, or photograph required to be created or maintained under the Storm Water Requirements or this Decree.
- xx. Storm Water Requirements – the requirements (in their current form or as may be modified in the future) set forth in: (i) Applicable Permits and (ii) any federal law, state law or Local Law applicable to Storm Water discharges from Construction Activity.
- yy. Storm Water Trained – an individual who: (i) is certified under the Storm Water Training Plan pursuant to Paragraph 43c (Storm Water Training Program) or (ii) is certified by CPESC, Inc. under the Certified Professional in Erosion and Sediment Control (“CPESC”) program and maintains a current CPESC certification; or (iii) is certified under another training program agreed to by the Plaintiff after a request is made to the Chief of the Water Enforcement Branch listed in Paragraph 17 (Notices).

zz. Storm Water Training Program – this term includes all of the training required by Paragraph 43 (Storm Water Training Program).

aaa. SWPPP – a Storm Water Pollution Prevention Plan.

bbb. SWPPP Preparer – a person or entity that assists Defendant or a DRC in preparing Site-specific SWPPPs and is a registered Professional Engineer or other credentialed professional specified by the Applicable Permit in the state in which the applicable Site is located.

ccc. Vertical Construction – all Construction Activities associated with erecting buildings and structures commencing with excavation for foundation construction and ending when a Notice of Termination has been filed.

ddd. Waters of the United States – any water into which a discharge of pollutants without a permit is prohibited under Section 301 of the Clean Water Act, 33 U.S.C. §1311, in its current form or as may be amended in the future.

2. Jurisdiction and Venue.

a. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. The Complaint states a claim upon which relief may be granted under 33 U.S.C. § 1319. Venue is proper under 28 U.S.C. § 1391(b) and (c).

b. This Court will retain jurisdiction for the purposes of issuing such further orders and directions as may be necessary and appropriate for the implementation or modification of this Decree, and for enforcing compliance with the provisions of this Decree.

c. For purposes of this Decree, the Defendant consents to and will not contest the jurisdiction of this Court over this matter.

3. Parties Bound. The obligations of this Decree apply to and are binding upon the Plaintiff and upon the Defendant, as provided by the terms of this Decree, and any successors or assigns. This Decree does not create any lien or interest in property in favor of the Plaintiff. The obligations, requirements and penalties provided for in this Decree apply only to the Defendant and do not apply to any independent, third-party purchaser of property from the Defendant or to any other person acting in concert with such purchaser.

4. Responsibility for Acts of Others and Delegation of Responsibilities. The Defendant shall be responsible for complying with Storm Water Requirements and this Decree at all Sites. Except as expressly prohibited in the Decree, the Defendant may delegate the performance of storm water compliance duties required under this Decree to Listed Contractors or Contractors provided that such Listed Contractors or Contractors have sufficient authority to carry out the delegated task and have been Storm Water Trained. Any such delegation does not relieve the Defendant of responsibility for the proper performance of any delegated task or for compliance with Storm Water Requirements and this Decree. In any action to enforce this Decree, the Defendant shall not assert as a defense the failure by any DRC, officer, director, trustee, servant, assign, employee, agent, Listed Contractor, Contractor, or entity in active concert or participation with such persons to take any action necessary to comply with Storm Water Requirements and this Decree at all Sites.

5. Public Notice. The Parties acknowledge and agree that the final approval and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of proposed consent decrees be given to the public and that the public shall have at least thirty days in which to make any comments. The Plaintiff may withhold or withdraw its consent to this Decree based on such comments. If the Plaintiff withholds or withdraws its consent, then

this Decree shall be subject to Federal Rule of Evidence 408 and nothing in this Decree shall be introduced or used in any future judicial proceeding.

6. Agreement Not to Challenge Decree. Subject to Paragraph 5 above, the Parties agree not to oppose entry of this Decree by this Court or to challenge any provision or requirement in this Decree or incorporated into this Decree, including but not limited to challenging the validity or enforceability of any such provision or requirement.

7. No Warranty by Plaintiff. Plaintiff does not, by its consent to entry of this Decree, warrant or aver in any manner that the Defendant's compliance with the provisions of Paragraphs 24-45 of this Decree will result in compliance with Storm Water Requirements. Notwithstanding Plaintiff's review and approval of any data, reports or plans formulated pursuant to this Decree, the Defendant shall remain solely responsible for compliance with Storm Water Requirements, this Decree and any other provisions of federal, state or Local Law.

8. Not a Permit Modification. This Decree is neither a permit nor a modification of existing permits under any federal, state, or other law, and in no way relieves the Defendant, or any DRC, of its responsibilities to comply with all applicable laws.

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

10. Computation of Time. The computation of any period of time set forth in this Decree shall be governed by Rule 6 of the Federal Rules of Civil Procedure. If a stated time period in the Decree expires on a Saturday, Sunday, or State or Federal legal holiday, it shall be extended to include the next Business Day.

11. Final Judgment. Upon approval and entry of this Decree by the Court, this Decree

shall constitute a final judgment between and among the Parties.

12. Purpose of Decree. It is the express purpose of this Decree to further the objectives of the Clean Water Act as well as regulations and permits issued pursuant to that Act. All obligations in this Decree shall have the objective of causing the Defendant and all DRCs to be and remain in full compliance with the Act, the regulations and permits issued pursuant to the Clean Water Act, as well as state and local laws, regulations, and permits authorized pursuant to the Clean Water Act.

13. Access.

a. Until termination of this Decree, Plaintiff, its representatives, contractors, consultants and attorneys shall each have the authority to enter, at reasonable times and upon presentation of credentials, any Site within the geographic boundaries of the Plaintiff or any location within the geographic boundaries of the Plaintiff at which Storm Water Records relating to this Decree are kept for the purposes of:

- i. monitoring the Defendant's compliance with this Decree;
- ii. verifying any data or information submitted by the Defendant pursuant to this Decree;
- iii. obtaining samples from any Site and, upon request, splits or duplicates of any samples taken by the Defendant, its contractors or consultants; and
- iv. reviewing and copying any Storm Water Records required to be kept by the Defendant pursuant to this Decree.

b. Nothing in this Paragraph or any other provision of this Decree shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal, state, or Local Law or to waive or restrict any defenses Defendant may have with respect to such authority.

14. Preservation of Storm Water Records. In addition to complying with any other applicable local, state, or federal records preservation requirements, until one calendar year after termination of this Decree, the Defendant shall preserve at least one legible copy of all Storm Water Records in its possession, custody, or control. Within thirty days of retaining or employing any agent, consultant, or Listed Contractor for the purpose of carrying out the terms of this Decree, the Defendant or applicable DRC shall enter into an agreement with any such agent, consultant, or Listed Contractor requiring such person to retain all Storm Water Records and provide the Defendant with a copy of them to Defendant upon request.

15. Authority to Sign Decree. The undersigned representative of the Defendant certifies that he or she is authorized to enter into this Decree and to execute and legally bind the Defendant to the terms and conditions of this Decree and meet the requirements for authorized signatory found in 40 C.F.R. § 122.22(a) or (b).

16. Service and Answer.

a. The Defendant shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by first class mail, certified mail, return receipt requested, or by an overnight carrier of national scope on the Defendant's behalf regarding all matters arising under or relating to this Decree. The Defendant agrees to accept service in that manner and to waive the formal service requirements of Federal Rule of

Civil Procedure 4 and any applicable local rules of this Court, including, but not limited to, service of summons.

b. The Parties agree that the Defendant need not file an Answer to the Complaint in this action unless or until this Court expressly declines to enter this Decree or the United States withdraws its consent pursuant to Paragraph 5.

17. Notices.

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

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 Case No. 90-5-1-1-08444

As to EPA

Chief, Water Enforcement Branch
Water, Wetlands & Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Director, Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. EPA 224A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

As to Defendant:

William H. Kennedy III
Senior Vice President and General Counsel
903 North 47th Street
Rogers, Arkansas 72756

b. Notifications to or communications with any Party shall be deemed submitted on the date they are postmarked and sent by first class mail, certified mail, return receipt requested or submitted to an overnight courier service with delivery verification.

18. Certification of Reports and Submissions. Any report or other document submitted by Defendant or a DRC pursuant to this Decree which makes any representation concerning compliance or noncompliance with any requirement of this Decree shall be certified by a “duly authorized representative” of Defendant in accordance with 40 C.F.R. § 122.22.

19. Entire Agreement. This Decree including all appendices 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 matters set forth in this Decree other than those expressly contained in this Decree.

20. Modification. The terms of this Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

21. Costs of Suit. Each party to this action shall bear its own costs and attorneys’ fees incurred prior to entry of the Decree in this action.

22. Termination of this Decree.

a. The following conditions (“Conditions of Termination”) are the exclusive

conditions for termination of this Decree and all of Defendant's obligations hereunder. This Decree shall terminate under the procedures set forth in this Section when these Conditions of Termination have been met:

- (i) the passing of four years since the Date of Entry ("the Fourth Anniversary");
- (ii) Defendant has paid all civil penalties and related interest due under this Decree;
- (iii) Defendant has paid all stipulated penalties and related interest demanded through the Fourth Anniversary by Plaintiff under Paragraphs 48-55, unless Defendant has successfully disputed the stipulated penalty pursuant to Section VII (Dispute Resolution) of this Decree;
- (iv) Defendant has established and implemented the Compliance Program required by Paragraphs 24-45 of this Decree;
- (v) Defendant has completed and submitted all reports that it is required to complete or submit under this Decree including the Compliance Summary Report submitted following the Fourth Anniversary and the Quarterly Compliance Report for the fourth quarter of the fourth year after the Date of Entry; and
- (vi) No enforcement action under this Decree is pending.

b. No sooner than four years after the Date of Entry, Defendant may notify Plaintiff that it is appropriate to terminate this Decree. In providing such notification, Defendant shall submit an Affidavit from any duly authorized officer of Defendant to the effect that all Conditions of Termination have been satisfied. If the Plaintiff agrees that the

statements in Defendant's Affidavit are accurate, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree. If the Plaintiff does not agree that the Statements in Defendant's Affidavit are accurate, Plaintiff shall respond within ninety (90) days to Defendant's notification in writing and describe, in reasonable detail, which of the statements in Paragraph 22a are not accurate in the opinion of Plaintiff in which case Defendant may invoke the provisions of Section VII (Dispute Resolution), and the Decree shall remain in effect pending resolution of the dispute by the Parties, or, ultimately, the Court. If the Plaintiff does not respond in writing within ninety (90) days of Defendant's notification, Defendant may move the Court for an order terminating the Decree. In any dispute concerning termination of this Decree, Defendant shall bear the burden of proving that all conditions required for termination of this Decree are satisfied.

23. Appendices. The following Appendices identified in this Decree are attached and incorporated by reference.

- A. SWPPP Criteria
- B. Pre-Construction Inspection and Review Form
- C. Site Inspection Report and Responsive Action Log
- D. Quarterly Compliance Report
- E. Compliance Summary Report
- F. Listed Contractors
- G. Sample Storm Water Tip Sheet
- H. List of Sites

II. COMPLIANCE PROGRAM

24. Application of Compliance Program. Where a provision of this Section II

(Compliance Program) assigns to Defendant a duty at any Site, Defendant shall either carry out that duty or shall cause the DRC at that Site to carry it out. Any actions or omissions by a DRC in violation of or in conformance with the terms of this Decree shall be deemed to be the acts or omissions of the Defendant.

25. Compliance.

a. The Defendant shall comply with all applicable Storm Water Requirements and this Decree and shall ensure that DRCs comply with all Storm Water Requirements and this Decree.

b. The Defendant shall not engage in and shall prevent DRCs from engaging in any activity at any location that results in a discharge of pollutants to Waters of the United States except in conformance with the Clean Water Act, the Applicable Permit, and other applicable law.

c. Defendant shall ensure that good housekeeping practices are maintained so as to keep solid waste from entering the Waters of the United States whenever it or a DRC engages in Construction Activities.

26. Storm Water Compliance Managers.

a. Site Storm Water Compliance Manager. Defendant shall designate at least one Site Storm Water Compliance Manager for each Site prior to the commencement of Construction Activities at a Site or within thirty Business Days of the Date of Entry, whichever is later. The Site Storm Water Compliance Manager may be the same person at different Sites and may have other duties at the Site, provided that each Site Storm Water Compliance Manager

is afforded sufficient time and authority to meet each obligation of this Paragraph for each Site for which that individual is responsible. If more than one Site Storm Water Compliance Manager is appointed for a Site, Defendant or applicable DRC shall designate the specific areas of responsibility of each designated Site Storm Water Compliance Manager in the SWPPP, as required by Paragraph 30 (Storm Water Plans and Records). At least one Site Storm Water Compliance Manager must be responsible for every type of work, geographic area and time period during which Construction Activity occurs at a Site. Each Site Storm Water Compliance Manager shall:

- i. be Storm Water Trained (a) within thirty days after the Training Plan is approved pursuant to Paragraph 43 (Storm Water Training Program); or (b) before Construction Activities commence at the Site, if such Construction Activities commence more than thirty days after the Training Plan is approved; or (c) before the person is appointed a Site Storm Water Compliance Manager at the Site;
- ii. be given and have reviewed a copy of the SWPPP for the Site and this Decree or an EPA-approved summary of this Decree prior to beginning work at a Site;
- iii. have the authority and responsibility to manage all tasks necessary to comply with Storm Water Requirements and this Decree at the Site with respect to his or her designated area(s) of responsibility as set forth in the SWPPP, including work performed by Contractors and Listed Contractors. All Site Storm Water Compliance Managers at each Site are required to take or direct action to comply with Storm Water Requirements and the provisions of this Decree at the Site, without regard to where or when he or she observes or learns of a particular Action Item;

iv. have the authority to order that any work within his or her designated area of responsibility as set forth in the SWPPP stop at the Site when necessary to comply with Storm Water Requirements or the provisions of this Decree and have the authority and responsibility to order or recommend such other sanctions or actions as necessary to comply with Storm Water Requirements and this Decree at the Site;

v. be familiar with and have the authority to certify, as allowed by the Applicable Permit, and cause the Site's SWPPP to be amended with respect to any work at the Site within his or her designated area of responsibility as set forth in the SWPPP;

vi. be the point of contact at the Site for regulatory officials and Defendant's or a DRC's employees, or Listed Contractors' or Contractors' employees regarding Storm Water Requirements with respect to any work at the Site within his or her designated area of responsibility as set forth in the SWPPP;

vii. report to the Company Storm Water Compliance Manager regarding compliance with Storm Water Requirements and this Decree with respect to any work in his or her designated area of responsibility as set forth in the SWPPP; and

viii. except as provided in the next sentence, be on Site (a) each day when clearing, grading, sewer installation, water main installation or construction of streets and sidewalks are occurring if those types of work fall within his or her scope of responsibilities as set forth in the SWPPP; and (b) for such additional time as is necessary to ensure that he or she can (1) visually observe and review the work within his or her designated area of responsibility as set forth in the SWPPP in light of predicted storm events, (2) direct additional installation and maintenance of BMPs related to such work as necessary, and (3) cause Action Items related to such work to be promptly identified and Responsive Actions timely taken. The Site Storm

Water Compliance Manager may be absent from the Site during the times described in the preceding sentence provided that he or she designates an individual who is Storm Water Trained to remain at the Site during such absences and directs that individual to contact him or her for consultation at least once during each day when work is occurring at the Site that falls within his or her designated area of responsibility as set forth in the SWPPP.

b. Company Storm Water Compliance Manager. Defendant shall designate one Company Storm Water Compliance Manager within three Business Days of the Date of Entry. The Company Storm Water Compliance Manager shall:

- i. be an employee of the Defendant;
- ii. be Storm Water Trained no more than thirty days after the Training Plan is approved as provided in Paragraph 43 (Storm Water Training Program);
- iii. have the authority and responsibility to manage all activities necessary to meet Storm Water Requirements and the provisions of this Decree at the Site, including those activities performed by Contractors and Listed Contractors;
- iv. have the authority to order any person to stop any work at the Site when necessary to comply with Storm Water Requirements and this Decree and to order or recommend such other sanctions or actions as necessary to comply with Storm Water Requirements and this Decree;
- v. oversee each Site Storm Water Compliance Manager and confer with each Site Storm Water Compliance Manager at least once a month;
- vi. be familiar with and have the authority to certify and cause the Site's SWPPP to be amended;
- vii. oversee the development and implementation of the Storm Water

Training Program established pursuant to Paragraph 43 (Storm Water Training Program);

viii. oversee the development and maintenance of the list of Sites required by Paragraph 28 (List of Sites);

ix. submit the Compliance Summary Report to EPA pursuant to Paragraph 41 (Compliance Summary Report);

x. serve as Defendant's point of contact for EPA regarding Defendant's and DRCs' compliance with Storm Water Requirements and this Decree; and

xi. approve or disapprove the SWPPPs and Major SWPPP Modifications at all Sites.

c. the Company Storm Water Compliance Manager's responsibilities under subparagraphs v, vii, viii, and xi above may not be delegated to anyone else.

27. Contractor Compliance and Designation of Contractor Storm Water Supervisors.

Defendant shall require that each DRC, Contractor and Listed Contractor at a Site comply with applicable Storm Water Requirements and this Decree and with instructions by the Storm Water Compliance Managers. Defendant shall require the designation of one individual for each Listed Contractor entity working at a Site as the Contractor Storm Water Supervisor for purposes of storm water compliance. This same person may also be designated as a Site Storm Water Compliance Manager pursuant to Paragraph 26 above. Defendant shall give each Contractor Storm Water Supervisor a copy of the SWPPP for the Site and this Decree, or an EPA-approved summary of this Decree before he or she begins work at the Site.

28. List of Sites.

a. Within thirty (30) days of the Date of Entry, Defendant shall provide, electronically and in hard copy, a List of Sites to EPA (in accordance with Paragraph 17 (Notices)).

i. The initial List of Sites shall include all Sites where Construction Activity has commenced before the Date of Entry and where coverage under the Applicable Permit has not been terminated.

ii. The initial List of Sites shall include the following information for each Site: (A) the Site name, address, latitude and longitude; (B) the owners and Operators of the Site; (C) the estimated number of acres that will be disturbed at the Site; (D) the effective date of Applicable Permit coverage, permit number, and the name of the permit holder(s); (E) the name and contact number for the relevant Site Storm Water Compliance Manager(s) and Company Storm Water Compliance Manager; and (F) a copy of the SWPPP and Major SWPPP Modifications for the Site.

b. Defendant shall notify EPA of any new Sites no later than thirty (30) days prior to the start of Construction Activity at a Site not on the List of Sites submitted under paragraph a. above and shall at that time provide EPA with the information listed in paragraph a, ii above for any such Sites. Defendant shall notify EPA and provide copies of any changes to the information contained in Paragraph 28a.(ii) above within thirty (30) days after implementing such changes, except that changes to the SWPPP other than Major SWPPP Modifications need not be provided.

c. If Defendant phases Construction Activity at a Site, Defendant may choose

to include on the List of Sites only the part of a Site where Construction Activity will first occur. When Construction Activity later extends to other areas of the Site, Defendant must submit to EPA no later than thirty (30) days prior to the start of such Construction Activity the information contained in Paragraph 28a.(ii) above which pertains to the additional part of the Site on which Construction Activity will occur. Defendant shall notify EPA of any changes to the information provided pursuant to this Paragraph within thirty (30) days after implementing such changes, except that changes to the SWPPP other than Major SWPPP Modifications need not be provided.

- d. Within thirty (30) days of implementing any modification to an
Applicable

Permit, Defendant shall provide copies of such modifications to EPA.

- e. Defendant shall notify EPA of any permit terminations at any Sites at least thirty (30) days prior to terminating permit coverage.

29. Permits.

- a. Before the commencement of any Construction Activity at a Site where coverage under an Applicable Permit is or will be required, Defendant shall file properly and timely or ensure that a DRC properly and timely files the application, notice, or other documentation required under applicable state law to obtain coverage under an Applicable Permit and obtains such coverage under the Applicable Permit for such Site.

- b. At all Sites, Defendant shall obtain, transfer, and terminate coverage as required by the Applicable Permit.

- c. Defendant shall not engage and shall prevent DRCs from engaging in Construction Activity at a location for which it is not the permittee under an Applicable Permit

until Defendant or the DRC has checked the public record and determined that coverage under an Applicable Permit, if required, has been obtained for such Construction Activity.

30. Storm Water Plans and Records.

a. Prior to the commencement of any Construction Activity at a Site, Defendant shall prepare a Site-specific SWPPP which shall be approved by the Company Storm Water Compliance Manager who shall certify on the face of the SWPPP that he or she has been to the Site, reviewed the SWPPP in light of Site conditions and has determined that the SWPPP calls for BMPs appropriate for Site conditions and complies with Storm Water Requirements and this Decree. At Sites where Construction Activity has already commenced, within thirty (30) days of the Date of Entry of this Decree, the Company Storm Water Manager shall review the existing SWPPP and either (1) certify on the face of the SWPPP that he or she has been to the Site, reviewed the SWPPP in light of Site conditions and has determined that the SWPPP calls for BMPs appropriate for Site conditions and complies with Storm Water Requirements or (2) stop all Construction Activity at the Site until he or she can certify the SWPPP as set forth in (1) above.

b. The individual who prepares the SWPPP shall be a SWPPP Preparer and shall be given a copy of this Decree and the SWPPP Criteria, attached hereto as Appendix A, as a guide. Before the commencement of Construction Activity at the Site, the SWPPP Preparer shall certify on the face of the SWPPP that he or she has prepared the SWPPP using SWPPP Criteria set forth in Appendix A as a guide, has reviewed the SWPPP in light of Site conditions, and determined that the SWPPP calls for BMPs appropriate for Site conditions and complies with Storm Water Requirements and this Decree.

c. If there is more than one Site Storm Water Compliance Manager

for the Site, the SWPPP shall designate the specific types of work, geographic areas, or time periods for which each Site Storm Water Compliance Manager is responsible.

d. The SWPPP and any Storm Water Records required to be maintained with the SWPPP by the Applicable Permit or by this Decree shall be maintained at the Site or, if there is no construction office at the Site, the location of the SWPPP shall be posted in a conspicuous location at the Site, such as the Site entrance or exit. Upon request, Defendant shall make the SWPPP available for review pursuant to Paragraph 13 (Access) as well as to inspectors with authority under the Applicable Permits, Contractors, Listed Contractors and employees.

e. Each SWPPP shall contain the requirements set forth in Paragraphs 31-35 below and comply with the terms and conditions of the Applicable Permit, this Decree, and other applicable federal law, state law and Local Law. SWPPPs shall be revised, updated or amended as needed to reflect any changes in site conditions and in accordance with the Applicable Permit. Whenever a Major SWPPP Modification occurs, a copy of the modification or changes must be given to those persons who are required to be given the SWPPP under the provisions of this Decree.

f. Each SWPPP shall be site-specific, impose the requirements listed in Paragraphs 31-35 below, and contain the following:

(1) a narrative description of the BMPs to be installed and implemented for each anticipated stage of construction, a justification for those BMPs selected, the sequence, timing and location of such BMPs and the specifications for BMP installation, maintenance and removal. The location of BMPs for each stage of construction should be clearly identified on a site map.

(2) a statement of whether grading will be phased, and, if so, the identity and description of each phase and the sequence of grading. If phased grading is not planned, the SWPPP should explain why phased grading will not be implemented and what alternative measures will be undertaken to minimize the amount of time that disturbed soil is exposed;

(3) a description of the size, type, location and anticipated construction dates for each sediment basin to be constructed, the specifications for these basins and ponds, and an explanation of why these plans are sufficient to meet permit requirements regarding sediment basins;

(4) a description of the types and timing of temporary and permanent stabilization to be used and estimated time periods that each graded area will be unstabilized.

31. Requirements Concerning Best Management Practices (“BMPs”). At all Sites, Defendant shall:

a. use BMPs of the types and in the quantities sufficient to reduce to the extent practicable pollutants in storm water discharges from the Site and the amount of disturbed soil; and

b. inspect and maintain BMPs as required under the Applicable Permit.

32. Stabilization Requirements.

a. At all Sites, Defendants shall temporarily stabilize all disturbed areas not under active construction and temporarily stabilize all cleared and graded areas at a Site within fourteen days of the last Construction Activity on that area.

b. For purposes of this Paragraph, Construction Activities means only ground disturbing activity directly associated with either (i) achieving final approved grade elevations in that specific area of the Site; (ii) installing streets, sidewalks, or utilities; (iii) installing structures called for in the development plan; (iv) activities necessary to achieve the stabilization required by this Paragraph; or (v) Vertical Construction.

33. Criteria for Grading and Clearing.

a. At each Site, Defendant shall schedule grading activities so that the time period for disturbed areas to be without vegetative cover is minimized to the extent practicable and conforms with the Applicable Permit, federal law, state law or Local Law.

b. At each Site clearing, grubbing or grading shall be prohibited within 50 feet of a Defined Water Drainage Course except as authorized by federal law, state law and Local Law.

34. Criteria for Sediment Basins.

a. At each Site, Defendant shall construct and maintain Sediment Basins as required by the Applicable Permit.

b. At each Site, Defendant shall locate each Sediment Basin as close to the sediment source as practicable. Sediment Basins may not be located offsite.

c. At each Site, Defendant shall provide each Sediment Basin with a stabilized spillway to minimize the potential for erosion of the spillway.

d. At each Site, Defendant shall ensure that the waters of the United States are not used as a Sediment Basin unless such activity is explicitly authorized by all necessary permits, including but not limited to a permit pursuant to 33 U.S.C. § 1344.

e. At each Site, Defendant shall design each Sediment Basin to

discharge at a rate that will not cause scouring of the banks or bottom of the receiving water.

35. Requirements for Construction Entrances and Exits.

a. At each Site, Defendant shall design construction entrances and exits that provide a buffer area where construction vehicles can drop their mud to avoid transporting it off site and shall require vehicles to enter and exit the Site through these buffer areas.

b. At each Site, Defendant shall inspect the entrance and exit areas weekly, within 24 hours after storm events, and within 24 hours after periods of heavy use.

36. Pre-Construction Inspection and Review

a. Prior to the commencement of Construction Activity at a Site, or prior to the commencement of Construction Activity on an undisturbed part of a phased Site, a Storm Water Compliance Manager shall perform a Pre-Construction Inspection and Review. Where any entity other than Defendant or a DRC commenced Construction Activities at a Site, a Storm Water Compliance Manager shall perform an inspection in accordance with the Pre-Construction Inspection and Review requirements set forth in paragraph c. below no later than five days after Defendant or the DRC assumes ownership or operational control of part or the entirety of a Site.

b. For purposes of this Paragraph, the commencement of Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, other normal and customary pre-construction site reviews and actions or the initial installation of BMPs that are not sediment basins, provided none of these activities involves significant soil disturbance or requires a federal, state, or local permit.

c. The Pre-Construction Inspection and Review shall include an inspection of the entire Site for which ownership or operational control has been assumed, or for phased sites of each area to be disturbed prior to commencement of Construction Activity on that area, and completion of the Pre-Construction Inspection and Review Form attached at Appendix B. Prior to the commencement of Construction Activity at any Site, or of Construction Activity on any undisturbed part of a phased Site, Defendant must timely complete a Responsive Action for each Action Item identified during the Pre-Construction Inspection and Review at the Site. The Pre-Construction Inspection and Review Form shall document each Responsive Action and when the Responsive Action was completed.

d. A Storm Water Compliance Manager shall review and sign the Pre-Construction Inspection and Review Form. The Pre-Construction Inspection and Review Form shall be kept with the SWPPP.

37. Inspections.

a. For each Site, Defendant shall conduct at a minimum a Site Inspection at the frequency required by the Applicable Permit. One or more Site Storm Water Compliance Managers shall either inspect the Site or cause the Site to be inspected by a Storm Water Trained individual(s) under the supervision of the Site Storm Water Compliance Manager. This Site Inspection requirement shall go into effect on the date the Pre-Construction Inspection and Review is signed, or the date required by the Applicable Permit, whichever is earlier.

b. For each Site Inspection, the Defendant shall designate one Site Storm Water Compliance Manager to compile information from each area inspected into a single Site Inspection Report and Responsive Action Log on the Site Inspection Report and Responsive Action Log form attached as Appendix C. That individual shall review and certify the Site

Inspection Report and Responsive Action Log in accordance with the terms of Paragraph 18 (Certification of Reports and Submissions).

c. If an inspection required by this Paragraph is missed or not documented on
on
a Site Inspection Report and Responsive Action Log, then the next Site Inspection Report and Responsive Action Log shall include a note of the omission and, to the extent possible, include the information required to have been reported for the prior inspection.

d. A copy of the final Site Inspection Report and Responsive Action Log generated prior to the submittal of a Notice of Termination shall be clearly labeled as such.

e. Site Inspection Reports and Responsive Action Logs shall be kept with the SWPPP.

38. Maintenance.

a. Defendant shall maintain each Site or cause each Site to be maintained in accordance with Storm Water Requirements and the provisions of this Decree.

b. For every Action Item observed during the Site Inspection or the Quarterly Compliance Inspection, as required by Paragraph 40 (Site Storm Water Compliance Review and Oversight), the Storm Water Compliance Manager or person conducting the inspection shall record on the Site Inspection Report and Responsive Action Log: (i) a list of Action Items, (ii) the inspection date, (iii) the Responsive Action taken for each Action Item, and (iv) the date the Responsive Action was completed for each Action Item.

c. Defendant shall cause each Responsive Action to be completed within the time period specified in the Applicable Permit.

39. Transfer of Ownership. Defendant, or if applicable a DRC, shall retain

responsibility for all Storm Water Requirements of the Applicable Permit and this Decree until the Applicable Permit is terminated or transferred in accordance with the governing State's termination requirements. If the Applicable Permit is terminated or transferred for only part of a Site consistent with State law, the Defendant or DRC will no longer be responsible for complying with the Applicable Permit and this Decree with respect to the portion of the Site for which the permit has been transferred or terminated.

40. Site Storm Water Compliance Review and Oversight.

a. At least once each calendar quarter, the Company Storm Water Compliance Manager shall conduct an unannounced Quarterly Compliance Inspection of each Site. The results shall be recorded on a Site Inspection Form attached at Appendix C. This Inspection may not be delegated to any one else.

b. No later than seven days after the Quarterly Compliance Inspection, the Company Storm Water Compliance Manager shall complete a Quarterly Compliance Review in accordance with the procedures and Report Form attached at Appendix D. The Company Storm Water Compliance Manager shall review the Quarterly Compliance Report with the Site Storm Water Compliance Manager(s), each of whom shall initial the Quarterly Compliance Report. This Review may not be delegated to any one else.

c. Defendant shall cause a Responsive Action for each Action Item identified in the Quarterly Compliance Inspection or Quarterly Compliance Review to be completed in the same manner as required under Paragraph 38 (Maintenance).

d. Quarterly Compliance Inspections and Quarterly Compliance Reviews shall be made available to EPA upon request.

41. Compliance Summary Report. By March 1st and October 1st of each calendar

year, the Company Storm Water Compliance Manager shall submit to EPA, a Compliance Summary Report that summarizes Defendant's compliance with this Consent Decree at each Site in accordance with the procedures and form attached as Appendix E. Copies shall be sent to the General Counsel of Defendant and pertinent portions shall be sent to each Site Storm Water Compliance Manager designated in the SWPPP.

42. Public Notification Signs. Defendant shall post a copy of the public notification sign including (i) a copy of the Site permit or notice of coverage; (ii) the name and contact phone number for each Site Storm Water Compliance Manager and indicate each manager's areas of responsibility; and (iii) a description of the construction activity and acreage at each Site. The public notification sign must be visible from the public road that provides access to the Site's main entrance and must remain posted at the Site until the permit has been terminated.

43. Storm Water Training Program.

a. Within forty-five days of the Date of Entry, Defendant shall submit a Training Plan to EPA for review and approval. The Training Plan shall provide for three separate training programs: (1) Site-Specific Training; (2) Management Training; and (3) Annual Refresher Training. Once EPA approves the Training Plan, Defendant shall immediately comply with all aspects of the Training Plan.

b. The Site-Specific Training Plan shall have three elements: (1) Site-Specific Storm Water Orientation; (2) Tip Sheets and (3) on-Site training for employees and Listed Contractor employees who do not attend the Site-Specific Orientation.

i. Defendant shall provide a Site-specific Storm Water Orientation before Construction Activities commence to all individuals expected to supervise or assist in the supervision of the types of work listed on Appendix F. The Site-Specific Storm Water

Orientation shall include a review of the following topics: (1) a description of storm water runoff and potential effects of runoff; (2) an overview of Storm Water Requirements; (3) an overview of the SWPPP and the proper maintenance of the BMPs installed and to be installed on the Site during Construction Activities; (4) the obligation of each individual not to interfere with the effectiveness of the BMPs at the Site and to identify Action Items; (5) the Permit's inspection requirements; and (6) the need to bring Action Items to the attention of the Site Storm Water Compliance Manager.

ii. The Training Plan shall also include a "Storm Water Tip Sheet" that provides an accurate and understandable description of the requirements in the Applicable Permit and SWPPP. The Training Plan shall require distribution of the Storm Water Tip Sheet to all individuals working at a Site. The "Storm Water Tip Sheet" shall substantially adhere to the form attached as Appendix G.

iii. Each Site Storm Water Compliance Manager shall personally meet with any person who is to supervise or assist in the supervision of the types of work under that Manager's designated areas of responsibility as set forth in the SWPPP but who did not attend the Site-specific Storm Water Orientation. This meeting shall occur prior to the person beginning work at the Site and in this meeting the Site Storm Water Compliance Manager shall: (1) describe storm water runoff and potential effects of runoff; (2) provide an overview of Storm Water Requirements; (3) provide an overview of the SWPPP and the proper maintenance of the BMPs installed and to be installed on the Site during Construction Activities; (4) explain the obligation of each individual not to interfere with the effectiveness of the BMPs at the Site and to identify Action Items and bring them to the attention of the Site Storm Water Compliance Manager; and (5) give the person a copy of the Storm Water Tip Sheet. This task may be

delegated to a Contractor Storm Water Supervisor who has been Storm Water Trained and who attended the Site Specific Storm Water Orientation for that Site.

c. Defendant shall require all Storm Water Compliance Managers, Contractor Storm Water Supervisors, and all persons who will supervise or assist in supervising the types of work listed in Appendix F to attend and successfully complete at least four hours of Management Training either through an in-person session or a computer-based course. The Training Plan shall require the Management Training Plan to include the following elements:

- i. an introduction to the importance of erosion and sediment control;
- ii. a review of Storm Water Requirements, including the fines and penalties for non-compliance;
- iii. a review of proper preparation of a Notice of Intent and Notice of Termination and other filing requirements;
- iv. a review of the contents of a SWPPP and additional requirements of this Decree;
- v. updating and maintaining an accurate SWPPP;
- vi. a review of the principles of erosion and sediment control;
- vii. a review of the types of BMPs available and discussion of the principles and methods of BMP selection;
- viii. a discussion of non-storm water pollutants and their control (such as oil, concrete wash out, trash, paint and paint residue);

- ix. a review of proper installation and maintenance of BMPs, including examples of acceptable and unacceptable BMP installation and maintenance;
- x. a review of the inspection requirements, the use of the inspection forms required by this Decree, and a discussion of the requirements for documentation and correction of Action Items and documentation of Response Actions;
- xi. a discussion of records management and organization;
- xii. a discussion of posting requirements at construction Sites;
- xiii. a discussion of permit transfer and termination procedures, including stabilization requirements;
- xiv. a review of the requirements of this Decree; and
- xv. a written or computer-based examination to determine proficiency in the principles and practices of, and statutes governing, erosion and sediment control and the requirements of this Decree and, upon successful completion of the examination, issuance of a training certificate that is valid for twelve months.

d. Defendant shall provide Annual Refresher Training for each individual subject to the training requirements of the Management Training Plan. The Training Plan shall require the Annual Refresher Training to consist of two to three hours of classroom or computer-based training addressing the topics required in the applicable training program and updating the participants on new regulations. The Training Plan shall also require the Annual Refresher Training to conclude with a written or computer-based examination to determine proficiency in the principles and practices of, and statutes governing, erosion and sediment control and minimizing storm water pollution. Upon successful completion of the Annual Refresher Training, the Training Plan shall call for the issuance of a renewal certificate valid for twelve

months. Storm Water Compliance Managers, Contractor Storm Water Supervisors, and all persons supervising or assisting in the supervision of the types of work listed in Appendix F shall maintain a current certification in order to continue performing their duties under this Decree.

e. The Training Plan shall require all Storm Water Compliance Managers, Contractor Storm Water Supervisors, and all persons supervising or assisting in the supervision of the types of work listed in Appendix F to be certified as Storm Water Trained within thirty days of EPA's approval of the Training Plan, or prior to beginning work at a Site, whichever is later.

f. The Training Plan shall identify the qualifications of the instructor of each course or the entity providing computer-based training required by this Paragraph and shall provide that each instructor is Storm Water Trained.

g. The Training Plan shall also require the Company Storm Water Compliance Manager to evaluate the Storm Water Training Plan annually and determine whether any changes are necessary. A written evaluation of the Storm Water Training Plan and a description of any significant proposed changes for EPA's approval shall be included in the October 1st Compliance Summary Report.

h. EPA shall approve Defendant's proposed Training Plan provided that the Plan (1) ensures that individuals who have completed each course will be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and Contractors and Listed Contractors in the implementation of such practices and (2) meets the requirements of this Paragraph. If EPA disapproves the Storm Water Training Plan, EPA shall notify Defendant in writing of such disapproval and in such notice describe in reasonable detail EPA's reasons for disapproval. Defendant shall correct the Plan as

directed by EPA or invoke the procedures set forth in Section VI (Dispute Resolution). Once EPA has approved Defendant's proposed Training Plan, Defendant shall immediately implement the Plan in accordance with its provisions.

i. Defendant shall maintain all records relating to implementation of its Training Plan including but not limited to the annual renewal certifications completed pursuant to Paragraphs 43 d. and e. above. These records shall be retained for the term of this Decree and made available to EPA upon request.

44. Corporate Acquisition. After the Date of Entry and prior to termination of this Decree, in the event that Defendant acquires or merges with another company, sixty days after the closing of the transaction, the acquired or merged company shall be deemed Defendant for purposes of this Decree. Nothing in this Paragraph relieves Defendant of its duty to comply with applicable law including Applicable Permits.

45. Submission of Storm Water Records to Plaintiff.

a. Upon Plaintiff's written request for a Storm Water Record, within fifteen (15) Business Days, Defendant shall provide a copy, as set forth in Paragraph 17 (Notices), of any Record required under this Decree. This Paragraph does not apply to requests for a Record made during an inspection by Plaintiff or its authorized representatives.

b. Defendant shall certify any Record submitted to Plaintiff in accordance with the certification requirements of this Decree as set forth in Paragraph 18 above.

III. CIVIL PENALTY

46. Civil Penalty. Defendant shall pay a civil penalty of \$513,740 to Plaintiff in four

installments as specified in Paragraph 47 below, together with interest accruing from the Date of Lodging at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

47. Method of Payment.

a. Within thirty (30) days of the Date of Entry, Defendant shall pay \$128,435 of the civil penalty as set forth below, plus interest as described in Paragraph 46, to the Plaintiff by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of the Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Missouri. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Decree in United States v. Cooper Land Development Inc., and shall reference the civil action number and DOJ case number 90-5-1-1-09005, to the Plaintiff in accordance with Paragraph 17 of this Decree (Notices);

b. Within one year of the Date of Entry, Defendant shall pay the Plaintiff a second installment of the civil penalty in the amount of \$128,435, plus interest on that amount as described in Paragraph 46. Defendant shall use the same payment method as specified in subparagraph a. above.

c. Within two years of the Date of Entry, Defendant shall pay the Plaintiff the installment of the civil penalty in the amount of \$128,435, plus interest on that amount as described in Paragraph 46. Defendant shall use the same payment method as specified in subparagraph a. above.

d. Within three years of the Date of Entry, Defendant shall pay the Plaintiff

the fourth and last installment of the civil penalty in the amount of \$128,435, plus interest on that amount as described in Paragraph 46. Defendant shall use the same payment method as specified in subparagraph a. above.

e. No portion of the civil penalty paid pursuant to this Decree may be used to reduce the Defendant's federal or state tax liability.

f. At least fifteen (15) days prior to the due date for each payment, Defendant shall contact the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Missouri ("FLU") and advise them of the date payment will be made. Prior to the anticipated payment date, the FLU will advise Plaintiff of the amount of interest due with the payment.

IV. STIPULATED PENALTIES

48. Stipulated Penalty Amounts.

a. Failure to Pay the Civil Penalty as required by Paragraphs 46-47.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>
1 st through 7 th days	\$5,000 per day late
8 th through 14 th days	\$10,000 per day late
Greater than 14 days late	\$20,000 per day late

b. Commencement of Construction Activity at a Site prior to obtaining a permit as required by Paragraph 29.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>
1 st through 7 th days	\$2,500 per day of Construction Activity without a Permit

8 th through 14 th days	\$5,000	per day of Construction Activity without a Permit
Greater than 14 days	\$10,000	per day of Construction Activity without a Permit

c. Commencement of Construction Activity at a Site prior to preparing a Site-Specific SWPPP as required by Paragraph 30.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1st through 7th days	\$1,500	per day of Construction Activity without a SWPPP
8 th through 14 th days	\$2,000	per day of Construction Activity without a SWPPP
Greater than 14 days	\$5,000	per day of Construction Activity without a SWPPP

d. Discharges of pollutants from a Site to the Waters of the United States prior to obtaining coverage as required under an Applicable Permit.

<u>Days of Discharge</u>	<u>Stipulated Penalty</u>	
1 st through 14 th days	\$2,500	per day of discharge
15 th through 30 th days	\$5,000	per day of discharge
Greater than 30 days	\$10,000	per day of discharge

e. Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 31 pertaining to construction and maintenance of BMPs at a Site except for sediment basins and stabilization requirements.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 14 th days	\$50	per day per violation
15 th through 30 th days	\$100	per day per violation

Greater than 30 days \$200 per day per violation

f. Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 32 pertaining to stabilization of disturbed areas at a Site.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 14 th days	\$500	per day per acre not stabilized
15 th through 30 th days	\$1000	per day per acre not stabilized
Greater than 30 days	\$2000	per day per acre not stabilized

The penalties can be pro-rated as is necessary for fractions of acres affected.

g. Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 33 prohibiting grading or clearing in certain areas or requiring phased grading or clearing at a Site.

<u>Stipulated Penalty</u>
\$3,000 per acre or less improperly graded or cleared

The penalties can be pro-rated as is necessary for fractions of acres affected.

h. Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 34 pertaining to construction and maintenance of sediment basins at a Site.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 14 th days	\$500	per day per violation
15 th through 30 th days	\$1000	per day per violation

Greater than 30 days \$2000 per day per violation

i. Failure to perform or, if performed, a material failure to document a Pre-Construction Inspection and Review as required by Paragraph 36 (Pre-Construction Inspection and Review): \$2,500 per missed Pre-Construction Inspection and Review.

j. Failure to perform or, if performed, a material failure to document a Quarterly Compliance Inspection or Review at a Site as required by Paragraph 40 (Site Storm Water Compliance Review and Oversight):

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 30 th days	\$50	per day late
31 st through 59 th days	\$100	per day late
More than 60 days late or never performed	\$6,000	per missed inspection

k. Failure to perform or, if performed, a material failure to document a Site Inspection at a Site as required by Paragraph 37 (Inspections) and Paragraph 38 (Maintenance):

<u>No. of Missed Inspections or Deficient Inspection Reports per Applicable Permit</u>	<u>Stipulated Penalty</u>	
1-5	\$100	per late or missed inspection
6-10	\$200	per late or missed inspection
Greater than 10	\$1000	per late or missed inspection

l. Failure to undertake a Response Action to correct an Action Item at a Site within the time required by the Applicable Permit as required by Paragraph 38 (Maintenance):

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 14 th days	\$100	per day per violation

15 th through 120 th days	\$200	per day per violation
Greater than 120 days	\$500	per day per violation

m. Failure to designate trained and certified Company and Site Storm Water Compliance Managers as required by Paragraph 26 or Contractor Storm Water Supervisor as required by Paragraph 27 (Contractor Compliance): \$100 per day per manager not designated.

n. Failure to train, meet with, distribute tip sheets to and/or certify persons as required by Paragraph 43.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1st through 14 th days	\$10	per person per day late
15 th through 21 st days	\$50	per person per day late
Greater than 21 days	\$100	per person per day late

o. Failure to submit or certify the following required submissions to EPA or if submitted, submission of the following documents with material deficiencies: (1) the initial List of Sites or an updated List of Sites as required by Paragraph 28 (List of Sites); (2), Storm Water Training Plan as required by Paragraph 43 (Storm Water Training Program); or (3) a Compliance Summary Report as required by Paragraph 41 (Compliance Summary Report): \$50 per day per missing or inadequate submission until an adequate submission is received by EPA. In the case where EPA deems a submission by the Defendant to be inadequate (as opposed to no submission at all), EPA shall notify Defendant of the inadequacy as soon as practicable and stipulated penalties associated with such inadequacy shall not begin to accrue until such notification has been given.

p. Failure to retain, submit or certify records to Plaintiff, except for those records covered by subparagraph n. above, as required by this Decree.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 20 th days	\$50	per record per day
21 st through 30 th days	\$100	per record per day
Greater than 30 days	\$250	per record per day

Provided, however, that each record shall be subject to a maximum stipulated penalty of \$2000.

q. Failure to comply with requirements of Paragraph 42 (Public Notification Signs) at a Site.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 20 th days	\$25	per sign per day
21 st through 30 th days	\$50	per sign per day
Greater than 30 days	\$150	per sign per day

r. Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or any Paragraph of this Decree not otherwise addressed by Paragraphs a-q above.

<u>Days of Violation</u>	<u>Stipulated Penalty</u>	
1 st through 30 th days	\$50	per day per violation
31 st through 60 th days	\$75	per day per violation
Greater than 60 days	\$100	per day per violation

s. To the extent that the SWPPP, Applicable Permit, federal law, state law or Local Law applicable to Storm Water discharges from Construction Activity or this Decree have identical or substantially similar requirements, a violation of such requirement shall be considered one violation under each subparagraph (a-r). For example, failure to maintain a silt fence which constitutes a violation of the Applicable Permit, SWPPP and Paragraph 31 of this Decree, shall be considered one and not three violations for the purposes of each applicable

subparagraph. For purposes of this subparagraph, commencement of Construction Activity prior to obtaining a permit and discharges of pollutants from a Site to the Waters of the United States prior to obtaining coverage under a permit are not considered identical or substantially similar requirements.

49. Payment of Stipulated Penalties. All penalties owed to the Plaintiff under this Section shall be due and payable within thirty days of the Defendant's receipt from the Plaintiff of a demand for payment of the penalties, unless the Defendant invokes the procedures under Section VI (Dispute Resolution). The Plaintiff may, in the exercise of its unreviewable discretion, waive its right to any or all of its portion of the stipulated penalty amount or its investigation and enforcement costs.

50. Defendant shall submit the stipulated penalty amount due to the Plaintiff by EFT to the United States Department of Justice lockbox bank referencing DOJ case number 90-5-1-1-09005 and the civil action number. Payment shall be made in accordance with instructions provided by the Plaintiff. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next Business Day. After payment, the Defendant shall mail a cover letter specifying the amount and date of payment, civil action number, DOJ case number 90-5-1-1-09005 and reason for payment, to the Plaintiff in accordance with Paragraph 17 (Notices).

51. Accrual of Stipulated Penalties. Where Paragraph 48 above indicates that stipulated penalties are to be assessed per day, such penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity, at which time any such penalty shall cease to accrue. Nothing herein, however, shall prevent the simultaneous

accrual of separate penalties for separate violations of this Decree. Penalties shall accrue regardless of whether Plaintiff has notified Defendant of a violation. Penalties that are to be assessed per day shall not accrue during any period in which Plaintiff has approved a request by Defendant for an extension of time to comply.

52. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way the Defendant's obligation to comply with the requirements of this Decree or Storm Water Requirements.

53. Effect of Dispute Resolution. Penalties, calculated in accordance with the requirements of Paragraph 48 above (including the penalty accrual requirements of such Paragraph) shall continue to accrue during any dispute resolution period, unless the Defendant requests the Court to halt or reduce accrual of such penalties and the Court so orders. However, stipulated penalties need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Plaintiff that is not appealed to this Court, the Defendant shall pay accrued penalties determined to be owing to Plaintiff within 15 days of the agreement or the receipt of the Plaintiff's decision or order;

b. If the dispute is appealed to the Court and Plaintiff prevails in whole or in part, the Defendant shall pay all accrued penalties determined by the Court to be owed to Plaintiff within 30 days of receipt of the Court's decision or order, except as provided in subparagraph c of this Paragraph;

c. If the Court's decision is appealed by any party, the Defendant shall pay all accrued penalties determined by the District Court to be owing to the Plaintiff into an interest-bearing escrow account within 30 days of receipt of the Court's decision or order.

Penalties shall be paid into this account if and as they continue to accrue, in accordance with the

requirements of Paragraph 48 above, at least every 30 days. The Escrow Agreement shall state that within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the Plaintiff or to the Defendant to the extent that they prevail.

54. Interest on Late Payment. If the Defendant fails to pay stipulated penalties when due, the Defendant shall pay interest accrued 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.

55. Stipulated penalties are not the Plaintiff's exclusive remedy for violations of this Decree. Plaintiff reserves the right to pursue any other remedies for violations of this Decree or the Clean Water Act, or other applicable law including the right to pursue civil penalties, criminal penalties, to issue appropriate administrative orders and seek injunctive relief against Defendant. Except, however, the amount of any statutory penalty assessed for a violation of this Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid. Any such action shall not be considered a "Covered Dispute" under Section VI (Dispute Resolution).

V. FORCE MAJEURE

56. Required Notification for Force Majeure. The Defendant shall notify Plaintiff orally and by electronic or facsimile transmission as soon as possible, but not later than seventy-two hours after the time the Defendant first knew of, or in the exercise of reasonable diligence under the circumstances should have known of, any event which might constitute a Force Majeure Event. The Defendant shall make the oral notification required by this Paragraph by calling the Chief, Water Enforcement Branch of Region VII, or another person authorized by EPA, and sending a message by electronic mail at the address provided in Paragraph 17 (Notices). If the Chief of the Water Enforcement Branch of Region VII is not available by

telephone, the Defendant may satisfy the telephone notice requirement by leaving a message for the Chief stating that the Defendant had called to notify him or her pursuant to this Paragraph. The Plaintiff may designate an alternative representative to receive oral notification at its discretion by sending the Defendant a written designation in accordance with Paragraph 17 (Notices). The written notice the Defendant submits pursuant to this Paragraph shall indicate whether the Defendant claims that the delay should be excused due to a Force Majeure Event. The notice shall describe in detail the basis for the Defendant's contention that it experienced a Force Majeure Event, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Defendant shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify the Plaintiff shall render this Section V (Force Majeure) void and of no effect as to the event in question, and shall be a waiver of the Defendant's right to obtain an extension of time for its obligations based on such event.

57. Procedures for Extension. If the Plaintiff finds that a delay in performance is, or was, caused by a Force Majeure event, the Plaintiff shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such a period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section VI (Dispute Resolution) shall apply, and the Defendant shall have the burden of proving that the delay is, or was, caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for that event.

58. Effect on Other Obligations. Compliance with a requirement of this Decree shall

not by itself constitute compliance with any other requirement of this Decree. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. The Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

VI. DISPUTE RESOLUTION

59. Exclusive Remedy. The Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Decree. However, the procedures set forth in this Section shall not apply to actions by the Plaintiff to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

60. 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 on the day the Defendant hand delivers the Plaintiff a written Notice of Dispute or on the day following delivery by overnight courier, or three days following delivery by U.S. Mail. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiff shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, the Defendant invokes formal dispute resolution procedures set forth in Paragraph 61 (Formal Dispute Resolution).

61. Formal Dispute Resolution.

a. Within 45 days after the conclusion of the informal negotiation period, the Defendant may invoke formal dispute resolution procedures by serving on the EPA 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 the Defendant's position and all supporting documentation relied upon by the Defendant.

b. The Plaintiff shall serve its Statement of Position within 45 days of receipt of the Defendant's Statement of Position. The Plaintiff's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Plaintiff. The Plaintiff's Statement of Position shall be binding on the Defendant, unless the Defendant files a motion for judicial resolution of the dispute in accordance with Paragraph 62 (Petitions to the Court).

62. Petitions to the Court. In the event that the Parties cannot resolve a dispute as set forth in Paragraph 61 (Formal Dispute Resolution), the following procedures shall control:

a. The Defendant may seek judicial resolution of the dispute by filing with the Court and serving on the Plaintiff a motion requesting judicial resolution of the dispute. The motion shall be filed within 45 days of receipt of the Plaintiff's Statement of Position set forth in Paragraph 61 (Formal Dispute Resolution). The motion shall contain a written statement of the Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree.

b. The Plaintiff shall respond to the Defendant's motion within the time for response to motions provided by the Local Rules of this Court unless the Parties agree or the Court orders otherwise.

c. The Defendant may file a reply memorandum within the time for reply memoranda provided by the Local Rules of this Court.

d. In any dispute under this Paragraph, the Defendant shall bear the burden of demonstrating that its position complies with and furthers the objectives of the Storm Water Requirements and this Decree. The Plaintiff reserves the right to argue that its position is reviewable only on the administrative record and shall be upheld unless arbitrary and capricious or otherwise not in accordance with law. The Defendant reserves the right to oppose such arguments. For purposes of this Decree, the administrative record shall comprise the Statements of Position exchanged by the Parties pursuant to Paragraph 61 (Formal Dispute Resolution), including any documents attached to or incorporated by reference in those Statements.

63. Effect on Other Obligations . The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Defendant under this Decree not directly in dispute, unless the Plaintiff agrees in writing or the Court orders otherwise.

VII. EFFECT OF SETTLEMENT

64. Covenant Not to Sue by Plaintiff. In consideration of the payment of the penalty required by Paragraph 46 (Civil Penalty) and the full and satisfactory compliance by the Defendant with the terms of this Decree, the Plaintiff hereby covenants not to sue or take administrative action against the Defendant seeking penalties or injunctive relief for the

violations of Storm Water Requirements at the Sites listed in Appendix H that occurred prior to the Date of Lodging.

65. Plaintiff's Reservations of Rights. Except as expressly resolved in Paragraph 64, the Plaintiff reserves the following rights:

- a. All rights not expressly waived in this Decree;
- b. All rights and remedies, legal and equitable, available to enforce the provisions of this Decree;
- c. The right to obtain civil penalties and injunctive relief, including contempt penalties, fines and statutory penalties, through an enforcement or abatement action against Defendant for any past, present, or future violations of the Clean Water Act or any other statutes, regulations, or rules;
- d. The right to seek and obtain criminal sanctions against any person, including Defendant;
- e. The right to seek relief other than penalties and injunctive relief for the violations alleged in the Compliant including but not limited to response costs or natural resource damages; and
- f. The right to undertake any action against any person, including Defendant, in response to conditions that may present an imminent and substantial endangerment to the public health or welfare or the environment.

66. No Effect on Third Parties. This Decree does not limit or affect the rights of Defendant or of the Plaintiff against any third parties not Party to this Decree, nor does it limit the rights of third parties against Defendant 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 party to this Decree.

67. Defendant's Covenant Not to Sue. Defendant hereby covenants not to sue Plaintiff for any actions undertaken by that Plaintiff through the Date of Lodging.

68. Defendant's Reservations of Right. Except as provided by Paragraph 69 below, or by other express terms of this Decree, Defendant reserves any defenses available to it in any future action brought by any Plaintiff to enforce this Decree, applicable Permits, the Clean Water Act, or any other statutes, regulations, or rules.

69. Waiver of Certain Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 64 of this Section.

70. No Waiver of Sovereign Immunity. Nothing in this Decree shall create a cause of action against the Plaintiff nor shall anything in this Decree be deemed to waive the sovereign immunity of the Plaintiff.

SO ORDERED THIS _____ DAY OF _____, 2009

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Decree in United States v. Cooper Land Development Inc., subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

Date: _____

~~JOHN C. CRUDEN~~
Acting Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division

Date: 17 Aug 2009

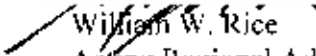
~~Elizabeth Loeb~~
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: (202) 616-8916

JOHN F. WOOD
United States Attorney


Charles M. Thomas, Mo. Bar No. 28522
Assistant United States Attorney
Charles Evans Whitaker Courthouse
400 East Ninth Street, Room 5510
Kansas City, Missouri 64106
Telephone: (816) 426-3130
Facsimile: (816) 426-3165

FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

Date: 7/27/09


William W. Rice
Acting Regional Administrator
U.S. Environmental Protection Agency, Region VII
901 5th Street
Kansas City, KS 66101

Date: 7/27/09


KELLEY CATLIN
Office of Regional Counsel
U.S. Environmental Protection Agency, Region VII
901 N. 5th Street
Kansas City, KS 66106

FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

Date: JUL 30 2009

WILLIAM C. EARLY
Acting Regional Administrator
Environmental Protection Agency, Region III

Cooper Land Development, Inc.
Civil Action No. 08-0709-CV-W-SOW

FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

Date: 7/24/09

LAWRENCE E. STARFIELD¹
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 6

FOR PLAINTIFF UNITED STATES OF AMERICA (continued):

Date: Aug 6, 2009

CYNTHIA GILES
Assistant Administrator for the Office of Enforcement and
Compliance Assurance
U. S. Environmental Protection Agency
Washington, D.C.


Date: July 16, 2007

ELYSE DIBIAGIO-WOOD
Attorney
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Mail Code 2243A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

WE HEREBY CONSENT to the entry of this Decree in United States v. Cooper Land
Development, Inc.

FOR COOPER LAND DEVELOPMENT, INC.

Date: July 15, 2009

William H. Kennedy 
Senior Vice President and General Counsel
Cooper Communities, Inc.
903 North 47th Street
Rogers, AR 72756
Fax: (479) 246-6695

Agent Authorized to Accept Service on Behalf of Above-signed Party:

William H. Kennedy
Senior vice President and General Counsel
Cooper Communities, Inc.
903 North 47th Street
Rogers, AR 72756

APPENDIX A: SWPPP CRITERIA

INSTRUCTIONS FOR STORM WATER POLLUTION PREVENTION PLAN PREPARATION

All SWPPPs shall comply with the terms and conditions of the Applicable Permit, Local Law and the Consent Decree issued in United States v. Cooper Land Development, (W.D. Mo.). other applicable federal law, state law and local law.

The guidelines below are intended to aid personnel in contracting for consulting services for the preparation of Storm Water Pollution Prevention Plans (SWPPP).

Abbreviations

EPA	Environmental Protection Agency
NPDES	National Pollutant Discharge Elimination System
SWPPP	Storm Water Pollution Prevention Plan
NOI	Notice of Intent
NOT	Notice of Termination
MS4	A municipal separate storm water collection system
BMP	Best Management Practice

Performance Guidelines

There are three performance guidelines to which SWPPPs should conform. They should:

1. **Meet legal requirements.**
 - a. Regulatory Requirements

In states where the Federal EPA has authorized the state to implement the requirements of the federal NPDES program, "regulatory requirements" are defined as the latest edition of the state's general permit for discharges from large and small construction sites or an individual permit. In states where the Federal EPA has retained authority over the NPDES program or otherwise continues to issue NPDES permits (e.g. on tribal lands), "regulatory requirements" are defined as the latest edition of the "National Pollution Discharge Elimination System (NPDES) General Permit for Discharge from Large and Small Construction Activities" or an individual permit. In addition, the SWPPP must satisfy the requirements set forth in the Consent Decree entered in United States v. Cooper Land Development (W.D. Mo.).

- b. Consent Decree Requirements: Preparation of the SWPPP shall also be guided

by the requirements of Paragraphs 30 - 35 of the Decree entered in the United States v. Cooper Land Development (W.D. Mo.). Paragraphs 30 - 35 of the Decree require that:

Paragraph 30(f) provides that:

Each SWPPP shall be site-specific, impose the requirements listed in Paragraphs 31-35 below, and contain the following:

- (1) a narrative description of the BMPs to be installed and implemented for each anticipated stage of construction, a justification for those BMPs selected, the sequence, timing and location of such BMPs and the specifications for BMP installation, maintenance and removal. The location of BMPs for each stage of construction should be clearly identified on a site map.
- (2) a statement of whether grading will be phased, and, if so, the identity and description of each phase and the sequence of grading. If phased grading is not planned, the SWPPP should explain why phased grading will not be implemented and what alternative measures will be undertaken to minimize the amount of time that disturbed soil is exposed;
- (3) a description of the size, type, location and anticipated construction dates for each sediment basin to be constructed, the specifications for these basins and ponds, and an explanation of why these plans are sufficient to meet permit requirements regarding sediment basins;
- (4) a description of the types and timing of temporary and permanent stabilization to be used and estimated time periods that each graded area will be unstabilized.

Paragraph 31 provides that:

Requirements Concerning Best Management Practices (“BMPs”).

At all Sites, Defendant shall:

- a. use BMPs of the types and in the quantities sufficient to reduce to the extent practicable pollutants in storm water discharges from the Site and the amount of disturbed soil; and
- b. inspect and maintain BMPs as required under the Applicable Permit.

Paragraph 32 provides that:

Stabilization Requirements:

- a. At all Sites, Defendants shall temporarily stabilize all disturbed areas not under active construction and temporarily stabilize all cleared and graded areas at a Site within fourteen days of the last Construction Activity on that area.
- b. For purposes of this Paragraph, Construction Activities means only ground disturbing activity directly associated with either (i) achieving final approved grade elevations in that specific area of the Site; (ii) installing streets, sidewalks, or utilities; (iii) installing structures called for in the development plan; (iv) activities necessary to achieve the stabilization required by this Paragraph; or (v) Vertical Construction.

Paragraph 33 provides that:

Criteria for Grading and Clearing.

- a. At each Site, Defendant shall schedule grading activities so that the time period for disturbed areas to be without vegetative cover is minimized to the extent practicable and conforms with the Applicable Permit, federal law, state law or Local Law
- b. At each Site clearing, grubbing or grading shall be prohibited within 50 feet of a Defined Water Drainage Course except as authorized by federal law, state law and Local Law.

Paragraph 34 provides that:

Criteria for Sediment Basins.

- a. At each Site, Defendant shall construct and maintain Sediment Basins as required by the Applicable Permit.
- b. At each Site, Defendant shall locate each Sediment Basin as close to the sediment source as practicable. Sediment Basins may not be located offsite.
- c. At each Site, Defendant shall provide each Sediment Basin with a stabilized spillway to minimize the potential for erosion of the spillway.

- d. At each Site, Defendant shall ensure that the waters of the United States are not used as a Sediment Basin unless such activity is explicitly authorized by all necessary permits, including but not limited to a permit pursuant to 33 U.S.C. § 1344.
- e. At each Site, Defendant shall design each Sediment Basin to discharge at a rate that will not cause scouring of the banks or bottom of the receiving water.

Paragraph 35 provides that:

Requirements for Construction Entrances and Exits.

- a. At each Site, Defendant shall design construction entrances and exits that provide a buffer area where construction vehicles can drop their mud to avoid transporting it off site and shall require vehicles to enter and exit the Site through these buffer areas.
 - b. At each Site, Defendant shall inspect the entrance and exit areas weekly, within 24 hours after storm events, and within 24 hours after periods of heavy use.
2. **Be easy to follow and implement.** It is important that the SWPPP be written in such a manner that it is easy for Cooper Land Development's operational personnel to understand and implement. The SWPPP should not be prepared in a vacuum by the consultant, but should reflect discussions and agreements that have been made between the consultants and Cooper Land Development's operational personnel. These discussions and agreements should include such things as construction sequencing and types of Best Management Practices (BMPs) that Cooper Land Development feels are the most cost effective and easiest to maintain.
3. **Be efficient.** There maybe several ways in which the reduction of pollutants from storm water discharges can be achieved in order to comply with Storm Water Requirements. It is the goal of Cooper Land Development to achieve compliance in the most efficient manner possible. When analyzing efficiency, initial costs should be combined with long-term costs (including operation and maintenance costs and potential replacement costs) to determine the appropriate solution for each situation.

SWPPP Checklist

I. A Copy of the NOI and Other Storm Water Related Permits that are required for the Site.

Copies of any federal, state or local storm water related permits should be included with the SWPPP. Questions that need to be addressed and answered in this section include:

- a) What storm water permits do I need?
- b) Do my subcontractors need separate permits or can they be covered under my permit?
- c) What other permits do I need, such as a CWA 404 permit?

II. Storm Water Pollution Prevention Plan (SWPPP) Certification. The SWPPP must be certified as per the Applicable Permit and the Decree.

A. Check the Applicable Permit to see which of the following signatures in (1) through (3) are required.

- (1) Signed by the owner of the Site.
- (2) Signed by the operator of the Site.
- (3) Signed by the Registered Professional Engineer or other credentialed professional specified by the Applicable Permit in the state in which the applicable site is located who is responsible for the preparation of the SWPPP.

B. Under Paragraph 30 of the Decree the SWPPP must also contain certifications by the SWPPP Preparer and Company Storm Water Compliance Manager as follows:

- (1) The Company Storm Water Compliance Manager shall certify on the face of the SWPPP that he or she has been to the Site, reviewed the SWPPP in light of Site conditions and has determined that the SWPPP calls for BMPs appropriate for Site conditions and complies with Storm Water Requirements and this Decree.
- (2) The individual who prepares the SWPPP shall certify on the face of the SWPPP that he or she has prepared the SWPPP using this SWPPP Criteria in Appendix A as a guide, has reviewed the SWPPP in light of Site conditions, and determined that the SWPPP calls for BMPs appropriate for Site conditions and complies with Storm Water Requirements and this Decree.

An example of a Title Block for the certification is as shown below:

ABC XYZ 123 HOMES,
A Delaware corporation,

By: _____
Name: _____
Title: _____

III. Contact Information

The SWPPP shall include the names, phone numbers and a description of each person's duties for the following individuals. If there is more than one Site Storm Water Compliance Manager for a Site, the SWPPP shall designate the specific responsibilities, types of work, geographic areas, or time periods for which each Site Storm Water Compliance Manager is responsible:

- a) Company Storm Water Compliance Manager
- b) Each Site Storm Water Compliance Manager

IV. Notice and Recordkeeping

- a) Posting NOI.
- b) Location of SWPPP and Inspection Reports.
- c) Retention of Records.

V. Responsibilities of Owners and Operators

If there is more than one permittee at the Site, the SWPPP shall include a list of activities that must be completed by each permittee and who has been assigned to implement each activity.

VI. Definition of Permit Area

Check the Applicable Permit to see which of the following are required:

- a) Site name, address, county or governmental subdivision and latitude and longitude of the Site.
- b) Name of the Water of the United States or MS4 into which the project discharges.
- c) Name of the agency or agencies that have jurisdictional authority for storm water pollution prevention.
- d) The function of the project (i.e., single family detached residential, townhouse, condo development).
- e) A description of any other activities such as dedicated crusher plants, asphalt plants, equipment staging areas, or material storage areas that may operate on the project site.

- f) Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including off-site borrow pits and fill areas.
- g) A general location map (e.g., USGS quadrangle map, a portion of a city or county map or other map with enough detail to show the location of the construction site and Waters of the United States within one mile of the site).

VII. Site Plan and BMP Map

Check the Applicable Permit to see which of the following are required:

- a) Direction of storm water flow and approximate slopes anticipated after major grading activities.
- b) Areas of soil disturbance and areas that will not be disturbed.
- c) Locations of major structural and non-structural BMPs.
- d) Locations where stabilization practices are expected to occur.
- e) Locations of off-site material, waste, borrow or equipment storage areas.
- f) Locations of all Waters of the United States.
- g) Locations where storm water discharges to Waters of the United States.
- h) Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.

VIII. Endangered and Threatened Species and Critical Habitat Protection, as required by the Applicable Permit

IX. Historic Properties Protection, as required by the Applicable Permit

X. Statement and Description of Storm Water Discharge Management Controls to Reduce Pollutants

- a) A narrative description of the BMPs to be installed and implemented for each anticipated stage of construction, a justification for those BMPs selected, the sequence, timing and location of such BMPs and the specifications for BMP installation, maintenance and removal. The location of BMPs for each stage of construction should be clearly identified on a site map. It is recommended that in addition to appearing on a comprehensive map, these also appear on "tear out" sheets that can be posted in the construction office.
- b) A description of planned interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. The SWPPP should provide that all disturbed areas not under active construction and all cleared and graded areas shall be temporarily stabilized within fourteen days of the last Construction Activity on that area.
- c) Anticipated dates when major grading activities will occur. Grading activities at the site shall be scheduled so that the time period for disturbed areas to be without vegetative cover is minimized to the extent practicable and conforms with the Applicable Permit and federal, state and local law. In particular, clearing,

grubbing or grading shall be prohibited within 50 feet of a Defined Water Drainage Course (i.e., any non-enclosed waterway or conveyance, including but not limited to streams and creeks, with the potential to carry run-off from the Site to a Water of the U.S.) except as authorized by federal, state and local law.

- d) Anticipated dates when construction activities temporarily or permanently cease on a portion of the site.
- e) A description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and/or the discharge of pollutants from exposed areas of the site. Sediment Basins shall be constructed and maintained as required by the Applicable Permit. Sediment Basins shall be located as close to the sediment source as practicable. Sediment Basins may not be located offsite. Sediment Basins must be provided with a stabilized spillway to minimize the potential for erosion of the spillway. Sediment Basins shall be designed to discharge at a rate that will not cause scouring of the banks or bottom of the receiving water. Waters of the United States shall not be used as a Sediment Basin unless such activity is explicitly authorized by all necessary permits, including but not limited to a permit pursuant to 33 U.S.C. § 1344.
- f) A description of buffer areas for construction entrance and exits shall be designed where construction vehicles can drop their mud to avoid transporting it off site and vehicles shall be required to enter and exit the Site through these buffer areas.
- g) A description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed.
- h) A description of the measures to prevent the discharge of solid materials, including building materials, to the Waters of the United States.
- i) A description of the measures to manage hazardous wastes, paint and cement washout, and other potential sources of storm water contamination.
- j) A description of the measures to minimize, to the extent practicable, off-site vehicle tracking of sediments onto paved surfaces and the generation of dust.
- k) A description of controls and measures that will be implemented to control the storm water discharges from on-site crusher and asphalt plants.

XI. Description of Non-Storm Water Discharge Management Controls to Reduce Pollutants. Refer to the Applicable Permit for which non-storm water discharges are allowable and which are prohibited. The list below is for discussion purposes only.

- a) Discharges from fire fighting activities.
- b) Fire hydrant flushing.
- c) Waters used to wash vehicles where detergents are not used.
- d) Water used to control dust.
- e) Water used to flush waterlines and wash down buildings.
- f) Air conditioning condensate.

- g) Uncontaminated spring water, groundwater and discharges from foundation drains.
- h) Uncontaminated excavation dewatering.
- i) Landscape irrigation.
- j) Any hazardous wastes on the Site.

XII. Procedures for Dealing with Spills, and Releases in Excess of Mandated Reportable Quantities, as required by the Applicable Permit.

- a) A list of emergency contact numbers.
- b) A table listing types of materials and the reportable quantity of each.
- c) Procedures for dealing with and reporting spills and releases.

XIII. Maintenance of Storm Water Discharge Management Controls

A description of the maintenance requirements for the BMPs laid out in the SWPPP.

XIV. Inspections

- a) Frequency of inspections. BMPs shall be inspected and maintained as required under the Applicable Permit. Construction entrance and exit areas shall be inspected weekly, within 24 hours after storm events, and within 24 hours after periods of heavy use.
- b) Standardized forms for inspection reports.

XV. Procedures for Updating and Modifying the SWPPP

- a) A statement designating when the SWPPP must be amended which will include the requirement to revise, update or amend as needed to reflect any changes in site conditions and in accordance with the Applicable Permit.
- b) A statement of the procedure that should be followed to update and modify the SWPPP.

XVI. Notice of Termination

- a) When a NOT is filed.
- b) Procedure for filing a NOT.

APPENDIX B: PRE-CONSTRUCTION INSPECTION AND REVIEW FORM

PROJECT PRE-CONSTRUCTION INSPECTION AND REVIEW

Project Information

Company or Division:	
Site Name:	Type of Site:
City in Which Site is Located:	County in Which Site is Located:
Special District in Which Site is Located (if applicable):	State in Which Site is Located:

Permit Coverage Information

Does the Site need coverage under the Applicable Permit? Yes_____ No_____			
If yes, fill in the blocks below. If the answer is "No", the Company Storm Water Compliance Manager must verify that no permit coverage is required and sign below:			
Signature:		Date:	
Issuing Authority:	Name of Permittee:	Permit No. (if available):	Date of Permit Coverage:

Contact Information

Cooper Land Development Storm Water Compliance Manager:	Tel. No.		Training Verification (including date of last training):
--	-----------------	--	---

Site Storm Water Compliance Manager(s):	Tel. No.	Responsible Areas	Training Verification (including date of last training):
Site Storm Water Compliance Manager(s):	Tel. No.	Responsible Areas	Training Verification (including date of last training):
Site Storm Water Compliance Manager(s):	Tel. No.	Responsible Areas	Training Verification (including date of last training):
Site Storm Water Compliance Manager(s):	Tel. No.	Responsible Areas	Training Verification (including date of last training):
Site Storm Water Compliance Manager(s):	Tel. No.	Responsible Areas	Training Verification (including date of last training):

Storm Water Pollution Prevention Plan Information

SWPPP Prepared By:			Date of SWPPP Certification:	
	Yes	No	Remarks:	Date of Correction:
Has the SWPPP Preparer certified that he/she prepared the SWPPP using the SWPPP Criteria in Appendix A of the Consent Decree, reviewed the SWPPP in light of Site conditions, and determined that the SWPPP calls for BMPs appropriate for Site conditions and complies with Storm Water Requirements and the Consent Decree?				
Has the CLD Storm Water Manager certified that he/she has been to the Site, reviewed the SWPPP in light of Site conditions and determined that the SWPPP calls for BMPs appropriate for Site conditions and complies with Storm Water Requirements and this Decree?				
If there will be more than 1 Site Storm Water Compliance Manager at the Site, does the SWPPP designate the specific types of work, geographic areas or time periods for which each Site Storm Water Compliance is responsible?				
Have all Site Storm Water Compliance Managers reviewed the SWPPP?				

Site Status

	Yes	No	Remarks:	Date of Correction:
Are all initial-phase BMPs called for by the SWPPP and Applicable Permit properly located and installed?				
For those Sites where construction has already commenced, are the BMPs working properly and are they appropriate for existing site conditions?				
Has all Required Training and Orientation occurred as required?				

Do not sign this pre-construction review worksheet until all items on this worksheet have been corrected and the date of correction noted. Do not commence Construction Activity until this worksheet has been signed. For the purposes of this form, Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of BMPs that are not sediment basins, provided that none of these activities involve significant soil disturbance.

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

Signature: _____

Date: _____

Print Name and Title: _____

APPENDIX C: SITE INSPECTION FORM

User Instructions to Site Inspection Report and Responsive Action Log

This form consists of the Site Inspection Report and Responsive Action Log. These are legal documents.

1. Only the Company or Site Storm Water Compliance Manager or someone designated by the Site Storm Water Compliance Manager who has been Storm Water Trained is permitted to undertake the inspection required by this form. If you are not this person, you must contact the Site Storm Water Compliance Manager or Company Storm Water Compliance Manager immediately.
2. Each Action Item must have a corresponding Responsive Action. An Action Item is a condition 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.
3. Before proceeding with any inspection, you must first verify whether all Responsive Actions identified from the prior inspection, if any, are undertaken within the time period allowed by the Applicable Permit and applicable relevant information is recorded for the prior inspection.
4. 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.
5. You must sign and date the completed Site Inspection Report and Responsive Action Log. If you are not a Site Storm Water Compliance Manager and you have been delegated to complete this form, a Site Storm Water Compliance Manager must review and sign the completed form as well.
6. All completed Site Inspection Reports and Responsive Action Logs must be kept with the SWPPP.

Procedures

Site Inspection Report and Responsive Action Log

7. You must record the following information on each and every Site Inspection Report and Responsive Action Log:

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

Permittee. Enter the name that appears on the Applicable Permit or the Notice of Intent.

Inspection Date. Insert the date 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.

Type of Inspection. Circle the inspection type that represents the purpose of the inspection. Only one inspection type may be circled. An inspection is required to be undertaken in each of the following circumstances: regular, applicable precipitation event, quarterly, or final prior to filing of the Notice of Termination.

Construction Stage. Briefly describe the type of Construction Activities occurring, e.g. initial grading, vertical construction, stabilization activities, etc.

Status of Each Sediment Basin. Describe the level and condition of each sediment basin and note the date of the last maintenance activities for that basin.

Questions

1. You must respond to all of the following questions on each and every Site Inspection Report and Responsive Action Log.
2. You must check "Yes," "No," or "N/A" for each question.
3. If you check "No" for any question (other than for Question C), you must provide a reference number under the "Responsive Action Log Reference #" column for each Action Item. 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, E-1, E-2, etc.

Site Inspection Report

Site name: _____

Permittee: _____

Inspection Date: _____ Inspector: _____

Weather Conditions (Circle One): Dry Rain Snow Icy Date of Last Rain Event: _____

Inspection Type (Circle One): Regular Precipitation Quarterly Final

Construction Stage: _____

Status of Each Sediment Basin: _____

General		Yes	No	N/A	Responsive Action Log Reference #(s)
A.	Are the Applicable Permit and SWPPP on Site?				
B.	Is accurate contact information provided on Site?				
C.	Have there been any Federal or State Inspections since the last inspection?				
D.	Was the Site Inspection Report and Responsive Action Log for last Inspection signed by the Site Storm Water Compliance Manager?				
E.	Have Responsive Actions from the last Site Inspection been timely addressed? If not, describe why not on the Responsive Action Log for this Site Inspection.				
Maintenance					
F.	Are there excess sediment or other pollutants exiting from the Site?				
G.	Are roads/gutters free of excessive sediment from the Site?				
H.	Are exit/entrance controls properly located, in working condition, and no repairs necessary?				

General		Yes	No	N/A	Responsive Action Log Reference #(s)
I.	Are exposed areas stabilized as required?				
J.	Are stockpiles located and stabilized as required?				
K.	Are BMPs properly located, in working condition, and no repairs necessary?				
L.	Are washouts properly located, in working condition, and no repairs necessary?				
M.	Are non-storm water and hazardous materials managed as required?				
N.	Are trash, construction debris, and other solid wastes managed as required?				
O.	Are portable toilets provided and properly located?				
P.	Are the Site BMPs and the SWPPP consistent with each other?				

Responsive Action Log

Responsive Action Log Reference #(s)	Responsive Action	Date Noted	Date Responsive Action Completed	Initials

Responsive Action Log Reference #(s)	Responsive Action	Date Noted	Date Responsive Action Completed	Initials

Inspection Conducted By:

Signature: _____ Print Name: _____

Title: _____ Company: _____

Date: _____

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

Site Storm Water Compliance Manager:

Signature: _____ Print Name: _____

Title: _____ Company: _____

Date: _____

Person Completing this form if not a Site Storm Water Compliance Manager:

Signature: _____ Print Name: _____

Title: _____ Company: _____

Date: _____

APPENDIX D: QUARTERLY COMPLIANCE REPORT FORM

Quarterly Compliance Report

Site Compliance Narrative

Site Name: _____ Permittee: _____

Date of Review: _____ Site Inspected By: _____

Company Storm Water Compliance Manager: _____ Initial after Review: _____

Upon completion of the Quarterly Compliance Inspection, each of the following topics should be reviewed with all of the Site Storm Water Compliance Managers. When the review is completed, all Storm Water Compliance Managers must initial the form.

Site Storm Water Compliance Manager	Area(s) of Responsibility	Initials	Date

[insert more signature blocks as necessary]

Physical Condition of the Site and BMPs
Is there a compliance issue(s) related to the physical condition of the Site or BMPs? (circle one) Y or N
If you answered Yes above, describe the issues and recommended action(s) to address the issue(s):

Adequacy of the SWPPP and Record Keeping Procedures

Are the SWPPP and the record keeping procedures adequate? (circle one) **Y** or **N**

If you answered **No** above, describe the inadequacies and recommended action(s) to address the inadequacies:

Contractor Compliance with Storm Water Requirements

Is there a compliance issue(s) related to a Listed Contractor or other Contractor compliance with Storm Water Requirements?
(circle one) **Y** or **N**

If you answered **Yes** above, describe the issues and recommended action(s) to address the issue(s):

Number of Responsive Actions not Performed in the Time and Manner Required by the Applicable Permit

Is there a compliance issue(s) related to the number of Responsive Actions not performed in the time and manner required by the Applicable Permit? (circle one) **Y** or **N**

If you answered **Yes** above, describe the issues and recommended action(s) to address the issue(s):

Recurring Compliance Issues at the Site

Is there a recurring compliance issue(s) related to storm water management at the Site? (circle one) **Y**
or **N**

If you answered **Yes** above, describe the issues and recommended action(s) to address the issue(s):

Quarterly Violations Table

Site Name: _____ Permittee: _____

Company Storm Water Compliance Manager: _____ Initial after Review: _____

Site Storm Water Compliance Manager	Area(s) of Responsibility	Initials	Date

[insert more signature blocks as necessary]

Violations and Other Notable Incidents	Incident Dates and Details	Incident Dates and Details	Incident Dates and Details	Incident Dates and Details	Total Violations
Commencement of Construction Activity prior to obtaining a permit.					
Commencement of Construction Activity prior to preparing a Site-Specific SWPPP.					
Discharges of pollutants from a Site to the Waters of the United States prior to obtaining coverage as required under an Applicable Permit (provide dates of discharges).					
Failure to perform or, if performed, a material failure to document a Pre-Construction Inspection and Review as required by Paragraph 37 of the Decree.					

Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 31 of the Decree pertaining to construction and maintenance of BMPs except for sediment basins and stabilization requirements.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 32 of the Decree pertaining to stabilization of disturbed areas.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 33 of the Decree prohibiting grading or clearing in certain areas or requiring phased grading or clearing.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 34 of the Decree pertaining to construction and maintenance of sediment basins.					
Failure to perform or, if performed, a material failure to document a Quarterly Compliance Inspection or Review as required by Paragraph 41 of the Decree.					
Failure to perform or, if performed, a material failure to document a Site Inspection as required by Paragraph 37 of the Decree.					
Failure to undertake a Response Action in the time required by the Applicable Permit.					
Failure to train, meet with, distribute tip sheets to and/or certify persons as required by Paragraph 43 of the Decree.					

Failure to comply with requirements of Paragraph 42 of the Decree pertaining to public notification signs.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or any Paragraph of this Decree not otherwise addressed reported above.					
Other notable items pertaining to Site Storm Water management and compliance with Applicable Permit, SWPPP and Decree.					

APPENDIX E: COMPLIANCE SUMMARY REPORT

Compliance Summary Report

Site Compliance Narrative

Site Name: _____ Permittee: _____

Date of Review: _____ Site Inspected By: _____

Company Storm Water Compliance Manager: _____ Initial after Review: _____

List Site Storm Water Compliance Managers:

Site Storm Water Compliance Manager	Area(s) of Responsibility	Initials	Date

[insert more signature blocks as necessary]

Complete this form for the last six months since submission of the last Compliance Summary Report.

Physical Condition of the Site and BMPs
Were any there compliance issues related to the physical condition of the Site or BMPs? (circle one) Y or N
If you answered Yes above, describe the issues and recommended action(s) to address the issue(s):

Adequacy of the SWPPP and Record Keeping Procedures

Are the SWPPP and the record keeping procedures adequate? (circle one) **Y** or **N**

If you answered **No** above, describe the inadequacies and recommended action(s) to address the inadequacies:

Contractor Compliance with Storm Water Requirements

Were there any compliance issues related to a Listed Contractor or other Contractor compliance with Storm Water Requirements?
(circle one) **Y** or **N**

If you answered **Yes** above, describe the issues and recommended action(s) to address the issue(s):

Number of Responsive Actions not Performed in the Time and Manner Required by the Applicable Permit

Were there any compliance issues related to the number of Responsive Actions not performed in the time and manner required by the Applicable Permit? (circle one) **Y** or **N**

If you answered **Yes** above, describe the issues and recommended action(s) to address the issue(s):

Recurring Compliance Issues at the Site

Are there any recurring compliance issues related to storm water management at the Site? (circle one)
Y or **N**

If you answered **Yes** above, describe the issues and recommended action(s) to address the issue(s):

Semi-Annual Violations Table

Site Name: _____ Permittee: _____

Company Storm Water Compliance Manager: _____ Initial after Review: _____

Site Storm Water Compliance Manager	Area(s) of Responsibility	Initials	Date

[insert more signature blocks as necessary]

Violations and Other Notable Incidents	Incident Dates and Details	Incident Dates and Details	Incident Dates and Details	Incident Dates and Details	Total Violations
Commencement of Construction Activity prior to obtaining a permit.					
Commencement of Construction Activity prior to preparing a Site-Specific SWPPP.					
Discharges of pollutants from a Site to the Waters of the United States prior to obtaining coverage as required under an Applicable Permit (provide dates of discharges).					
Failure to perform or, if performed, a material failure to document a Pre-Construction Inspection and Review as required by Paragraph 37 of the Decree.					

Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 31 of the Decree pertaining to construction and maintenance of BMPs except for sediment basins and stabilization requirements.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 32 of the Decree pertaining to stabilization of disturbed areas.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 33 of the Decree prohibiting grading or clearing in certain areas or requiring phased grading or clearing.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or Paragraph 34 of the Decree pertaining to construction and maintenance of sediment basins.					
Failure to perform or, if performed, a material failure to document a Quarterly Compliance Inspection or Review as required by Paragraph 41 of the Decree.					
Failure to perform or, if performed, a material failure to document a Site Inspection as required by Paragraph 37 of the Decree.					
Failure to undertake a Response Action in the time required by the Applicable Permit.					
Failure to train, meet with, distribute tip sheets to and/or certify persons as required by Paragraph 43 of the Decree.					

Failure to comply with requirements of Paragraph 42 of the Decree pertaining to public notification signs.					
Violation of any Storm Water Requirement, Applicable Permit requirement, SWPPP provision or any Paragraph of this Decree not otherwise addressed reported above.					
Other notable items pertaining to Site Storm Water management and compliance with Applicable Permit, SWPPP and Decree.					

APPENDIX F: LISTED CONTRACTORS

Contractors who perform the following types of work:

Earthmoving

Grading

Installing or Maintaining BMPs

Storm Drain Installation

Water and Sewer Installation

Paving

Road building

Landscape Installation

Masonry

Interior and Exterior Painting and Staining

Installing Drywall, Framing, Siding or stucco

Installing and Maintaining Latrines

APPENDIX G: SAMPLE STORM WATER TIP SHEET

TIP SHEET
Storm Water Compliance Training

The goal of every job that Cooper Land Development (CLD) is responsible for is to minimize the pollution in the water that flows off the site. As an employee, contractor, or subcontractor of CLD you play an important role in helping us with our goal. Please be aware of the following topics as they relate to your work.

- The **Consent Decree** is the reference for Storm Water Compliance at a site and for the education of both employees and contractors in the proper work practices that will comply with the goals of the **Consent Decree** – that minimize pollutants that leave the site.
- The **Clean Water Act** sets a goal that all Waters of the United States are fishable and swimmable. As part of that goal, the **Clean Water Act** regulates the pollutants that are washed off disturbed land by storm water.
- The **Clean Water Act** requires that any pollutants in storm water must be in compliance with the terms of the **Construction General Permit** that allows us to disturb land on the site. This permit governs the measures we have to take to limit the amount of pollutants in the storm water.
- The **Storm Water Pollution Prevention Plan** or **SWPPP** is a fundamental requirement of the **Construction General Permit**. A **SWPPP**:
 1. Identifies all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. The **SWPPP** also describes practices to be used to reduce pollutants in storm water discharges from the construction site, and
 2. Helps assure compliance with the terms and conditions of the permit (when the plan is designed for the individual site, and is fully implemented).

The law requires that activities at sites where land disturbance is occurring be in conformance with the **SWPPP** for that site.

- **Best Management Practices** or **BMP** are measures specified by the **SWPPP** taken to reduce the amount of pollutants in storm water. **BMPs** including silt fences, sedimentation basins, vegetation, rock berms, gutter guards, curb inlet protection, drainage swales, and other measures are very important in assuring compliance with the permit and to keep sediment out of the storm water discharging from the site. If you notice a problem with any **BMP** please notify your foreman immediately. Do not remove or alter a **BMP** without specific directions from your supervisor.
- If you see pollutants in any form, in storm water leaving the job site, please stop what you are doing and notify your foreman immediately.

- If you see mud or debris on the road in front of the job or at any entrance/exit please notify your foreman immediately or call XXXXXXXXXXXXXXXX at XXXXXXXXXXXX.

I understand the importance of Storm Water Compliance. I have read and comprehend the above information. If I have further questions I will ask my foreman or call XXXXXXXX at XXXXXXXXXXXX.

APPENDIX H: LIST OF SITES

Creekmoor

Bella Vista Village

Glade Springs Village

Hot Springs Village

Sienna Lake