

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
F & R CONTRACTORS CORP.)	
and)	
F & R CONTRACTORS LLC,)	
)	
Defendants.)	
)	

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree pursuant to Sections 309(b) and (d) of the Clean Water Act (the “Act”), 33 U.S.C. §§ 1319(b) and (d), alleging that Defendant F&R Contractors Corp. and Defendant F&R Contractors LLC (hereinafter collectively referred to as “F&R” or “Defendant”) violated the Act and the regulations promulgated pursuant to that statute, including the conditions and limitations of the Federal Construction General Permit (“Federal CGP”) issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, for the discharge of stormwater pollutants from construction sites to waters of the United States.

WHEREAS F&R Contractors Corp. filed a certificate of conversion with the Puerto Rico Department of State to convert to F&R Contractors LLC on or about November 10, 2011.

WHEREAS F&R Contractors LLC is the successor-in-interest to F&R Contractors Corp. and assumes any obligations or liabilities of F&R Contractors Corporation incurred prior to its conversion.

WHEREAS, F&R operates or has operated construction sites throughout the Commonwealth of Puerto Rico, primarily for residential developments, including, but not limited to: 1) the 34-acre Estancias del Bosque Housing Development (“Estancias del Bosque”), 2) the 9-acre Puerta del Mar Residential Development (“Puerta del Mar”), and 3) the 71-acre Señorío de Gonzaga Housing Development (“Señorío de Gonzaga”).

WHEREAS, the Complaint alleges that F&R failed to implement the conditions of the Federal CGP at each site listed above, including, but not limited to, failing to prepare adequate stormwater pollution prevention plans (“SWPPPs”), failing to implement the necessary best

management practices (“BMPs”), failing to update as necessary the SWPPPs, and failing to comply with notice and site inspection requirements, all as required by the Federal CGP.

WHEREAS, F&R Construction Group, Inc. (“F&R Group” and, collectively with F&R Contractors Corp. and F&R Contractors LLC, the “Settling Parties”) is owned in part by three of the seven shareholders/members of Defendants F&R Contractors Corp. and F&R Contractors LLC, and is a voluntary party to this Consent Decree to ensure the implementation of this Consent Decree’s provisions.

WHEREAS, the Settling Parties under this Consent Decree have already started the implementation and operation of several measures, including the appointment of key in-house compliance personnel and the engagement of outside consultants, that are not specifically required by the Federal CGP.

WHEREAS, the Settling Parties do not admit any liability to the United States arising out of the transactions, events or occurrences alleged in the Complaint.

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

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

I. JURISDICTION AND VENUE

1. Jurisdiction. This Court has jurisdiction over the subject matter of this action and over the Parties to this Consent Decree, pursuant to Section 309(b) of the Act, 33 U.S.C.

§ 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue lies in this district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint occurred in, and the Settling Parties conduct business in, this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Settling Parties consent to the Court's jurisdiction over this Consent Decree and any such action and over the Settling Parties and by execution hereof consent to venue in this judicial district.

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

II. APPLICABILITY

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

4. Transfer of Operation. No transfer of operation of any Site, as defined in Section IV (Definitions), whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the Settling Parties of their obligation to ensure that the terms of the Decree are implemented during such time as either Settling Party is an operator of the Site, in accordance with the Act.

5. Duty to Inform. The Settling Parties shall provide a copy of this Consent Decree to all of its officers, employees and agents whose duties might reasonably include Construction Activities or compliance with any provision of this Decree, as well as to any Contractor retained

to perform work related to Construction Activities required under this Consent Decree. The Settling Parties shall include as a condition to any such contract, the Contractor's obligation to perform Construction Activities in conformity with the terms of this Consent Decree.

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

7. Corporate Structure, Transfer of Assets. The Settling Parties shall not alter their general corporate structure or enter into agreements with third parties that would allow them to directly or indirectly circumvent the requirements of this Consent Decree.

III. OBJECTIVES

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

IV. DEFINITIONS

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

- a. “Act” or “Clean Water Act” shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.
- b. “Action Item” shall mean a condition that requires action to be taken, including any Corrective Action as defined by the Federal CGP (as hereafter defined), to achieve or maintain compliance with Stormwater Requirements, as defined herein.
- c. “Applicable Permit(s)” shall mean (i) the Federal CGP (as hereafter defined), or (ii) any individual NPDES permit issued by EPA or an authorized governmental entity regarding stormwater discharges associated with construction activities pursuant to 33 U.S.C. § 1342. This term applies to any such permit in its current form or as it may be amended in the future.
- d. “Best Management Practices” or “BMPs” shall mean the same as the term is defined in 40 C.F.R. § 122.2 in its form as of the Effective Date or as it may be amended in the future. As of the Effective Date, that definition is “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.”
- e. “Business Day” shall mean any day other than a Saturday, Sunday, or federal or Commonwealth of Puerto Rico holiday.
- f. “Complaint” shall mean the complaint filed by the United States in this action.

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

h. “Construction Activity(ies)” shall mean earth-disturbing activities, such as the clearing, grading, and excavation of land, and related activities at a Site involving construction materials, equipment storage or maintenance – *e.g.*, fill piles, borrow area, concrete truck washout, fueling, measures used to control the quality of storm water associated with construction activity, or other industrial storm water directly related to the construction process, as in concrete or asphalt batch plants. For purposes of this Consent Decree, Construction Activities do not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of Stormwater Control Measures that are not sediment basins, provided that these activities do not involve soil disturbance.

i. “Contractor(s)” shall mean any of the Settling Parties’ consultants, contractors or sub-contractors at a Site, including any employees of the consultants, contractors or subcontractors working at a Site.

j. “Corrective Action” shall mean any action taken to (1) repair, modify, or replace any stormwater control used at a Site; (2) clean up and dispose of spills, releases or other deposits found on a Site; or (3) remedy a permit violation.

k. “Corrective Action Report” shall mean a report filed in connection with a Corrective Action pursuant to Part 5.4 of the Federal CGP.

l. “Covered Sites” shall mean those sites listed in Appendix A hereto, and any site operated by the Settling Parties that is determined at any time prior to the termination of this Consent Decree to be subject to the requirements of the Act.

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

n. “Defendant” shall mean F&R Contractors Corp. and its successor-in-interest, F&R Contractors LLC.

o. “Effective Date” shall have the definition provided in Section XVI (Effective Date).

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

q. “Federal Construction General Permit” or “Federal CGP” shall mean the federal NPDES General Permit for Discharges from Construction Activities issued by EPA on February 16, 2012 (77 Fed. Reg. 12286) 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 stormwater discharges from construction activities.

r. “Notice of Intent” or “NOI” shall mean a request for coverage under an Applicable Permit.

s. “Notice of Termination” or “NOT” shall mean notification that coverage under an Applicable Permit is ready for termination.

t. “NPDES” shall mean the National Pollutant Discharge Elimination System.

- u. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.
- v. “Parties” shall mean the United States and the Settling Parties.
- w. “Pre-Construction Inspection and Review” shall mean the inspection and review required by Paragraph 23 (Pre-Construction Inspection and Review).
- x. “Pre-Construction Inspection and Review Form” or “PCIR Form” shall mean the form attached at Appendix D and required by Paragraph 23 (Pre-Construction Inspection and Review).
- y. “Quarterly Compliance Inspection and Review” shall mean the inspection and review required by Paragraph 29 (Quarterly Compliance Inspection and Review).
- z. “Quarterly Compliance Inspection Form” shall mean the form attached at Appendix F and required by Paragraph 29 (Quarterly Compliance Inspection and Review).
- aa. “Quarterly Reporting Period” shall mean each successive period of three (3) calendar months following the first Quarterly Reporting Period. The first Quarterly Reporting Period shall run from the Effective Date until the end of the first three (3) full calendar months following the Effective Date. The last day of the last Quarterly Reporting Period will be three (3) years after the Effective Date, even if this results in a Quarterly Reporting Period of less than three (3) full calendar months.
- bb. “Quarterly Summary Report” shall mean the report to be prepared and submitted by the Company Stormwater Compliance Manager using the form attached as Appendix H and as required by Paragraph 30 (Quarterly Summary Report).

cc. “Record” shall mean any record, report, document or photograph required to be created or maintained pursuant to Stormwater Requirements.

dd. “Responsive Action” shall mean an action taken or that is necessary to be taken to achieve or maintain compliance with Stormwater Requirements, including Corrective Actions as defined by the Federal CGP.

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

ff. “Settling Parties” shall mean F&R Contractors Corp., F&R Contractors LLC, and F&R Construction Group, Inc.

gg. “Site” shall mean any location for which either or both of the Settling Parties has executed a contract (verbally or in writing) for construction, and (a) either (i) has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, or (ii) has day-to-day operational control of activities at a project that are necessary to ensure compliance with a SWPPP for the Site or other conditions of an Applicable Permit (*e.g.*, the Settling Parties are authorized to direct workers at a Site to carry out activities required by the SWPPP or to comply with other conditions of an Applicable Permit), and (b) at which there is or will be Construction Activities requiring an Applicable Permit.

hh. “Site Inspection Form” shall mean the form attached as Appendix E-1 and as required by Paragraph 25 (Inspections).

ii. “Stormwater Consultant” shall mean a person or company who provides professional or expert assistance to the Settling Parties to ensure compliance with Stormwater

Requirements. Each person who is a Stormwater Consultant shall: (i) possess the skills to assess conditions at a Site that could impact the quality of stormwater and non-stormwater discharges and compliance with Stormwater Requirements; and (ii) be knowledgeable in the principles and practices of sediment and erosion control and other Stormwater Control Measures.

jj. “Stormwater Control Measures” shall mean any stormwater control, BMP or other method (including narrative effluent limitations) used to prevent or reduce the discharge of pollutants from a Site to waters of the United States.

kk. “Stormwater Requirements” shall mean the terms and conditions of this Decree and the Applicable Permit for the particular Site, and the laws and regulations that apply, interpret, or enforce the Applicable Permit, in their form as of the Effective Date or as any of the foregoing requirements may be amended in the future.

ll. “Stormwater Trained” shall mean an individual who has successfully completed one of the following methods of stormwater training: (i) one who is currently certified by the International Erosion Control Association under the Certified Professional in Erosion & Sediment Control (“CPESC”) program; (ii) one who is certified under the Stormwater Training Program pursuant to Paragraph 21 (Stormwater Training Program), wherein the training instructor shall be CPESC-certified; or (iii) one who has completed another stormwater training program by a CPESC-certified instructor, either classroom or web-based, authorized by EPA after a request made to the EPA representative(s) listed in Section XV (Notices). EPA shall make all reasonable efforts to timely review any such request. Any dispute regarding EPA’s response to such request shall be addressed through the Dispute Resolution process as set forth in Section XI (Dispute Resolution). Successful completion of any method of training described in

this subparagraph shall require successful passage of any and all comprehension tests in the relevant program.

mm. “Stormwater Training Program” shall include all of the training required by Paragraph 21 (Stormwater Training Program).

nn. “SWPPP” shall mean a Stormwater Pollution Prevention Plan or other plan for controlling pollutants in stormwater discharges from Sites that meets the requirements of Paragraph 18 (SWPPPs).

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

V. CIVIL PENALTY

10. Amount. No later than thirty (30) Days after the Effective Date, the Settling Parties shall pay the sum of \$500,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is entered with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of entry.

11. Delivery of Penalty. The Settling Parties shall pay the civil penalty due at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to the Settling Parties by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Puerto Rico, after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which the Settling Parties shall use to identify all payments required to be made in accordance with this Decree. The FLU will provide the payment instructions to:

Mr. Néstor A. Amador Chacón, Esq.
Comptroller
F&R Contractors Corp./F&R Contractors LLC
P.O Box 9932
San Juan, PR 00908-2232
Tel.: (787) 753-7010
namador@frcg.net

on behalf of the Settling Parties. The Settling Parties may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XV (Notices). At the time of payment, the Settling Parties shall send notice that payment has been made: (i) to EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XV; and (iii) to EPA Region 2 in accordance with Section XV. Such notice shall reference the CDCS number and DOJ case number 90-5-1-1-09628.

12. Tax. The Settling Parties shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) when calculating its federal, Commonwealth of Puerto Rico or local income tax obligations, if any.

VI. COMPLIANCE REQUIREMENTS

13. Compliance with Applicable Permits. The Settling Parties shall fully comply with all requirements of the Act as it relates to the discharge of stormwater from Sites, as well as all implementing regulations and the terms and conditions of all Applicable Permits.

14. Designation of Company Stormwater Compliance Manager.

a. No later than five (5) Days after the Effective Date, the Settling Parties shall submit in writing a notice to the United States identifying one employee of the Settling

Parties who will serve as the Company Stormwater Compliance Manager to oversee stormwater compliance activities throughout F&R and F&R Group, and shall submit evidence that the Company Stormwater Compliance Manager meets the criteria set forth in this Paragraph. The Company Stormwater Compliance Manager shall (i) be an employee of the Settling Parties; (ii) be Stormwater Trained; (iii) have the authority and responsibility to manage all activities necessary to meet Stormwater Requirements at each Site, including those activities performed by subcontractors; (iv) have the authority to order any person to stop any work at a Site when necessary to comply with Stormwater Requirements and to order such other actions as necessary to comply with the Stormwater Requirements; (v) oversee each Site Stormwater Compliance Manager; (vi) ensure a SWPPP has been completed that complies with Stormwater Requirements prior to commencement of Construction Activities at a Site; (vii) have the authority and responsibility to certify and cause a Site's SWPPP to be amended as necessary at those Sites where the Settling Parties have control over the preparation of the SWPPP, and to notify the Site owner of any SWPPP amendments; (viii) have the authority and responsibility to notify the Site owner of the need to amend the SWPPP where the owner retains control of the SWPPP, and ensure SWPPP amendments are completed where required and comply with Stormwater Requirements; (ix) oversee the development and implementation of the Settling Parties' Stormwater Training Program; (x) oversee the development, maintenance and delivery of the List of Sites to EPA and provide notice of Construction Activities and permit terminations pursuant to Paragraph 16; (xi) develop and submit to EPA the Quarterly Compliance Summary Reports; (xii) serve as the Settling Parties' point of contact for EPA regarding compliance with Stormwater Requirements and the Consent Decree; and (xiii) have the authority and

responsibility to immediately raise concerns with and make recommendations to the owner of the Site, and to notify EPA of any concerns.

b. The Company Stormwater Compliance Manager shall maintain his or her certification of Stormwater Trained as current, pursuant to the applicable certification requirements. The Settling Parties may change the Company Stormwater Compliance Manager by providing EPA with written notice of the change pursuant to Section XV (Notices) and submitting evidence that the person selected meets the criteria set forth in this Paragraph. The name and contact information for the Company Stormwater Compliance Manager shall be posted in a visible location at each Site along with the name and contact information for the Site Stormwater Compliance Manager.

15. Designation of Site Stormwater Compliance Managers.

a. For each Site, the Settling Parties shall designate as Site Stormwater Compliance Manager an employee of Settling Parties who shall (i) be Stormwater Trained; (ii) be given and have reviewed a copy of the site-specific SWPPP and this Consent Decree; (iii) have the authority and responsibility to supervise and oversee all tasks necessary to comply with Stormwater Requirements at the Site; (iv) have the authority to stop work within the Site when necessary to ensure compliance with the applicable Stormwater Requirements and have the authority and responsibility to order or recommend such actions as necessary to comply with said requirements; (v) be familiar with the Site's SWPPP, and have the authority and responsibility to update the SWPPP on-Site and to propose SWPPP amendments where necessary to the Company Stormwater Compliance Manager; (vi) be the point of contact at the Site for regulatory officials and Settling Parties' or a Contractor's employees regarding applicable Stormwater

Requirements; (vii) report to the Company Stormwater Compliance Manager regarding compliance with Stormwater Requirements; and (viii) except as specifically provided in the Consent Decree, be on Site when Construction Activities are occurring. Upon any change in the designation of a Site Stormwater Compliance Manager for a specific Site, the Settling Parties shall identify the new Site Stormwater Compliance Manager in the corresponding SWPPP and certify that the replacement meets the requirements set forth herein.

b. Timing for Designation of Site Stormwater Compliance Managers: The Settling Parties shall designate a Site Stormwater Compliance Manager for each Site within thirty (30) Days of the Effective Date, or fifteen (15) Days prior to the commencement of Construction Activity at the Site, whichever occurs later. The Site Stormwater Compliance Manager may be the same person at more than one Site and may have other duties at the Site, provided that each Site Stormwater Compliance Manager is afforded sufficient time and authority (including the authority to update the site-specific SWPPP as needed) to meet the obligations under this Consent Decree.

c. The name and contact information of the Site Stormwater Compliance Manager shall be posted in a visible location at each Site, along with the name and contact information of the Company Stormwater Compliance Manager.

d. For all Site Stormwater Compliance Managers, the Company Stormwater Compliance Manager shall maintain evidence that the person selected meets the criteria set forth above, including (i) a copy of the certification demonstrating that the individual is Stormwater Trained; and (ii) a copy of any other stormwater training certificates that person has received. Such evidence shall be made available to EPA within thirty (30) Days, upon request.

16. Notice to EPA of List of Sites.

a. Not later than sixty (60) days after the Effective Date, the Settling Parties shall provide a List of Sites (“the List”) to the EPA representative listed in Section XV (Notices) in searchable electronic form or in hardcopy in the format attached as Appendix A as described below.

- (i) The initial List shall include all Sites where the Settling Parties have initiated Construction Activity and final stabilization has not occurred as of the Effective Date.
- (ii) The List shall provide: (i) The Site name; (ii) the Settling Parties’ permit number, if available, and effective date of coverage; (iii) the name of the Site owner where applicable (and, if available, the Site owner’s permit number(s) and effective date if different from the Settling Parties’ permit number); (iv) the location of the Site including the physical address and/or the latitude and longitude; (v) the contact information (including telephone number and/or e-mail) for the Site Stormwater Compliance Manager; (vi) the start date of the Settling Parties’ Construction Activities, or if not available, the best estimate for the start date of the Settling Parties’ Construction Activities; (vii) the date that the Pre-Construction Inspection and Review Form was signed for Sites where Settling Parties commenced Construction Activity after the Effective Date; (viii) the estimated number of acres to be disturbed; (ix) the identity of the person or entity that (A) prepared and signed the Site’s SWPPP; and (B) is contractually

responsible for permit-mandated Site inspections; and (xi) the date of, or if not available, the best estimate for the Settling Parties' termination of Construction Activities and, if applicable, the date of final stabilization and the date the NOT was signed.

- (iii) (B) This information about each Site shall be provided either by adding the information to the List or by providing it by a hyperlink in the List to documents that contain the information (e.g., NOI, PCIR Form, NOT).

b. The Settling Parties shall provide to the EPA representative listed in Section XV (Notices) an updated List not later than the 30th day after the end of each Quarterly Reporting Period. The updated List shall include the information provided in subparagraph (a) for each Site, including new Covered Sites. Covered Sites are those where commencement of Construction Activity occurred during the prior Quarterly Reporting Period. For previously listed Sites, the Settling Parties are required to update only the permittee name and the date the NOT was signed, and this information shall be provided by either adding the information to the List or by providing it by a hyperlink in the List to documents that contain the information (e.g., NOI, PCIR Form, NOT). If a Site owner, owner's surety, financial institution or competent authority has ordered partial or total suspension or termination of the Settling Parties' work at a Site, the details of that action and the date it took effect shall be noted on the updated List. The Settling Parties may remove Sites from the updated List after filing an NOT under the Applicable Permit, but only after identifying that an NOT was filed on at least one quarterly updated version of the List.

17. Permits. The Settling Parties shall not initiate, or allow their employees or Contractors to initiate or direct any employee or Contractor to initiate, Construction Activities at a Site until Applicable Permit coverage has been obtained by the Settling Parties and all operators as defined in the Federal CGP. Where any compliance obligation under this Consent Decree requires the Settling Parties to obtain an Applicable Permit, the Settling Parties shall comply with all statutory and regulatory requirements to obtain such Applicable Permit. The Settling Parties may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any Applicable Permit required to fulfill such obligation, if the Settling Parties can demonstrate compliance with applicable statutory and regulatory requirements to obtain all such Applicable Permits.

18. SWPPPs.

a. Prior to undertaking or allowing any Construction Activities at a Site, and in compliance with the submission requirements of the Applicable Permits, including the Federal CGP, the Settling Parties shall prepare a SWPPP or ensure that a SWPPP has been prepared for each Site, and shall ensure that the SWPPP for each Site complies with the requirements of the Applicable Permits.

b. The SWPPP shall also identify the Stormwater Compliance Manager and include contact information and a detailed description of that person's duties.

c. The Settling Parties shall modify the SWPPP as necessary under the requirements of the Applicable Permit, including the Federal CGP and this Consent Decree. If the SWPPP is not in compliance, the Settling Parties' must amend the SWPPP, or ensure the Site

owner amends the SWPPP as necessary. In addition, the Settling Parties shall ensure that the SWPPP for each Site meets the Criteria for Stormwater Plan Preparation (Appendix B)

d. The SWPPP shall be prepared by a Stormwater Consultant or a registered professional engineer, and signed in accordance with the requirements of the applicable stormwater regulations or Applicable Permit. The Settling Parties shall provide a copy of Appendix B to the SWPPP preparer. The SWPPP preparer shall certify on the SWPPP that it was developed using the criteria in Appendix B and consistent with the Federal CGP.

e. Where the Settling Parties have operational control over construction plans and specifications, the Settling Parties must ensure that (1) project specifications meet the minimum requirements of the Federal CGP, this Consent Decree and Appendix B; (2) the SWPPP indicates the areas of the project where the Settling Parties have operational control over project specifications, including the ability to make modifications in specifications; (3) all other permittees implementing portions of the SWPPP (or their own SWPPP) who may be impacted by a change to the construction plan are notified of such changes in a timely manner; and (4) the SWPPP indicates the name of the party(ies) with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions.

f. Where the Settling Parties have operational control over day-to-day activities, the Settling Parties must ensure that: (1) the SWPPP meets the minimum SWPPP requirements of the CGP, the Consent Decree, and Appendix B and identifies the parties responsible for implementation of control measures identified in the plan; (2) the SWPPP indicates areas of the project where the Settling Parties have operational control over day-to-day activities; (3) the SWPPP indicates the name of the party(ies) with operational control over

project specifications including the ability to make modifications in specifications.

19. Availability of Plan and Permit. During working hours on all Business Days, the Settling Parties shall ensure that a copy of the Applicable Permit and SWPPP, including all SWPPP modifications, are available at the Site for review by any Contractor or employee of the Settling Parties, as well as by any local, Commonwealth of Puerto Rico, or federal inspector in accordance with Paragraph 77 (Right of Entry) or any other permit, law, or regulation then in effect. If there is no construction office on-Site, the SWPPP shall be posted electronically or kept at a nearby location where it can be easily accessed upon request, and the location of the SWPPP shall be posted at the Site.

20. Notice of Site Stormwater Compliance Manager's Phone Number. The Settling Parties shall post a conspicuous notice (a) providing the telephone number of the Settling Parties' Site Stormwater Compliance Manager in its construction office or, in the absence of a construction office, in another conspicuous location at each Site, and (b) authorizing all employees and Contractors to contact the Site Stormwater Compliance Manager at each Site with any questions or to report problems relating to sediment and erosion control at any Site. If the Settling Parties' designated Site Stormwater Compliance Manager is not available to answer the phone at any time, the Settling Parties shall ensure that a person or machine shall be available to answer or record a message and that those messages are retrieved and addressed within a reasonable time.

21. Stormwater Training Program and Associated Records.

a. The Settling Parties shall implement the Stormwater Training Program set forth in Appendices I-1, I-2, and I-3, which includes Site Stormwater Compliance Manager

training (I-1), Site-specific training and Site-specific orientation for employees and Contractors (I-2), and annual refresher training for Site Stormwater Compliance Managers (I-3). Training and refresher training under this Program may be live or provided through electronic media. The Settling Parties must submit the Stormwater Training Program (and the annual refresher training materials each year thereafter) for EPA approval.

- (i) The Settling Parties shall provide Site Stormwater Compliance Manager training to all Site Stormwater Compliance Managers pursuant to Appendices I-1, I-2, and I-3. To be certified as Stormwater Trained under this Consent Decree, Site Stormwater Compliance Managers must complete the training course, pass a written or computer-based examination, and receive and maintain a training certification that is valid for twelve (12) months. All Site Stormwater Compliance Managers must be certified as Stormwater Trained no later than three (3) months after the Effective Date of the Consent Decree, or prior to being designated as a Site Stormwater Compliance Manager, whichever is later. Employee stormwater training that meets the requirements of this Consent Decree may be completed prior to the Effective Date.
- (ii) The Settling Parties shall provide Site-specific stormwater training pursuant to Appendix I-2 to the Settling Parties' and Contractors' employees who, in the field at a Site, primarily and directly supervise (or who primarily and directly assist in the supervision of) Construction Activity at a Site and who are not otherwise required to be Stormwater

Trained. The Settling Parties' and Contractors' employees must complete the Site-specific stormwater training prior to commencement of Construction Activity at the Site, or for the Settling Parties' or Contractors' employees that begin work at a Site after Construction Activity has commenced, no later than twenty (20) Days after beginning work at a Site.

- (iii) The Settling Parties shall provide Site-specific stormwater orientation to all Settling Parties' and Contractors' employees working at the Site. The Site-specific stormwater orientation shall include the pre-construction meeting and weekly meetings pursuant to Paragraphs 22 and 24, respectively, and shall include the provision of the Contractor Briefing Sheet (Appendix C), which provides a description of stormwater requirements to all Contractors and employees working at the Site.
 - (iv) The Settling Parties shall provide annual refresher training pursuant to Appendix I-3 for employees who were previously trained under subparagraph 16.a.(i) and are required to be Stormwater Trained. Each such person shall complete the annual refresher training and pass a written test. The renewal training shall be valid for up to twelve (12) months.
 - (v) The Settling Parties shall maintain Records of each employee's certification and shall provide such Records to EPA within thirty (30) Days, upon request.
- b. The Company Stormwater Compliance Manager shall evaluate the

Settling Parties' Stormwater Training Program annually and determine whether any changes to the Stormwater Training Program are necessary. A written evaluation of the Stormwater Training Program and a description of any significant proposed changes for EPA's approval shall be appended to the fourth Stormwater Compliance Report submitted per year.

22. Pre-Construction Meetings.

a. Prior to the initiation of Construction Activities at a Site, the Site Stormwater Compliance Manager shall hold a pre-construction meeting with all the Settling Parties' employees and Contractors who will be involved in Construction Activities at the Site. At this meeting, the Site Stormwater Compliance Manager shall explain the Applicable Permit requirements, the SWPPP and drawings, and the terms of this Consent Decree.

b. In addition, the Site Stormwater Compliance Manager shall distribute at the meeting: (i) the most current version of the site-specific SWPPP to all Settling Parties' and Contractors' employees that supervise or assist in the supervision of construction activities; and (ii) the Contractor Briefing Sheet (Appendix C) to all attendees. The Site Stormwater Compliance Manager shall maintain evidence of attendance at the pre-construction meeting and that the attendees received the documents set forth herein and understand the terms and conditions of the Applicable Permit and SWPPP. The signed attendance sheet shall be kept with the SWPPP.

c. If any employee of a Settling Party or Contractor begins to work at a Site after the pre-construction meeting has occurred and has not attended the pre-construction meeting, the Site Stormwater Compliance Manager shall provide to that individual the documents required pursuant to the above sub-Paragraph. The Site Stormwater Compliance

Manager shall maintain evidence of receipt of said documents, including the Contractor Briefing Sheet (Appendix C).

23. Pre-Construction Inspection and Review. Prior to the initiation of Construction Activities by the Settling Parties' employees or their Contractors at any Site, except for activities associated with the installation of perimeter Stormwater Control Measures at a Site, the Site Stormwater Compliance Manager shall conduct a Pre-Construction Inspection and Review and complete a corresponding Pre-Construction Inspection and Review ("PCIR") Form (Appendix D). The Pre-Construction Inspection and Review shall include an inspection of the entire Site to determine whether the Stormwater Control Measures required by the SWPPP to be in place at the commencement of Construction Activities have been installed correctly at the correct locations. Prior to the commencement of the Settling Parties' Construction Activity, a Responsive Action shall be completed for each Action Item on the PCIR Form, and the Site Stormwater Compliance Manager shall certify that the Stormwater Control Measures required by the SWPPP to be in place at the commencement of Construction Activities have been installed correctly at the correct locations prior to the commencement of Construction Activity. The Settling Parties shall keep a copy of the completed PCIR Form (Appendix D) with the SWPPP.

24. Weekly Meetings. In addition to the pre-construction meeting, the Site Stormwater Compliance Manager shall schedule and hold weekly meetings with all employees of Settling Parties and Contractors involved in Construction Activities during the time period when the meeting is scheduled at each Site, to review the requirements of the Applicable Permits and the SWPPP, and to address any problems that have arisen in the implementation of the Consent Decree or the SWPPP, or in maintaining Stormwater Control Measures. The Settling

Parties shall make available to all attendees at these meetings copies of the Contractor Briefing Sheet (Appendix C).

25. Inspections. The requirements of this paragraph are effective thirty (30) Days after the Effective Date.

a. At a minimum, commencing no later than the date the PCIR Form is signed or the date required by the Applicable Permit, whichever is earlier, a Site Stormwater Compliance Manager shall inspect each Site or cause the Site to be inspected by a Stormwater Consultant under his or her supervision, at least at the frequency required by the Applicable Permit but not less frequently than every seven (7) Days.

b. The Site Stormwater Compliance Manager shall inspect the entire Site to (i) determine whether all Construction Activities are being conducted in accordance with the requirements of the SWPPP, the Applicable Permit, and this Consent Decree; (ii) determine whether the SWPPP is being updated and implemented in accordance with the requirements of the Applicable Permit and this Consent Decree; (iii) identify and record all Action Items, including any repairs, maintenance, modifications, Corrective Actions or other work necessary to maintain existing Stormwater Control Measures in effective operating condition or to implement additional Stormwater Control Measures; and (iv) identify and record any unpermitted discharge of pollutants from the Site into waters of the United States, including wetlands and municipal separate storm sewer systems leading to surface waters.

c. The Site Stormwater Compliance Manager shall record each Site Inspection on the Site Inspection Form (Appendix E-1) that shall be certified in accordance with the terms of the Applicable Permit. The Settling Parties shall keep the Site Inspection Forms

with the SWPPP. If the Site Inspection is conducted by a Stormwater Consultant under the supervision of the Site Stormwater Compliance Manager, the Site Stormwater Compliance Manager must then review and sign the Site Inspection Form.

d. If the Site project owner has engaged a third-party consultant to conduct Inspections under the SWPPP, the Settling Parties will, as a condition of its agreement with the owner, require the owner to conduct said Site Inspections at least as often as required by the Federal CGP. A copy of all Site Inspection Forms shall be delivered to the Settling Parties within twenty-four (24) hours of completion of the Site Inspection. The Site Stormwater Compliance Manager shall review and sign all Site Inspection Forms. The Settling Parties shall keep a record of all Site Inspection Forms delivered to the Settling Parties.

e. Upon completing the Final Site Inspection in accordance with Paragraph 31 (Final Site Inspection), the Settling Parties shall label the final Site Inspection Form as "Final."

26. Stormwater Control Measures.

a. The Settling Parties must implement, maintain and repair, as needed, all Stormwater Control Measures as required by the SWPPP and the Applicable Permit for the Construction Activities that the Settling Parties or their Contractors are performing at a Site.

b. If an Action Item, including a missing, ineffective, or breached Stormwater Control Measure, is identified during an inspection required by the Applicable Permit, the Site Stormwater Compliance Manager shall record the following information on the Site Inspection Form (Appendix E-2): a specific reference to the Action Item, including the date it was identified; a description of the Responsive Action taken; and the date the Responsive

Action was completed. Each Site Inspection Form shall be kept on Site as described in Paragraph 29(b).

c. For Action Items that require a Corrective Action, Settling Parties shall comply with the Corrective Action requirements in the Federal CGP, and the Site Stormwater Compliance Manager shall timely complete a Corrective Action Report (Appendix E-2). The Corrective Action Report shall, at a minimum, be signed by the Site Stormwater Compliance Manager. Each Corrective Action Report shall be kept on Site as described in Paragraph 29(b).

d. The Settling Parties shall correct all Action Items within the time required by and otherwise in accordance with the terms of the Applicable Permit. The Settling Parties shall install or modify all required additional or different BMPs in accordance with the terms of the Applicable Permit. The Settling Parties shall modify the SWPPP to reflect those changes in accordance with the terms of the Applicable Permit.

27. Temporary Alteration of Stormwater Control Measures. If, during the course of construction at a Site, the temporary removal or alteration of a Stormwater Control Measure becomes necessary to accomplish the Construction Activities or to protect health and safety at a Site, the Site Stormwater Compliance Manager shall note such removal or alteration on the Site Inspection Form, including specific information regarding the changes made, and the Day and time such changes were made. The Settling Parties shall restore the Stormwater Control Measure as soon as practicable and no later than twenty-four (24) hours after the completion of the activity that required the change. The Site Stormwater Compliance Manager shall note the restoration on the Site Inspection Form, including specific information regarding the Day and time at which the restoration was begun and completed. If the Site Stormwater Compliance

Manager is unavailable to initially record the temporary alteration and restoration of Stormwater Control Measures at a Site, another Stormwater Trained employee shall record the temporary alteration and restoration of Stormwater Control Measures, in which case the Site Stormwater Compliance Manager must both review the alteration with the Stormwater Trained employee recording such alteration and verify the restoration of Stormwater Control Measures within a reasonable period of time. The Settling Parties shall take all reasonable measures to prevent discharges from the Site to the waters of the United States during the time of the temporary removal or alteration of a Stormwater Control Measure. To the extent practicable, reasonable measures shall include, but not be limited to, timing the temporary removal or alteration of a Stormwater Control Measure to occur when precipitation is not forecasted and/or installing new or alternate Stormwater Control Measures around the affected area. The above activities must either be consistent with the Site's Applicable Permit or approved and documented by the appropriate local, Commonwealth of Puerto Rico, or federal inspector.

28. Temporary Stabilization.

a. The Settling Parties shall initiate and complete stabilization as required by the Applicable Permit.

b. If the Settling Parties are terminated at a Site prior to completion of Construction Activity or abandon the Site under the applicable legal or contractual provisions, by order of competent authority, or for other reason outside the control of the Settling Parties, the Settling Parties will, to the extent practicable, implement temporary stabilization, conduct and document an exit inspection, and notify EPA pursuant to Section XV (Notices) that Settling Parties are no longer working at the Site.

29. Quarterly Compliance Inspection and Review.

a. At least once during each Quarterly Reporting Period, beginning with the first full Quarterly Reporting Period after the Effective Date, the Company Stormwater Compliance Manager shall conduct a Quarterly Compliance Inspection of each Site. The results shall be recorded on a Quarterly Compliance Inspection Form (Appendix F), and Settling Parties shall keep the Quarterly Compliance Inspection Forms with the SWPPP. The Company Stormwater Compliance Manager shall record all Action Items in the same manner as required under Paragraph 26 (Stormwater Control Measures).

b. No later than seven (7) Days after the Quarterly Compliance Inspection, the Company Stormwater Compliance Manager shall complete a Quarterly Compliance Review for each Site. The Quarterly Compliance Review shall consist of a review of the results of the Site Inspection Forms and Corrective Action Reports completed since the last Quarterly Compliance Inspection. The Company Stormwater Compliance Manager shall complete a Quarterly Compliance Review Form (Appendix G) for each Site. The Company Stormwater Compliance Manager shall review the Quarterly Compliance Review Form with the Site Stormwater Compliance Manager for that Site, and both persons shall sign the Quarterly Compliance Review Form for the Site. The Settling Parties shall keep the Quarterly Compliance Review Forms with the SWPPP.

c. The Site Stormwater Compliance Manager shall be responsible for managing the completion of Responsive Actions, including Corrective Actions, for each Action Item identified during the Quarterly Compliance Inspection or Quarterly Compliance Review in the same manner as required under Paragraph 26 (Stormwater Control Measures).

30. Quarterly Summary Report. Within forty-five (45) Days of the end of each calendar quarter after the Effective Date, the Company Stormwater Compliance Manager shall prepare and submit a Quarterly Summary Report to EPA using the form in Appendix H that: (a) identifies any instances of apparent noncompliance during the calendar quarter by the Settling Parties or their Contractors with the Applicable Permit and this Consent Decree, including, at a minimum, the name and location of the Site, the Contractor involved (if applicable), and a description of the apparent noncompliance; (b) identifies recurring apparent noncompliance issues and proposed solutions to such issues that the Settling Parties have implemented or will implement; and (c) attaches copies of any government inspection report(s) or enforcement action(s) taken at any Site during the calendar quarter related to stormwater compliance. The Company Stormwater Compliance Manager shall provide a copy of this Quarterly Summary Report to all Site Stormwater Compliance Managers. The Site Stormwater Compliance Manager shall take any action required by the Company Stormwater Compliance Manager to achieve and maintain compliance.

31. Final Site Inspection. The Site Stormwater Compliance Manager shall perform an inspection of any Site at the conclusion of the construction project at such Site to ascertain whether all areas of the Site that have been subject to Construction Activities by the Settling Parties or their Contractors have been stabilized in accordance with Applicable Permit conditions and requirements and that the Site is eligible to terminate permit coverage. If the Site is not eligible to terminate permit coverage, the Site Stormwater Compliance Manager shall ascertain whether all areas of the Site that have been subject to Construction Activities by the Settling Parties or their Contractors have been temporarily stabilized in accordance with the Applicable

Permit, and whether another entity has assumed responsibility for Construction Activities at the Site. The Site Stormwater Compliance Manager shall record the Final Site Inspection on the Site Inspection Form, which shall be signed and certified in accordance with the terms of the Applicable Permit. The Site Stormwater Compliance Manager shall note on the Site Inspection Form that it is the Final Site Inspection. The certified Final Site Inspection Form shall be retained by the Settling Parties with the SWPPP. If all areas of the Site have been permanently stabilized in accordance with Applicable Permit conditions and requirements, the Settling Parties, when a co-permittee, shall file for termination or inactivation of the Applicable Permit, in accordance with the requirements of any Applicable Permit. The Settling Parties shall notify EPA of any permit termination at any Site at least fifteen (15) Days prior to terminating permit coverage. If the Settling Parties temporarily stabilize a Site, the Settling Parties shall so indicate on the Site Inspection Form, and shall also identify the entity that has assumed responsibility for Construction Activities at the Site. The Settling Parties will notify EPA of any Site where the project owner, owner's surety, financial institution, or competent authority has ordered partial or total suspension or termination of a Contractor's work no more than ten (10) Days after receipt of a written order of suspension or termination.

VII. REPORTING REQUIREMENTS

32. Quarterly Summary Reports. All Quarterly Summary Reports shall be submitted as required under Section XV (Notices).

33. Cause of Violation. If the cause of an alleged violation has not been identified or cannot be explained in a Quarterly Summary Report, the Settling Parties shall so state in the Report. The Settling Parties shall submit an amendment to the Report, including an explanation

of the violation, within 30 Days of the Day when the Settling Parties become aware of the violation. Nothing in this Paragraph or the following Paragraph relieves the Settling Parties of their obligation to provide the notice required by Section X (Force Majeure).

34. Notification of Violation. Whenever any violation of this Consent Decree or of any Applicable Permit or any other event affecting the Settling Parties' performance under this Decree, or their work at a Site may pose an immediate threat to the public health or welfare or the environment, the Settling Parties shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the Settling Parties first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

35. Certification of Quarterly Summary Reports. Each Report submitted by the Settling Parties under this Section shall be signed by an official of the submitting party and include the following certification:

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

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

36. Annual Cost Report. No later than sixty (60) Days after the end of each fiscal year, the Settling Parties shall provide EPA with an itemized report of all costs associated with operating its compliance program under the Consent Decree.

37. Certification of Annual Cost Reports. The Annual Cost Report shall include the following certification:

I certify, to the best of my knowledge and belief, that this information is true, accurate and complete. Because certain costs apply to company activities and functions broader than stormwater compliance, I or a qualified person under my supervision or direction, have used best professional judgment to allocate the portion of those costs attributable to stormwater compliance activities covered by the Consent Decree. The costs represented herein are good faith approximations and should not be considered exact costs.

38. Other Reporting Obligations. The reporting requirements of this Consent Decree do not relieve the Settling Parties of any reporting obligations required by the Clean Water Act or its implementing regulations, or by any other federal, Commonwealth of Puerto Rico, or local law, regulation, permit, or other requirement.

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

VIII. REVIEW AND APPROVAL

40. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

41. Actions. If the submission is approved pursuant to the preceding Paragraph 40, the Settling Parties shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 40.b or .c, the Settling Parties shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to the Settling Parties' right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution).

42. Corrections. If the submission is disapproved in whole or in part pursuant to Paragraph 40.c or .d, the Settling Parties shall, within 30 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the Settling Parties shall proceed in accordance with the preceding Paragraph.

43. Stipulated Penalties. Any stipulated penalties applicable to the original submission, as provided in Section IX (Stipulated Penalties), shall accrue during the 30-Day or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the Settling Parties' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

44. Disapproval. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require the Settling Parties to correct any

deficiencies, in accordance with the preceding Paragraphs, subject to the Settling Parties' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

IX. STIPULATED PENALTIES

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

46. Payment of Civil Penalty. If the Settling Parties fail to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, the Settling Parties shall pay a stipulated penalty for each Day that the payment is late as follows:

<u>Penalty Per Day</u>	<u>Period of Nonpayment</u>
\$1,000.00	1st through 30th Day
\$2,000.00	31st Day and thereafter

47. Compliance with Applicable Permits. If the discharge of any pollutant from a Site to a water of the United States occurs prior to obtaining coverage as required under an Applicable Permit or in violation of an applicable permit, the Settling Parties shall pay a stipulated penalty of \$3,000.00 per discharge.

48. Designation of Stormwater Compliance Managers.

a. If the Settling Parties fail to designate a Company Stormwater Compliance

Manager as required by Paragraph 14, or otherwise fail to comply with any portion of Paragraph 14, they shall pay a stipulated penalty of \$1,000.00 per Day for each Day that they fail to comply with Paragraph 14.

b. If the Settling Parties fail to designate a Site Stormwater Compliance Manager for any Site as required by Paragraph 15, or otherwise fail to comply with any portion of Paragraph 15, they shall pay a stipulated penalty of \$750.00 per Day per Site for each Day that they fail to comply with Paragraph 15.

49. List of Sites. If the Settling Parties fail to submit the initial List of Sites or to update the List of Sites as required by Paragraph 16, or otherwise fail to comply with any portion of Paragraph 16, they shall pay a stipulated penalty of \$1,000.00 per day for each Day that they fail to comply with Paragraph 16.

50. Permits and SWPPPS. If the Settling Parties fail to obtain permit coverage for a Site, as required by Paragraph 17, or prepare a SWPPP for a Site, as required by Paragraph 18.a, or revise a SWPPP, as required by Paragraph 18.b, or otherwise fail to comply with Paragraphs 17, 18, 19 or 20, they shall pay a stipulated penalty per violation for each Day of noncompliance as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th Day
\$1,000.00	15th through 30th Day
\$1,500.00	31st Day and thereafter

51. Stormwater Training Program. If the Settling Parties fail to implement the training program as required by Paragraph 21, or otherwise fail to comply with Paragraph 21, they shall pay a stipulated penalty of \$500.00 for each employee of Settling Parties or Contractor.

52. Inspections.

a. If the Settling Parties fail to perform (including completion of all Corrective Actions) or, if performed, fail to document a Pre-Construction Inspection and Review as required by Paragraph 23, or otherwise fail to comply with any portion of Paragraph 23, they shall pay a stipulated penalty of \$2,000.00 per violation of Paragraph 23 per Site.

b. If the Settling Parties fail to perform or, if performed, fail to document a Site Inspection as required by Paragraph 25, or otherwise fail to comply with any portion of Paragraph 25, they shall pay a stipulated penalty of \$750.00 per violation of Paragraph 25 per Site.

c. If the Settling Parties fail to perform or, if performed, fail to document a Quarterly Compliance Inspection and Review as required by Paragraph 29, or otherwise fail to comply with any portion of Paragraph 29, they shall pay a stipulated penalty of \$1,500.00 per violation of Paragraph 29 per Site.

d. If the Settling Parties fail to perform or, if performed, fail to document a Final Site Inspection as required by Paragraph 31, or otherwise fail to comply with any portion of Paragraph 31, they shall pay a stipulated penalty of \$3,000.00 per violation of Paragraph 31 per Site.

53. Pre-Construction Meetings.

a. If the Settling Parties fail to hold a pre-construction meeting as required by Paragraph 22, or otherwise fail to comply with any portion of Paragraph 22, they shall pay a stipulated penalty of \$2,000.00 per violation of Paragraph 22 per Site.

b. If the Settling Parties fail to hold a weekly meeting as required by Paragraph 24, or otherwise fail to comply with any portion of Paragraph 24, they shall pay a stipulated penalty of \$1,000 per violation of Paragraph 24 per Site.

54. Stormwater Control Measures and Stabilization. If the Settling Parties fail to implement all Stormwater Control Measures, as required by Paragraphs 26 and 27, or fail to temporarily stabilize any Site, as required by Paragraph 28, or otherwise fail to comply with any portion of Paragraphs 26, 27, or 28, they shall pay a stipulated penalty per violation for each Day of noncompliance as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th Day
\$1,000.00	15th through 30th Day
\$2,000.00	31st Day and beyond

55. Reporting Requirements. If the Settling Parties fail to comply with any of the reporting requirement under this Consent Decree, including those enumerated in Section VI or VII, they shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th Day
\$1,000.00	15th through 30th Day

\$1500.00

31st Day and beyond

56. Not Otherwise Specified. If the Settling Parties fail to comply with any other requirement of this Consent Decree not otherwise specified herein, they shall pay a stipulated penalty of \$500.00 per violation per Day for each Day that they fail to comply with the Consent Decree.

57. Date of Accrual. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

58. Payment. The Settling Parties shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

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

60. Payment Stayed. Stipulated penalties shall continue to accrue, as provided in Paragraph 57, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, the Settling Parties shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the Effective Date or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the Settling Parties shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order,

except as provided in subparagraph c, below.

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

61. Which Violation. The Settling Parties shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

62. Interest. If the Settling Parties fail to pay the civil penalty or any stipulated penalty according to the terms of this Consent Decree, the Settling Parties shall be liable for interest on such payments, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for the Settling Parties' failure to pay the civil penalty or any stipulated penalty.

63. Additional Remedies. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for the Settling Parties' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act or its implementing regulations, the Settling Parties shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

X. FORCE MAJEURE

64. Definition. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Parties, of any entity controlled by the Settling Parties, or of the Settling Parties’ Contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Parties’ best efforts to fulfill the obligation. The requirement that the Settling Parties exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring, and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include the Settling Parties’ financial inability to perform any obligation under this Consent Decree.

65. Notification by Settling Parties. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Parties shall provide notice orally or by electronic or facsimile transmission to the Chief of the Multi-Media Permit and Compliance Branch of EPA’s Caribbean Environmental Protection Division in accordance with Section XV (Notices) within 72 hours of when the Settling Parties first knew that the event might cause a delay. Within seven (7) Days thereafter, the Settling Parties shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Parties’ rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Parties, such event may cause or contribute to an

endangerment to public health, welfare or the environment. The Settling Parties shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Parties from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Parties shall be deemed to know of any circumstance of which the Settling Parties, any entity controlled by the Settling Parties, or the Settling Parties' Contractors knew or should have known.

66. Extension of Time. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify the Settling Parties in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

68. Dispute Resolution. If the Settling Parties elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), they shall do so no later than fifteen (15) Days after receipt of EPA's notice pursuant to the preceding Paragraph. In any such proceeding, the Settling Parties shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration

of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Parties complied with the requirements of Paragraphs 64 and 65, above. If the Settling Parties carry this burden, the delay at issue shall be deemed not to be a violation by the Settling Parties of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

69. Exclusive Mechanism. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The Settling Parties' failure to seek resolution of a dispute under this Section shall preclude the Settling Parties from raising any such issue as a defense to an action by the United States to enforce any obligation of the Settling Parties arising under this Decree.

70. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the Settling Parties send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within ten (10) Days after the conclusion of the informal negotiation period, the Settling Parties invoke the formal dispute resolution procedures as set forth below.

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

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

73. Judicial Review. The Settling Parties may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Settling Parties' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

75. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 71 (Formal Dispute Resolution) pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Settling Parties shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 71 (Formal Dispute Resolution), the Settling Parties shall bear the burden of demonstrating that their position complies with this Consent Decree and that implementation of its position will result in equivalent or greater environmental protection than would implementation of the United States' position.

76. Does Not Affect Obligation. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Settling Parties under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day

of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 60 (Payment Stayed). If the Settling Parties do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

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

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

78. Samples. Upon request, the Settling Parties shall provide EPA or its authorized representatives splits of any samples taken by the Settling Parties. Upon request, EPA shall provide the Settling Parties splits of any samples taken by EPA.

79. Copies of Documents. Until three (3) years after the termination of this Consent Decree, the Settling Parties shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in

any manner to the Settling Parties' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, the Settling Parties shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

80. Notification of Destruction of Documents. At the conclusion of the information-retention period provided in the preceding Paragraph, the Settling Parties shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, the Settling Parties shall deliver any such documents, records, or other information to EPA. The Settling Parties may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Parties assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Parties. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

81. Confidential Business Information. The Settling Parties may also assert that information required to be provided under this Section is protected as Confidential Business

Information (“CBI”) under 40 C.F.R. Part 2. As to any information that the Settling Parties seek to protect as CBI, the Settling Parties shall follow the procedures set forth in 40 C.F.R. Part 2.

82. Does Not Limit Right of Entry or Inspection. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of the Settling Parties to maintain documents, records, or other information imposed by applicable federal or Commonwealth of Puerto Rico laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

83. Effect of Settlement. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

84. Plaintiff’s Reservation of Rights. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in preceding Paragraph 83 (Effect of Settlement). This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in preceding Paragraph 83 (Effect of Settlement). The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Settling Parties’ Sites, whether related to the violations addressed in this Consent Decree or otherwise.

85. Waiver. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Sites or the Settling Parties' violations, the Settling Parties 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 83 (Effect of Settlement) of this Section.

86. Not a Permit Modification. This Consent Decree is not a permit, or a modification of any permit, under any federal, Commonwealth of Puerto Rico, or local laws or regulations. The Settling Parties are responsible for achieving and maintaining complete compliance with all applicable federal, Commonwealth of Puerto Rico, and local laws, regulations, and permits; and the Settling Parties' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the Settling Parties' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, Commonwealth of Puerto Rico, or local laws, regulations, or permits.

87. Third Parties. This Consent Decree does not limit or affect the rights of the Settling Parties or of the United States against any third parties not party to this Consent Decree,

nor does it limit the rights of third parties, not party to this Consent Decree, against the Settling Parties, except as otherwise provided by law.

88. No Rights for Third Party. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIV. COSTS

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

XV. NOTICES

90. Addresses. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email:

eescasemanagement.enrd@usdoj.gov
Re: DJ No. 90-5-1-1-09628

As to the United States by mail:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-09628

With electronic copies to: *scott.bauer@usdoj.gov*; *ruben.gomez@usdoj.gov*

As to EPA:

Chief, Multi-Media Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
State Road # 165 Km. 1.2
Guaynabo, PR 00968-8069

AND

Hector L. Velez-Cruz, Esq.
Office of Regional Counsel, Caribbean Team
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
State Road # 165 Km. 1.2
Guaynabo, PR 00968-8069

With electronic copies to: *velez.hector@epa.gov*; *lopez.jaime@epa.gov*

As to the Settling Parties:

Mr. Manuel J. Fullana Morales, P.E.
F&R Contractors Corp.
F&R Contractors LLC
F&R Construction Group, Inc.
P.O Box 9932
San Juan, PR 00908-2232
Tel.: (787) 753-7010
mfullana@frcg.net

AND

Ms. Hilda Quiñones Rivera, Esq.
P.O. Box 368010
San Juan, PR 00936-8010
Tel.: (787)620-8189
hquinones@qralaw.com

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

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

XVI. EFFECTIVE DATE

93. Effective Date. The “Effective Date” shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted by the Court, whichever occurs first, as recorded on the Court’s docket; provided, however, that the Settling Parties hereby agree that they shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVII. RETENTION OF JURISDICTION

94. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

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

96. Dispute Resolution. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 75 (Standard of Review), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

97. Termination. After Settling Parties have completed the Compliance Requirements (Section VI), the Reporting Requirements (Section VI and VII), and have complied with all other requirements of this Decree, and have paid the civil penalty (Section V) and any accrued stipulated penalties (Section IX) as required by this Decree, Settling Parties may serve upon the United States a Request for Termination, stating that Settling Parties have satisfied those requirements, together with all necessary supporting documentation.

Following receipt by the United States of the Settling Parties' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Settling Parties have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

If the United States does not agree that the Decree may be terminated, the Settling Parties may invoke Dispute Resolution under Section XI. However, the Settling Parties shall not seek Dispute Resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XX. PUBLIC PARTICIPATION

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

XXI. SIGNATORIES/SERVICE

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

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

XXII. INTEGRATION

101. Integration. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIII. APPENDICES

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

Appendix A:	List of Sites
Appendix B:	Criteria for Stormwater Plan Preparation
Appendix C:	Contractor Briefing Sheet
Appendix D:	Pre-Construction Inspection and Review Form
Appendix E-1:	Site Inspection Form
Appendix E-2:	Corrective Action Report
Appendix F:	Quarterly Compliance Inspection Form
Appendix G:	Quarterly Compliance Review Form
Appendix H:	Company Stormwater Compliance Manager Quarterly Summary Report Form

Stormwater Training Programs

Appendix I-1: Company and Site Stormwater Compliance Managers
Training Program Syllabus

Appendix I-2: Site-Specific Employees and Contractors
Training Program Syllabus

Appendix I-3: Refresher Training Syllabus

XXIV. FINAL JUDGMENT

103. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and the Settling Parties pursuant to Fed. R. Civ. P. 54 and 58.

IT IS HEREBY SO ORDERED this ____ day of _____, 2015.

UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF PUERTO RICO

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. F&R Contractors Corp. and F&R Contractors LLC*.

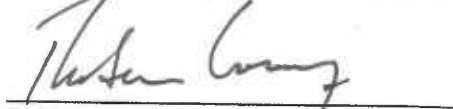
FOR THE UNITED STATES OF AMERICA:

Dated: _____



ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Dated: 05.26.15



RUBEN D. GOMEZ (Gov. Atty. No. G00809)
SCOTT BAUER
Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4797 (Gomez)
(202) 514-4133 (Bauer)
ruben.gomez@usdoj.gov
scott.bauer@usdoj.gov


ROSA E. RODRIGUEZ-VELEZ
United States Attorney
District of Puerto Rico

HECTOR E. RAMIREZ
Assistant United States Attorney
Chief, Civil Division
District of Puerto Rico
Torre Chardon, Suite 1201
350 Carlos Chardon Ave.
San Juan, Puerto Rico 00918
Bar No. 128302

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. F&R Contractors Corp and F&R Contractors LLC*.


FOR THE UNITED STATES OF AMERICA (cont.):

Dated: 5/5/15



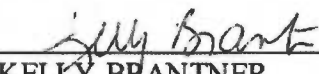
SUSAN SHINKMAN
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dated: 5.5.15



MARK POLLINS
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dated: 5/5/15

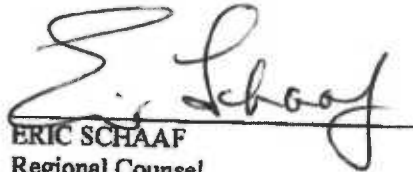


KELLY BRANTNER
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. F&R Contractors Corp. and F&R Contractors LLC*

FOR THE UNITED STATES OF AMERICA (cont.):

Dated: 5/11/15



ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. F&R Contractors Corp. and F&R Contractors LLC*.

**FOR DEFENDANT/SETTLING PARTY
F&R CONTRACTORS CORP. AND
F&R CONTRACTORS LLC**

Dated: 04.28.2015



Angel A. Fullana Olivencia
F&R Contractors Corp.
F&R Contractors, LLC
P.O. Box 9932
San Juan, PR 00908-2232

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

OUTSIDE COUNSEL

Dated: 04.28.2015

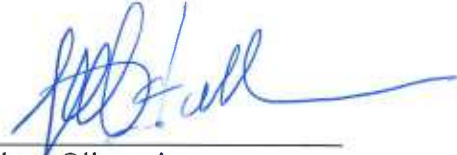


Hilda Quiñones Rivera
Q.R. & Asociados, LLC
PO Box 368010
San Juan, PR 00936-8010

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. F&R Contractors Corp. and F&R Contractors LLC*.

**FOR SETTLING PARTY
F&R CONSTRUCTION GROUP, INC.**

Dated: 04.28.2015



Angel Fullana Olivencia
F&R Construction Group, Inc.
P.O. Box 9932
San Juan, PR 00908-2232

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

OUTSIDE COUNSEL

Dated: 04.28.2015



Hilda Quiñones Rivera
Q.R. & Asociados, LLC
PO Box 368010
San Juan, PR 00936-8010

United States v. F & R Contractors Corp.

Civil No. _____

Appendix A

List of Sites

Site Name	Permit Number	Effective Date of Coverage	Site SW Mgr. name and contact info.	SWPPP Preparer name and contact info.	SWPPP Inspector name and contact info.	Site Owner, Site Owner's Permit Number(s) ¹	Site Location ²	Date PCIR Form signed ³	Est. acres to be disturbed	Date Construction Activities Commenced	Date Final Stabilization	Date NOT signed	Suspension or Termination Order ⁴
Los Jardines - Phase II	PRR12A115	05/28/2012	Antonio Fullana 787-753-7010 tonofullana@hotmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com		PR-683 KM 1.8 Arecibo, PR 18° 26' 54" 66° 36' 48"		33.5	06/04/2012			
Rafael Hernandez Modernization	PRR12A059 (CGP2008 PRR10BY17)	06/08/2012	Alberto Gregory 787-753-7010 albertogregory@hotmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Alberto Gregory 787-753-7010 albertogregory@hotmail.com		PR-2 KM 155.5 Int. Duscombe Ave. Mayaguez PR, 00680 18° 11' 34" 67° 09' 10"		7.5	01/30/2012			
San Isidro Vocational High School	PRR12A246	07/18/2012	Luis Borges 787-753-7010 lborges@frcg.net	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com Luis Borges 787-753-7010 lborges@frcg.net		State Road PR-188 KM 1.2 Canovanas, PR 00729 18° 23' 22" 65° 53' 17"		8.25	10/13/2012			Apr/18/2013 to Aug/12/2013 (suspension by owner - PR Public Buildings Authority)

¹ As applicable.² Site Location shall include physical address and/or Site latitude and longitude.³ Applicable to Sites where Settling Parties commenced Construction Activity after the Effective Date.⁴ If applicable, provide details of any order of partial or total suspension or termination of Settling Parties' work at a Site issued by Owner, Owner's surety, financial institution or competent authority.

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Appendix A

List of Sites

Las Cascadas Hotel	PRR12A319	10/16/2012	Carlos Luhring 787-753-7010 carlosluhring@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Carlos Luhring 787-753-7010 carlosluhring@gmail.com	PR-2 Km. 126.5 Aguadilla, PR 00603		2.0	10/19/2012				
Comprehensive Cancer Center of the University of Puerto Rico	PRR12A622	07/14/2014	Jose Ruiz 787-753-7010 joseruiz.fr@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Comprehensive Cancer Center of the University of Puerto Rico (PRR12A523)	PR-21 & PR-18 KM. 7.0 San Juan, PR 00921		7.75	01/12/2013				
Estacionamiento Multipisos - Parque de las Ciencias	PRR12A664	10/17/2014	Franklin Herrera 787-753-7010 fr.fherrera@yahoo.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Municipio Autonomo de Bayamon (PRR12A666)	PR-167 Urb. Sierra Bayamon #1560 Bayamon, PR 00961		1.5	10/17/2014				
AOR Building Supplies	PRR12A759	03/09/2015	Fernando Marquez 787-753-7010 fmarquez@frcg.net	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Maritza Rivas, P.E. <i>Rivas Consulting Engineers, PSC</i> 787-317-9260 rivas.permisos@gmail.com	Summit@Santurce LLC (PRR12A747)	1822 Ponce de Leon Ave. San Juan, PR 00909		1.25	N/A				

Date of Submission: _____

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Appendix A

List of Sites

Instructions:

- 1) The initial List of Sites shall be provided to the EPA representative, no later than sixty (60) days after the Effective Date of the Consent Decree.
- 2) The initial List shall include all Sites where the Settling Parties have initiated Construction Activity and final stabilization has not occurred as of the Effective Date of the Consent Decree.
- 3) The information required by this list shall be provided either by adding the information to this table or by providing it by a hyperlink in the List to documents that contain the information (e.g., NOI, PCIR Form, NOT).
- 4) F & R Contractors shall provide an updated List no later than the 30th day after the end of each Quarterly Reporting Period. The updated List shall include the information provided in this list for each Site, including new Covered Sites. Covered Sites are those where commencement of Construction Activity occurred during the prior Quarterly Reporting Period. For previously listed Sites, the Settling Parties are required to update only the permittee name and the date the NOT was signed, by either adding the information to the List or by providing it by hyperlink in the List to documents that contain the information (e.g., NOI, PCIR Form, NOT).
- 5) F & R Contractors may remove Sites from the updated List after filing a Notice of Termination ("NOT") under the Applicable Permit, but only after identifying that a NOT was filed on at least one quarterly updated version of the List.

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Appendix B

Checklist for Stormwater Pollution Prevention Plan Preparation
(All SWPPPs Must Include the Criteria Set Forth in this Checklist)

GENERAL SWPPP INFORMATION		
Site Name and Location:		
Is Respondent aware whether more than one (1) SWPPP has been prepared for the Site? _____		
Identify the Entity that developed the SWPPP that Respondent will be using at the Site: _____		
SWPPP Date:		
SWPPP CRITERIA		
SWPPP Information		
YES	NO	
		Has Respondent named a Company Stormwater Compliance Manager?
		Has Respondent named a Stormwater Trained Site Stormwater Compliance Manager for this Site?
		Did the Company Stormwater Compliance Manager oversee the development of the SWPPP?
		During the progression of the work at the Site, did the Company Stormwater Compliance Manager or Site Stormwater Compliance Manager oversee any modifications to the SWPPP?
		Did the Company Stormwater Compliance Manager or Site Stormwater Compliance Manager oversee the compliance of the SWPPP with the requirements established in the applicable permit and the Consent Decree?
		Does the SWPPP identify the Company Stormwater Compliance Manager, Site Stormwater Compliance Manager(s) and all other members of the Storm Water Team and each of their individual responsibilities per Part 7.2.1 of the Construction General Permit?
		Do the Company Stormwater Compliance Manager, Site Stormwater Compliance Manager(s) and all other members of the Storm Water team have access to an electronic or paper copy of the Applicable Permit and the most updated copy of the SWPPP?
Nature of Construction Activities		
		Does the SWPPP describe the nature of the construction activities?
		Does the SWPPP describe the size of the property (in acres)?
		Does the SWPPP describe the total area expected to be disturbed by the construction activities (in acres)?

		Does the SWPPP describe the construction support activity areas covered by the Applicable Permit?
		Does the SWPPP describe the maximum area expected to be disturbed at any one time?
Emergency-Related Projects		
		In an emergency-related project, are earth-disturbing activities being conducted in response to a public emergency?
		If yes, does the SWPPP document: (1) the cause of the public emergency, (2) the information substantiating its occurrence and (3) a description of the construction necessary to reestablish affected public services?
Identification of Other Site Operators		
		Does the SWPPP include a list of all other operators who will be engaged in construction activities at the Site, and the areas of the Site over which each operator has control?
Sequence and Estimated Dates of Construction Activities		
		<p>Does the SWPPP include a description of the intended sequence of construction activities, including a schedule of the estimated start dates and the duration of the activity for the following activities?</p> <ul style="list-style-type: none"> • Installation of stormwater control measures, and when they will be made operational, including an explanation of how the sequence and schedule for installation of stormwater control measures complies with Part 2.1.1.3a and of any departures from manufacturer specifications pursuant to Part 2.1.1.3b; • Commencement and duration of earth-disturbing activities, including clearing and grubbing, mass grading, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization; • Cessation, temporarily or permanently, of construction activities on the site, or in designated portions of the site; • Final or temporary stabilization of areas of exposed soil. The dates for stabilization must reflect the applicable deadlines to which you are subject in Part 2.2.1; and • Removal of temporary stormwater conveyances/channels and other stormwater control measures, removal of construction equipment and vehicles, and cessation of any pollutant-generating activities.
Site Map		
		<p>Does the SWPPP include a legible Site map showing the following features?</p> <ul style="list-style-type: none"> • Boundaries of the property and of the locations where construction activities will occur, including: <ul style="list-style-type: none"> a. Locations where earth-disturbing activities will occur, noting any phasing of construction activities; b. Approximate slopes before and after major grading activities. Note areas of steep slopes, as defined in Appendix A;

		<p>c. Locations where sediment, soil, or other construction materials will be stockpiled;</p> <p>d. Locations of any crossings of surface waters;</p> <p>e. Designated points on the site where vehicles will exit onto paved roads;</p> <p>f. Locations of structures and other impervious surfaces upon completion of construction; and</p> <p>g. Locations of construction support activity areas covered by this permit (see Part 1.3.c).</p> <ul style="list-style-type: none"> • Locations of all surface waters, including wetlands, that exist within or in the immediate vicinity of the site. Indicate which water bodies are listed as impaired, and which are identified by your state, tribe, or EPA as Tier 2, Tier 2.5, or Tier 3 waters; • The boundary lines of any natural buffers provided consistent with Part 2.1.2.1a; • Areas of federally-listed critical habitat for endangered or threatened species; • Topography of the site, existing vegetative cover (<i>e.g., forest, pasture pavement, structures</i>), and drainage pattern(s) of stormwater and authorized non-stormwater flow onto, over, and from the site property before and after major grading activities; • Stormwater and allowable non-stormwater discharge locations, including: <ul style="list-style-type: none"> a. Locations of any storm drain inlets on the site and in the immediate vicinity of the site; and b. Locations where stormwater or allowable non-stormwater will be discharged to surface waters (including wetlands) on or near the site. • Locations of all potential pollutant-generating activities identified in Part 7.2.7; • Locations of stormwater control measures; and • Locations where polymers, flocculants, or other treatment chemicals will be used and stored.
Construction Site Pollutants.		
		Does the SWPPP include a list and description of all the pollutant-generating activities at the Site, if applicable?
		For each pollutant-generating activity, does the SWPPP include an inventory of pollutants or pollutant constituents associated with that activity, which could be exposed to rainfall, and could be discharged from the Site?
		Where applicable, does the SWPPP document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in Part 2.3.5.1?
Non-Stormwater Discharges		
		Does the SWPPP identify all sources of allowable non-stormwater discharges?
Buffer Documentation.		

		If a surface water is located within 50 feet of the Site's earth disturbances, does the SWPPP describe which compliance alternative in Part 2.1.2.1 of the Construction General Permit was selected for the Site?
		Does the SWPPP comply with all documentation requirements in Part 2.1.2.1?
Description of Stormwater Control Measures		
<i>Stormwater Control Measures to be Used During Construction Activity</i>		
		Does the SWPPP describe all stormwater control measures that are or will be installed and maintained at the Site to meet the requirements of the Applicable Permit?
		For each stormwater control measure, does the SWPPP document information on the type of stormwater control measure to be installed and maintained, including design information?
		Does the SWPPP document what specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of your site to meet the requirement of Part 2.1.2.2a of the Construction General Permit?
		For exit points on the Site, does the SWPPP document the stabilization techniques the company will use and any additional controls that are planned to remove sediment prior to vehicle exit, consistent with Part 2.1.2.3 of the Construction General Permit?
		For linear projects, where the operator has determined that the use of perimeter controls in portions of the Site is impracticable, does the SWPPP document why this is the case?
<i>Use of Treatment Chemicals</i>		
		Will polymers, flocculants, or other treatment chemicals be used at the Site? If so, this section applies to the SWPPP:
		Does the SWPPP include a listing of all soil types that are expected to be exposed during construction and that will be discharged to locations where chemicals will be applied?
		Does the SWPPP include a listing of soil types expected to be found in fill material to be used in these same areas, to the extent this information is available prior to construction?
		Does the SWPPP include a listing of all treatment chemicals to be used at the Site, and why the selection of these chemicals is suited to the soil characteristics of your Site?
		Does the SWPPP include the locations where polymers, flocculants, or other treatment chemicals will be used and stored?
		Has the US EPA Regional Office authorized the use of cationic treatment chemicals on the Site? If "Yes," does the SWPPP include the specific controls and implementation procedures designed to ensure that your use of cationic treatment chemicals will not lead to a violation of water quality standards?
		Does the SWPPP include the dosage of all treatment chemicals that will be used at the site or the methodology that will be used to determine dosage?
		Does the SWPPP include the information from any applicable Material Safety Data Sheets (MSDS)?

		Does the SWPPP include schematic drawings of any chemically-enhanced stormwater controls or chemical treatment systems to be used for application of the treatment chemicals?
		Does the SWPPP include a description of how chemicals will be stored consistent with the Construction General Permit?
		Does the SWPPP include references to applicable state or local requirements affecting the use of treatment chemicals, and copies of applicable manufacturer's specifications regarding the use of specific treatment chemicals and/or chemical treatment systems?
		Does the SWPPP include a description of the training that personnel who handle and apply chemicals have received prior to permit coverage, or will receive prior to use of the treatment chemicals at the Site?
<i>Stabilization Practices</i>		
		Does the SWPPP describe the specific vegetative and/or non-vegetative practices that will be used to comply with Part 2.2 of the Construction General Permit?
		If the SWPPP incorporates the stabilization deadlines in Part 2.2.1.3a of the Construction General Permit for projects in arid, semi-arid or drought stricken areas, does the SWPPP document the beginning and ending dates of the seasonally dry period and your site conditions?
		If the project is affected by circumstances beyond the control of the operators/permittees and cannot meet the deadlines for initiation and/or completion of vegetative stabilization as required in Parts 2.2.1.1 and/or 2.2.1.2 of the Construction General Permit, does the SWPPP document (1) the circumstances that prevent the company from meeting the deadlines specified in Parts 2.2.1.1 and/or 2.2.1.2 of the Construction General Permit and (2) the schedule that will be followed for initiating and completing stabilization?
Pollution Prevention Procedures		
<i>Spill Prevention and Response Procedures</i>		
		Does the SWPPP describe the procedures that the company will follow to prevent and respond to spills and leaks consistent with Part 2.3 of the Construction General Permit?
		Does the SWPPP include procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases?
		Does the SWPPP identify the name or position of the employee(s) responsible for detection and response of spills or leaks?
		Does the SWPPP include the procedures to notify appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with Part 2.3.4 of the Construction General Permit and established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, occurs during a 24-hour period?
		Is contact information in locations that are readily accessible and available?
		Does the SWPPP include reference to the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311

		of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity?
Waste Management Procedures		
		Does the SWPPP describe the procedures for handling and disposing of all wastes generated at the Site, including, but not limited to, clearing and demolition debris, sediment removed from the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste?
Procedures for Inspection, Maintenance, and Corrective Action.		
		Does the SWPPP describe the procedures for maintaining stormwater control measures, conducting site inspections, and taking corrective actions?
		Does the SWPPP identify the personnel responsible for conducting inspection?
		Does the SWPPP specify whether the inspection schedule will be conducted pursuant to Part 4.1.2.1 (weekly) or Part 4.1.2.2 (every 2 weeks and within 24 hours of a storm event of 0.25 inches or greater) or Part 4.1.3 (at Sites discharging to sensitive waters, weekly and within 24 hours of a storm event of 0.25 inches or greater) of the Construction General Permit?
		If the applicable inspection schedule requires F&R to obtain rainfall data in accordance with either Part 4.1.2.2 or Part 4.1.3 (at Sites discharging to sensitive waters) of the Construction General Permit, does the SWPPP identify the location of the rain gauge on the Site or the address of the weather station that will be used to obtain rainfall data?
		Does the SWPPP include any inspection or maintenance checklists or other forms that will be used?
Staff Training		
		Does the SWPPP include documentation that the required personnel were trained in accordance with Part 6 of the Construction General Permit and the Consent Decree?
Documentation of Compliance with Other Federal Requirements		
		Endangered Species Act. Does the SWPPP include documentation supporting a determination with respect to Part 1.1.e and Appendix D of the Construction General Permit?
		Historic Properties. The SWPPP must include documentation required by Appendix E in relation to potential impacts to historic properties.
		Safe Drinking Water Act Underground Injection Control (UIC) Requirements for Certain Subsurface Stormwater Controls. If any of the following stormwater controls will be used at the Site, as they are described below, does the SWPPP document any contact you have had with the applicable state agency or EPA Regional Office responsible for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's implementing regulations at 40 CFR Parts 144 - 147? Such controls would generally be considered Class V UIC wells: <p style="margin-left: 40px;">a. Infiltration trenches (if stormwater is directed to any bored, drilled, driven shaft, or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);</p>

		<p>b. Commercially manufactured pre-cast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate stormwater flow; and</p> <p>c. Drywells, seepage pits, or improved sinkholes (if stormwater is directed to any bored, drilled, driven shaft, or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).</p>
<p>SWPPP Certification</p>		
		<p>Has the SWPPP been signed and dated in accordance with Appendix I, Part I.11 of the Construction General Permit?</p>

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Appendix C
Contractor Briefing Sheet

The instructions set forth herein shall apply to all employees, contractors and subcontractors of F&R Contractors Corp. and F&R Construction Group, Inc. (collectively, "F&R") performing or supervising earth disturbance or other construction activities at a construction site.

F&R is committed to minimizing stormwater pollution from water that may flow off its construction sites. As an employee, contractor or subcontractor of F&R you play an important role in helping F&R implement this commitment. Please be aware of the following topics as they relate to your work on the site.

The applicable Construction General Permit ("CGP") issued by the U.S. Environmental Protection Agency ("EPA"), the Site Stormwater Pollution Plan and the Consent Decree are the main references for Stormwater Compliance at a site and for the education of employees and contractors in proper work practices that will comply with the goals of minimizing pollutants that leave a site.

The Clean Water Act and its implementing permit ("CGP") establish the basic structure for regulating the discharge of pollutants from point sources to waters of the United States.

The Clean Water Act requires that any stormwater washed off a site must be in compliance with the terms of the CGP, which allows us to disturb land on a construction site. This permit governs the measures we have to take to limit the amount of pollutants in the storm water.

The Stormwater Pollution Prevention Plan ("SWPPP") is a fundamental requirement of the CGP and:

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.

Stormwater Control Measures are those stormwater controls, best management practices ("BMPs") or other methods used to prevent or reduce the discharge of pollutants from a site into the waters of the United States. These measures are intended to reduce the amount of pollutants in stormwater run-off. Stormwater Control Measures, including silt fences, sedimentation basins, vegetation, rock berms, gutter guards, curb inlet protection, buffer zones, drainage swales, and other measures are very important in assuring compliance with the permit and to keep sediment out of stormwater discharging from the site. If you notice a problem with any Stormwater Control Measures, please notify your foreman immediately. Do not remove or alter a Stormwater Control Measures without specific directions from your supervisor.

If you see pollutants in any form, in stormwater leaving the construction 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 site or at any entrance/exit please notify your foreman immediately or call _____ at _____.

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Appendix C
Contractor Briefing Sheet

List of Contractor Dos & Dont's

DO:

DO go to the Site Stormwater Compliance Manager with any questions regarding storm water pollution prevention or this list.

DO place all trash and debris in the receptacles provided.

DO use designated washout areas for (and only for) cleaning equipment (e.g., concrete trucks must use the designated concrete washout area).

DO immediately report any spills of petroleum or other chemicals to the Site Stormwater Compliance Manager.

DO immediately comply with instructions given by the F&R Stormwater Compliance Manager, the Site Stormwater Compliance Manager or his/her designee.

DON'T:

DON'T allow any solvents or chemicals to drain into a street, storm drain, creek, waterway, or other body of water.

DON'T disable, damage or interfere with any silt fence or similar stormwater control measure.

Example: DON'T run over a silt fence or straw wattle or forget to replace any silt fence or straw wattle you temporarily relocate, damage or dislodge.

DON'T disable, damage or interfere with any inlet controls.

Example: DON'T remove inlet controls (unless an action is needed to prevent flooding) or place dirt or debris in or adjacent to inlet controls.

DON'T disable, damage, evade or interfere with any storm water pollution prevention controls at construction entrances.

Example: DON'T evade stone construction entrances.

DON'T disable, damage, drive over or interfere with any geotextile, matting or mulch.

DON'T disable, damage or interfere with any other stormwater pollution control measure.

The failure to comply with stormwater requirements at this Site is a breach of your contractual obligations and may result in economic sanctions, employment termination or both.

Certification: I understand the importance of Stormwater Compliance as set forth in this Briefing Sheet. I have read and comprehend the above information. If I have further questions I will ask my foreman or call _____ at _____.

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Appendix D
 Pre-Construction Inspection and Review Form

Site Name: _____

Permit Number: _____

Site Stormwater Compliance Manager: _____

Permit Coverage	Yes	No	N/A	Permit No./Permit Holder	Date Coverage
1. Did F&R submit an NOI?					
2. Are there multiple operators associated with this project?					
3. If "Yes" to Question 2, pursuant to the CGP, have you ensured, either directly or through coordination with other permittees, that your activities do not disrupt or make another party's Stormwater Control Measures ineffective?					

SWPPP Information	Yes	No	N/A	Deficiency Identified (if any)	Date Corrected
4. Is the SWPPP properly certified?					
5. Has the Site Stormwater Compliance Manager reviewed the SWPPP?					
6. If "Yes" to Question 2, does the SWPPP identify your areas of operational day-to-day control?					
7. Does the SWPPP identify the stages of construction and the stormwater control					

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Appendix D
 Pre-Construction Inspection and Review Form

measures called for at each stage?					
8. Does the SWPPP identify the Site inspection frequency and routine maintenance deadlines required by the CGP?					
9. Does the SWPPP contain a statement by the SWPPP preparer that its development was guided by the requirements of the CGP and the Consent Decree?					
10. Did the Pre-Construction Inspection cover the entire Site? Yes _____ / No _____ If not, specify portion(s) of the Site that were inspected: _____ _____					

Site Status	Yes	No	N/A	Deficiency Identified (if any)	Date Corrected
11. Has the Site Stormwater Compliance Manager received stormwater training in accordance with the Consent Decree?					
12. Are required Stormwater Control Measures correctly installed at the correct locations?					
13. As applicable, do the installed Stormwater Control Measures appear to be working properly and are they appropriate for existing conditions at the Site?					
14. Have Construction Activities commenced at the Site? If so, when?					

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Appendix D
Pre-Construction Inspection and Review Form

The Site Stormwater Compliance Manager or Company Stormwater Compliance Manager shall review and sign this Pre-Construction Inspection and Review Form. Do not sign this form until a responsive action has been completed for each deficiency identified on this form and the completion date of the Responsive Action has been recorded. Do not commence Construction Activities until this form has been signed. Construction Activities do not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of Stormwater Control Measures that are not sediment basins, provided that none of these activities involve significant earth disturbance. This form must be kept on-Site and a copy shall be kept with the SWPPP for the Site at the project construction office. If the Site does not have a construction office, the location of this form and other records must be posted on-Site.

Name and Title

Signature

Date

A copy of this form must kept on site with the applicable SWPPP.

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**Appendix E-1
 Inspection Report**

Site Name: _____ CGP Tracking No. _____
 Inspector Name: _____ Inspection Date: _____

General Information
<p>Inspection Frequency (Note: You may be subject to different inspection frequencies in different areas of the Site. Check all that apply.)</p> <p>_____ Standard Inspection Frequency: Weekly.</p> <p style="margin-left: 40px;">Date of Last Rainfall: _____ Total Rainfall Amount (inches): _____</p> <p>_____ Increased Frequency: Every 7 days and within 24 hours of a 0.25-inch rain (for areas of the Site discharging to sediment or nutrient-impaired waters or to waters designated as Tier 2, Tier 2.5 or Tier 3).</p> <p style="margin-left: 40px;">Was this inspection triggered by a 0.25" or greater storm event? _____ Yes _____ No</p> <p style="margin-left: 40px;">If yes, how did you determined whether a 0.25" storm event has occurred?</p> <p style="margin-left: 40px;">_____ Rain gauge on site _____ Weather station representative of Site Specify Weather Station Source: _____</p> <p>Total Rainfall Amount that triggered the inspection (inches): _____</p>
<p>Weekly Construction Meetings</p> <p>Date of Meeting: _____ Location of Meeting: _____</p>

Condition and Effectiveness of Erosion and Sediment (E&S) Controls (CGP Part 2.1)					
Type and Location of each E&S Control	Repair or Other Maintenance Needed? (Yes/No)	Corrective Action Required? (Yes/No)	Date on Which Need for Maintenance or Corrective Action First Identified?	Date on Which Maintenance or Corrective Action Was Completed?	Notes

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**Appendix E-1
 Inspection Report**

Site Name: _____ CGP Tracking No. _____
 Inspector Name: _____ Inspection Date: _____

* **Note:** Including any repairs or maintenance needed for existing BMPs Stormwater Control Measures to ensure that they are maintained in effective operating condition, and the need to modify and/or to implement additional Stormwater Control Measures BMPs to eliminate or significantly minimize any discharges of pollutants from the Site into waters of the United States.

Condition and Effectiveness of Pollution Prevention (P2) Practices (CGP Part 2.3)					
Type/Location of P2 Practices	Repair or Other Maintenance Needed? (Yes/No)	Corrective Action Required? (Yes/No)	Date on Which Maintenance or Corrective Action First Identified?	Date on Which Maintenance or Corrective Action Was Completed?	Notes

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**Appendix E-1
 Inspection Report**

Site Name: _____ CGP Tracking No. _____
 Inspector Name: _____ Inspection Date: _____

Type/Location of P2 Practices	Repair or Other Maintenance Needed? (Yes/No)	Corrective Action Required? (Yes/No)	Date on Which Maintenance or Corrective Action First Identified?	Date on Which Maintenance or Corrective Action Was Completed?	Notes

*** Note:** The permit differentiates between conditions requiring repairs and maintenance, and those requiring corrective action. The permit requires maintenance in order to keep controls in effective operating condition and requires repairs if controls are not operating as intended. Corrective actions are triggered only for specific, more serious conditions, which include: 1) A required stormwater control was never installed, was installed incorrectly, or not in accordance with the requirements in Part 2 and/or 3; 2) You become aware that the stormwater controls you have installed and are maintaining are not effective enough for the discharge to meet applicable water quality standards or applicable requirements in Part 3.1; 3) One of the prohibited discharges in Part 2.3.1 is occurring or has occurred; or 4) EPA requires corrective actions as a result of a permit violation found during an inspection carried out under Part 4.2. If a condition on your site requires a corrective action, you must also fill out a corrective action form found at www.epa.gov/npdes/stormwater/swppp. See Part 5 of the permit for more information.

Stabilization of Exposed Soil (CGP Part 2.2)			
Stabilization Area	Stabilization Method	Have You Initiated Stabilization? (Yes/No)	Notes

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**Appendix E-1
 Inspection Report**

Site Name: _____ CGP Tracking No. _____
 Inspector Name: _____ Inspection Date: _____

Description of Discharges (CGP Part 4.1.6.6)	
Was a stormwater discharge or other discharge occurring from any part of your site at the time of the inspection? ____ Yes ____ No If "yes", provide the following information for each point of discharge:	
Discharge Locations	Observations
	Describe the discharge and identify and any unpermitted discharge of pollutants from the Site into waters of the United States: _____ _____ At points of discharge and the banks of any surface waters in your property boundaries or immediately adjacent to your property, are there any signs of visible erosion and/or sedimentation that have occurred and are attributable to your discharge? Yes No If yes: <ul style="list-style-type: none"> • identify and record any unpermitted discharge of pollutants from the Site into waters of the United States, including wetlands and municipal separate storm sewer systems leading to surface waters

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 Inspection Report**

Site Name: _____ CGP Tracking No. _____
 Inspector Name: _____ Inspection Date: _____

	<ul style="list-style-type: none"> Observe and document the visual quality of the discharge, and take note of the characteristics of the stormwater discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollutants Document whether your stormwater controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance. <p>Specify the location(s) where these conditions were found, and indicate whether modification, maintenance, or corrective action is needed to resolve the issue: [Enter text here.]</p>
	<p>Describe the discharge: _____</p> <p>_____</p> <p>At points of discharge and the banks of any surface waters in your property boundaries or immediately adjacent to your property, are there any signs of visible erosion and/or sedimentation that have occurred and are attributable to your discharge? Yes No</p> <p>If yes:</p> <ul style="list-style-type: none"> Identify and record any unpermitted discharge of pollutants from the Site into waters of the United States, including wetlands and municipal separate storm sewer systems leading to surface waters Observe and document the visual quality of the discharge, and take note of the characteristics of the stormwater discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollutants Document whether your stormwater controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance. <p>Specify the location(s) where these conditions were found, and indicate whether modification, maintenance, or corrective action is needed to resolve the issue: [Enter text here.]</p>
Pollutants on Site	
<p>Did you notice the presence of conditions that could lead to spills, leaks, or other pollutants on the site? Yes No</p> <p>If "yes", provide the following information:</p>	

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**Appendix E-1
 Inspection Report**

Site Name: _____ CGP Tracking No. _____
 Inspector Name: _____ Inspection Date: _____

Location (where you notice the presence of conditions that could lead to spills, leaks, or other pollutants)	Observations
	Describe the conditions that could lead to spills, leaks, or other pollutants: _____ _____
	Describe the conditions that could lead to spills, leaks, or other pollutants: _____ _____
	Describe the conditions that could lead to spills, leaks, or other pollutants: _____ _____
	Describe the conditions that could lead to spills, leaks, or other pollutants: _____ _____

New or Modified Stormwater Controls	
Are new or modified Stormwater controls necessary at the time of the inspection? Yes No	
If "yes", provide the following information:	
Location (where new or modified stormwater controls are necessary)	Observations
	Stormwater Controls: New _____ Modified _____ Describe the new or modified stormwater controls: _____ _____
	Stormwater Controls: New _____ Modified _____ Describe the new or modified stormwater controls: _____ _____
	Stormwater Controls: New _____ Modified _____

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**Appendix E-1
 Inspection Report**

Site Name: _____ CGP Tracking No. _____
 Inspector Name: _____ Inspection Date: _____

	Describe the new or modified stormwater controls: _____ _____
--	--

Incidents of Noncompliance	
Did you observe any incident of noncompliance? Yes No If "yes", provide the following information:	
Location (where you observed any incident of noncompliance)	Observations
	Describe the incident of noncompliance: _____ _____
	Describe the incident of noncompliance: _____ _____
	Describe the incident of noncompliance: _____ _____

Stormwater Compliance Manager Certification and Signature	
"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 gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."	
Signature of Stormwater Compliance Manager: _____	Date: _____
Printed Name and Affiliation: _____	

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**Appendix E-1
Inspection Report**

Site Name: _____ CGP Tracking No. _____
Inspector Name: _____ Inspection Date: _____

Stormwater Consultant Certification and Signature

“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 gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Signature of Stormwater Consultant: _____ **Date:** _____

Printed Name and Affiliation: _____

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Appendix E (2)
Corrective Action Report

Site Name: _____

Date: _____

Section A – Initial Report			
(Complete this section <u>within 24 hours</u> of discovering the condition that triggered corrective action)			
Date problem first discovered: _____		Time discovered: _____	
Name and contact information of individual completing form: _____ _____			
<p>What site conditions triggered the requirement to conduct corrective action (<i>check the box that applies</i>):</p> <p><input type="checkbox"/> A required stormwater control was never installed, was installed incorrectly, or not in accordance with the requirements in Part 2 and/or 3</p> <p><input type="checkbox"/> The stormwater controls that have been installed and maintained are not effective enough for the discharge to meet applicable water quality standards or applicable requirements in Part 3.1 of the permit</p> <p><input type="checkbox"/> A Part 2.3.1 prohibited discharge has occurred or is occurring</p> <p><input type="checkbox"/> EPA requires corrective action as a result of permit violations found during an EPA inspection carried out under Part 4.2</p>			
Provide a description of the problem: _____ _____			
Deadline for completing corrective action: _____			
<p>If your estimated date of completion falls after the 7-day deadline, explain (1) why you believe it is not possible to complete work within 7 days, and (2) why the date you have established for making the new or modified stormwater control operational is the soonest practicable timeframe:</p> <p>_____ _____ _____</p>			
Section B – Corrective Action Progress			
(Complete this section <u>no later than 7 calendar days</u> after discovering the condition that triggered corrective action)			
Section B.1 – Why the Problem Occurred			
Cause(s) of Problem (insert additional rows if applicable)		How This Was Determined and the Date You Determined the Cause	
_____ _____			
Section B.2 – Stormwater Control Modifications to be Implemented to Correct the Problem			
List of Stormwater Control Modification(s) Needed to Correct Problem (insert additional rows if applicable)	Date of Completion	SWPPP Update Necessary? <input type="checkbox"/> Yes <input type="checkbox"/> No [If yes, specify date SWPPP modified]	Notes
_____ _____			

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**Appendix E (2)
Corrective Action Report**

Site Name: _____

Date: _____

		<input type="checkbox"/> Yes <input type="checkbox"/> No [If yes, specify date SWPPP modified]	

Section C – Certification and Signature

Section C.1 – Certification and Signature by Stormwater Consultant

“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 ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Signature of Stormwater Consultant: _____

Name of Stormwater Consultant: _____

Date: _____

Section C.2 – Certification and Signature by Site Stormwater Compliance Manager

“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 ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Signature of Site Stormwater Compliance Manager: _____

Name of Site Stormwater Compliance Manager: _____

Date: _____

Section C.3 – Certification and Signature by Company Stormwater Compliance Manager

“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 ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Signature of Company Stormwater Compliance Manager: _____

Name of Company Stormwater Compliance Manager: _____

Date: _____

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Appendix F
Quarterly Compliance Inspection Form

Site Name: _____ Inspection Area: _____

Inspection Date: _____ Quarterly Reporting Period: _____ to: _____

Company Stormwater Compliance Manager: _____

Inspection Type: _____ Regular _____ Final

Weather Conditions: _____ Dry _____ Rain Date of last Rainfall Event: _____

Rainfall Amount as of Time of Inspection: _____ inches Rainfall Duration: _____ hours

General		Yes	No	N/A	Responsive Action Log Reference No.
1.	Is the SWPPP on Site or is its location posted?				
2.	Has the SWPPP been implemented by the Company Compliance Manager?				
3.	Does the SWPPP identify potential sources of pollution?				
4.	Does the SWPPP identify the nature of potential sources of pollution and their areas of control?				
5.	Does the SWPPP identify the nature and sequence of earth disturbance activities?				
6.	If this is the first Quarterly Compliance Inspection conducted for the Site, was there a failure to perform or material failure to document the Pre-Construction Inspection and Review prior to commencement of construction activity?				
7.	If required, are the Applicable Permit and/or NOI on Site?				
8.	Was NPDES permit active at all times during the previous quarter, while there was construction activity?				
9.	Did NPDES permit cover all areas with active construction activity during the previous quarter?				
10.	If the answer to questions 8 and 9 is "no", how many days during the previous quarter was there a discharge of pollutants without a permit?				
11.	Is contact information for the Company Stormwater Compliance Manager provided on-Site and is it correct?				
12.	Since the last site inspection, has Contractor received written notice of a federal, state, or				

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Appendix F
Quarterly Compliance Inspection Form

	local inspection evaluating compliance with the Applicable Permit?				
13.	If the answer to question 12 is "yes", are copies of the inspection(s) and response(s) filed with the SWPP?				
14.	Were all Site Inspection Forms during the Quarterly Reporting Period signed by a Site Stormwater Compliance Manager and certified as required by the Consent Decree and the Applicable Permit?				
15.	Were all Responsive Action Items performed in a timely manner during the Quarterly Reporting Period, as required by the Consent Decree?				
16.	Were all Corrective Action reports required by the Applicable Permit completed?				
17.	Are the Site Stormwater Compliance Managers trained and certified per F&R requirements?				
18.	Is there an excess of sediment or other pollutants exiting the Site?				
19.	Are the outfalls / receiving water discharges free of sediment?				
20.	Is there any floatable debris near the discharges?				
21.	Do any sediment traps or basins or outlet devices require stabilization or other maintenance?				
22.	Are off-Site roads/gutters free of excessive sediment from the Site?				
23.	Are exit/entrance controls properly located and in working condition, with no maintenance necessary?				
24.	Are exposed areas stabilized as required?				
25.	Is there evidence of accelerated erosion or sedimentation?				
26.	Are the stabilization methods installed in a timely manner (in accordance with Applicable Permit) after earth disturbance work is completed?				
27.	Are dust control measures properly used?				
28.	Are step slopes adequately stabilized?				

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Appendix F
Quarterly Compliance Inspection Form

29.	Are stockpiles located and stabilized as required?				
30.	Are other BMPs properly located, in working condition, and no repairs necessary?				
31.	Are existing silt fences and/or perimeter controls properly installed and maintained?				
32.	Are check dams properly installed and maintained?				
33.	Are erosion control blankets properly installed and maintained?				
34.	Are stream crossings properly installed and maintained?				
35.	Are on-lot the BMPs properly installed and maintained?				
36.	Are storm drain inlet protection measures properly installed and maintained?				
37.	Are channels, swales, and other open conveyances properly installed stabilized, and maintained, with no signs of erosion?				
38.	Are off-Site roads/gutters free of excessive sediment from the Site?				
39.	Are all pumping and dewatering activities using adequate filtration for discharges water?				
40.	Are concrete, paint, and stucco washout areas properly located, in working condition, and no maintenance necessary?				
41.	Are there signs of improper washout or cleaning of materials around the Site, away from the marked washout areas?				
42.	Are hazardous materials managed as required?				
43.	Are storage areas for construction materials properly protected from rain and stormwater runoff?				
44.	If refueling is done on-Site, are proper measures taken to reduce the potential for pollution discharges?				
45.	Is there any evidence of leaks or spills?				
46.	Are trash, construction debris, and other solid wastes managed as required, and on-Site roads/gutters free of excessive sediment?				

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Appendix F
 Quarterly Compliance Inspection Form

47.	Do the construction activities have the potential for blowing trash or debris?				
48.	Are portable toilets properly located, anchored and maintained?				
49.	Were the SWPPP or Erosion & Sediment Control program updated regularly to reflect construction conditions?				
50.	Are there ruts, gullies or other signs of accelerated erosion?				
51.	Are there any other compliance issues, inadequate BMP, additional BMPs or improvement this Site should address?				
52.	Does the Site have any recurring compliance issues?				

The following Action Items were observed by the Company Stormwater Compliance Manager during the Quarterly Compliance Inspection of the Site:

General

Maintenance

PREPARED BY Company Stormwater Compliance Manager

 Name Signature Date

Note: Settling Parties shall keep copies of all Quarterly Compliance Inspection Forms with the SWPPP.

Upon completion of the Quarterly Compliance Inspection, each of the following topics shall be reviewed for each Site by the Site Stormwater Compliance Manager and the Company Stormwater Compliance Manager. When the review is completed, the Site Stormwater Compliance Manager shall sign the form in the space provided below.

A. Physical Condition of the Site and Stormwater Control Measures	
1.	Are there compliance issues related to the physical condition of the Site or Stormwater Control Measures? _____ Yes _____ No. If "yes," identify the issues and origins:
2.	If "yes" to question 1, recommended actions to address issues identified include:
B. Adequacy of SWPPP and Recordkeeping Procedures	
1.	Are there perceived inadequacies in the SWPPP or in recordkeeping procedures? _____ Yes _____ No. If "yes," identify the inadequacies:
2.	If "yes" to question 1, recommended actions to address these inadequacies include:
C. Contractor Compliance with Stormwater Requirements	
1.	Are there any Stormwater Compliance issues being caused by subcontractors? _____ Yes _____ No. If "yes," identify the issues?
2.	If "yes" to question 1, recommended actions to address these issues include:

D. Responsive Actions not Performed in Time and Manner Required by Applicable Permit

1. Has Respondent identified compliance issues with the number of Responsive Actions performed as required by the Applicable Permit? (Circle one) (Yes) or (No) If “yes,” identify the issues and observed origin of the issues.

2. If “yes” to question 1, recommended actions to address these issues include:

E. Recurring Compliance Issues at Site

1. Has Respondent identified recurring compliance issues with the number of Responsive Actions performed or required by the Applicable Permit? (Circle one) (Yes) or (No) If “yes,” identify the issues and observed origin of the issues.

2. If “yes” to question 1, recommended actions to address these issues include:

1. Did Respondent fail to obtain coverage for this Site under an Applicable Permit prior to start of Construction Activities? If yes, has there been any discharge of pollutants from the Site to a U.S. water during the quarter covered herein without obtaining required permit coverage? _____ Yes _____ No. If yes, total number of days of unauthorized discharge during the quarter: _____

2. If this is the first Quarterly Compliance Inspection and Review conducted for the Site, did Respondent identify a failure to perform or document the Pre-Construction Inspection and Review? _____ Yes _____ No

3. Was the Site Stormwater Compliance Manager trained in accordance with Stormwater Training program at the time of this Quarterly Compliance Inspection and Review? _____ Yes _____ No.

Number of Site inspections conducted during the quarter: _____

Number of Site Inspections required during the quarter: _____

Number of missed or undocumented Site Inspections: _____

Number of times SWPPP was not available (or at posted location) during Site Inspection: _____

Name

**Company Stormwater Compliance
Manager**

Signature

Date

Name

**Site Stormwater Compliance
Manager**

Signature

Date

[Note]: The Company Stormwater Compliance Manager shall review the Quarterly Compliance Review Form with the Site Stormwater Compliance Manager for that Site, and both persons shall sign the Quarterly Compliance Review Form for the Site.

Respondent shall maintain each Quarterly Compliance Review Forms with the SWPPP.

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Appendix H

Quarterly Summary Report Form

The information set forth herein is a compilation and summary of events occurred during the quarter from: _____, 20__ to _____, 20__.

A. Information for Categories of Self-Reported Stipulated Penalties

Number of days of discharge of pollutants from a Site to a U.S. water prior to obtaining coverage under an Applicable Permit. (See Paragraph No. 47.)	Site Name	Location	No. of Days
Number of days of discharge from a Site to a U.S. water in violation of an Applicable Permit. (See Paragraph No. 47.)	Site Name	Location	No. of Days
Number of days without a Company Stormwater Compliance Manager that meets the requirements of Paragraph 14 (Designation of Company Stormwater Compliance Manager). (See Paragraph No. 48.)			
Number of days without a Site Stormwater Compliance Manager at a Site that meets the requirements of Paragraph 15 (Designation of Site Stormwater Compliance Managers). (See Paragraph No. 48.)	Site Name	Location	No. of Days
Number of days the respondent failed to submit the List of Sites or to update it or otherwise comply with Paragraph 16 (Notice to EPA of List of Sites). (See Paragraph No. 49.)			
Number of days without the required permit coverage for a Site. (See Paragraph No. 50.)	Site Name	Location	No. of Days

Number of days the respondent failed to prepare a SWPPP or ensure a SWPPP was prepared for a Site that meets the requirements of Paragraph 18 (SWPPPs). (See Paragraph No. 50.)	Site Name	Location	No. of Days
Number of days the respondent failed to modify a SWPPP or ensure a SWPPP was modified pursuant to Paragraph 18 (SWPPPs). (See Paragraph No. 50.)	Site	Location	No. of Days
Number of days that a Site Stormwater Compliance Manager was not certified as Stormwater Trained as required by Paragraph 9(II) (Definitions – “Stormwater Trained”) and Paragraph 21 (Stormwater Training Program and Associated Records). (See Paragraph No. 51.)	Site Name	Location	Days Per Violation
Number of days the respondent failed to provide Site Specific Stormwater Training at a Site as required by Paragraph 21 (Stormwater Training Program and Associated Records). (See Paragraph 51.)	Site	Location	Days Per Person
Number of times the respondent failed to provide the Contractor Briefing Sheet as required by Paragraph 21(a)(iii) (Stormwater Training Program and Associated Records). (See Paragraph 51.)	Site	Location	Days Per Person
Number of times the respondent failed to perform or document a required Pre-Construction Inspection and Review at a Site pursuant to Paragraph 23 (Pre-Construction Inspection and Review). (See Paragraph No. 52(a).)	Site	Location	
Total number of required Inspections at all Sites. (See Paragraph No. 52)			

Number of times the respondent failed to perform or document a required Inspection at a Site that meets the requirements of Paragraph 25 (Inspections). (See Paragraph No. 52(b).)	Site	Location	No. of Missed, Incomplete or Undocumented Inspections
Total number of required Quarterly Compliance Inspections and Quarterly Compliance Reviews at all Sites. (See Paragraph No. 52(c).)			
Number of times the respondent failed to perform or document a required Quarterly Compliance Inspection or Review at a Site that meets the requirements of Paragraph 29 (Quarterly Compliance Inspection and Review). (See Paragraph No. 52(c).)	Site	Location	
Number of times the respondent failed to perform or document a Final Site Inspection at a Site pursuant to Paragraph 31 (Final Site Inspection). (See Paragraph No. 52(d).)	Site	Location	
Number of times the respondent failed to hold a pre-construction meeting at a Site that meets the requirements of Paragraph 22 (Pre-Construction Meetings) or a weekly meeting that meets the requirements of Paragraph 24 (Weekly Meetings). (See Paragraph No. 53.)	Site	Location	No. of Days Per Violation

Number of days the respondent failed to implement all stormwater control measures as required by Paragraph 26 (Stormwater Control Measures) and Paragraph 27 (Temporary Alteration of Stormwater Control Measures). (See Paragraph No. 54.)	Site	Location	No. of Days Per Violation
Number of days the respondent failed to temporarily stabilize a Site pursuant to Paragraph 28 (Temporary Stabilization) and Paragraph 31 (Final Site Inspection). (See Paragraph No. 54.)	Site	Location	No. of Days
Number of days the respondent failed to comply with any reporting requirement. (See Section VI, VII and Paragraph No. 55.)	Reporting Requirement	No. of Days	

A. Describe the cause of each violation (Paragraph 30. Quarterly Summary Report and Paragraph 33. Cause of Violation)

B. Identify any recurring non-compliance issues and proposed solutions to such issues that respondent has implemented or will implement. (Paragraph 30)

C. Attachments:

a. Provide copies of any government inspection report(s) or enforcement action(s) taken at any Site during the calendar quarter related to stormwater compliance. (Paragraph 30)

b. Provide the Company Stormwater Compliance Manager’s annual evaluation of the Stormwater Training Program pursuant to Paragraph 21(b) (applicable to the fourth Quarterly Compliance Summary Report submitted each year). D. Signature and Certification

I hereby certify that the foregoing information was prepared under my direction or supervision. I certify that the responses are, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

E. This form must be sent to the following:

The Company Stormwater Compliance Manager shall provide a copy of this Quarterly Summary Report to all Site Stormwater Compliance Managers.

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 ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Certified by Company Stormwater Compliance Manager:

Name

Signature

Date

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Appendix I-1

Stormwater Training Program

Company and Site Stormwater Compliance Managers Training Program Syllabus

Given to: Company and Site Stormwater Compliance Managers

Course Duration: Three (3) full days

General Contents:

- Awareness and Risk of Environmental Compliance (2 hours)
 - Consent Decree application
 - Costs of non-compliance
 - How to calculate risk
 - Long term impacts to water resources

- Rules and Regulations – Understanding the Clean Water Act (2 hours)
 - History of Clean Water Act Regulations
 - Section 401 Rules and TMDL's
 - Section 402 Rules
 - NPDES Regulation Details (MS4, Construction, and Industrial Clients)
 - Section 404 Rules
 - Administrative Order Process
 - Civil Penalties and Processes
 - Criminal Prosecutions and Case Examples
 - Third Party Citizen Lawsuits

- Proper Elements of Site Management for Compliance (1 hour)
 - 10 most common reasons for site regulatory visits
 - Documentation pitfalls
 - Case Histories from clients who thought they found a loophole

- A day in the life of a stormwater inspector: A video diary (1 hour)
 - Stories, examples, and an interactive example
 - Checklists (Pre-construction, routine, quarterly), programs, and photo diaries
 - Examples of “good” inspection programs

- Training Strategies and “Traits” of Successful Programs (1 hour)
 - Doing vs. Telling
 - Field Programs
 - Measurement Techniques

- CPESC Certification or Equivalent Training (8 hours) and Examination¹ (5 hours)
 - I - Introduction & Why We Care 25 min

¹ CPESC examinations are available in English and Spanish. Accordingly, Respondent reserves the right to offer said examination in English or Spanish to its employees who are required to be Stormwater Trained.

- II - Rules and Regulations 60 min
 - III - Site Planning & Management 20 min
 - IV - Predicting Soil Loss 75 min
 - V - Runoff Management 60 min
 - VI - Soil Stabilization 60 min
 - VII - Sediment Control 60 min
- Site Inspections, documentation, and corrective actions – Field Training (4 hours)
 - Site inspections, documentation and corrective actions at an existing construction Site, including discussion of Stormwater Control Measures, Best Management Practices, SWPPP documentation and Consent Decree requirements.

EXAMINATION

When Given: Annually

Training Certification shall be valid for a period of twelve (12) months and shall be renewed annually through completion of a refresher course and exam (as defined in Appendix I-3).

Certificate Issued: Passing the course will result in maintenance of certification as Stormwater Trained under this Consent Decree for a period of twelve (12) months.

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Appendix I-2
Training Program

Site-Specific Employees and Contractors Training Program Syllabus

Given to: Employees who primarily and directly supervise or who primarily and directly assist in the supervision of Construction Activity and Contractors. Course will be given in Spanish.

General Content: The training class shall consist of the topics listed below:

- Introduction to the F & R Contractors, Corp.'s Stormwater Compliance Policy
- Stormwater Pollution Prevention Planning (SWPPP's) and SWPPP Management

Course Duration: Four (4) hours

1. Stormwater Basics: Rules of Engagement
 - i. Course Outline
 - ii. Group Exercise
 - iii. Incentives for Success
2. Rules, Risks, and Ramifications
 - i. EPA Permit, State Examples
 - ii. Enforcement Cases
3. Specifications
 - i. Bidding/Estimating
 - ii. Pre-Construction Valuation
 - iii. Chain of Command
4. Stormwater Pollution Prevention Plans
 - i. The Good, the Bad, and the Ugly
 - ii. Drawings: What to look for
 - iii. Notes: How to go from filler to fulfillment?
5. Consent Decree Definition and Scope
6. Inspections, Inspection requirements, and Record Maintenance BMP Installation and Maintenance
7. Site-Specific Orientation
8. Group Exercise: Evaluation of Knowledge

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Appendix I-3
Training Program

Refresher Training Syllabus

Given to: Company and Site Stormwater Compliance Managers

Duration: 4 hours

General Content:

- F & R Contractors, Corp., Stormwater Compliance Policy, Stormwater Regulation, and Permits Required for Stormwater Pollution Prevention
- Filing Requirements, SWPPP Preparation/Contents, and Updating the SWPPP and Maps in compliance with the Consent Decree and the Applicable Permit.
- Inspections, Inspection requirements, and Record Maintenance, Stormwater Control Measure and BMP Installation and Maintenance
- Dealing with Subcontractors
- Lessons Learned

EXAMINATION

What: A recertification will be administered on an annual basis or as needed to ensure that all employees who are required to be Stormwater Trained comply with the applicable provisions of the Consent Decree.

When: To be Administered Annually.

Refresher Certifications shall be valid for a period of twelve (12) months from the date of examination and shall be renewed annually.

Certificate Issued: Passing the course will result in maintenance of certification as Stormwater Trained for 12 months.