

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:25-cv-60
)	
ELMORE SAND & GRAVEL, INC.,)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS, Plaintiff United States of America, by authority of the Attorney General of the United States, acting at the request of and on behalf of the United States Environmental Protection Agency (“EPA”), filed the Complaint in this action alleging that Defendant Elmore Sand & Gravel, Inc. violated and remains in violation of Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendant, without authorization, discharged and is continuing to discharge pollutants to waters and adjacent wetlands covered by the CWA located within what the Complaint refers to as the “Site,” i.e., approximately 1,665 acres of real property in Elmore County, Alabama, just north of the city of Elmore and north and south of Marion Spillway Road (near 32.568 degrees north latitude and 86.342 degrees west longitude);

WHEREAS, the Complaint seeks: (a) injunctive relief prohibiting Defendant from further unauthorized discharges, including by complying with any permit issued under Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344; (b) injunctive relief compelling Defendant to restore, remediate, stabilize, and/or mitigate the impacts of the unauthorized discharges; (c) a

civil penalty award in favor of the United States and against Defendant; and (d) such other relief as the United States and the Court may deem appropriate;

WHEREAS, years before the United States filed the Complaint, the United States and Defendant (“Parties”) commenced settlement negotiations concerning the alleged CWA violations;

WHEREAS, Defendant contends that its continued mining, processing, and rail loadout operations on or in the vicinity of the Site are necessary for Defendant to support its implementation of the mandatory injunctive relief set forth in this Consent Decree, and Defendant has submitted evidence to the United States regarding the limits of Defendant’s cash flow and ability to satisfy the financial aspects of any judgment in this case;

WHEREAS, the mandatory injunctive relief plans referenced in Paragraphs 13 and 14 of this Consent Decree, in particular, are the result the Parties’ (and their environmental consultants’) good faith, closely coordinated, and years-long efforts to meet injunctive relief objectives in consideration of Defendant’s ability-to-pay capability;

WHEREAS, the Parties agree and 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; and

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and 33 U.S.C. § 1319(b), and the Court has personal jurisdiction over Defendant.

2. Venue is proper in this Court pursuant to 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391(b) and 1395 because Defendant conducts business in this District and the causes of action and CWA violations alleged in this action arose in the Middle District of Alabama.

3. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in the Middle District of Alabama.

4. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301, 309, 402, and/or 404 of the CWA, 33 U.S.C. §§ 1311, 1319, 1342, and/or 1344.

II. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon Defendant and any successors, assigns, or other persons otherwise bound by law whether or not any such person has notice of this Consent Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, including, for example, any contractor or consultant retained to perform injunctive relief required under this Consent Decree. Defendant shall condition any such contract upon

performance that conforms to the terms of this Consent Decree. The United States shall not be considered a party to any such contract.

7. In any action to enforce this Consent Decree against Defendant, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, successors, assigns, contractors, consultants, or any person acting in concert or participation with Defendant, to take any actions necessary to comply with the provisions of this Consent Decree.

8. It is the express purpose of the Parties in agreeing to this Consent Decree to further the objective set forth in CWA Section 101(a), 33 U.S.C. § 1251.

III. DEFINITIONS

9. Terms used in this Consent Decree have the same meaning assigned to them by applicable provisions of the CWA or its implementing regulations, unless otherwise provided in this Consent Decree.

10. The following terms used in this Consent Decree have the definitions set forth in this Paragraph:

“Complaint” means the pleading that the United States filed to commence this case just prior to or concurring with the lodging of the proposed Consent Decree.

“Consent Decree” or “Decree” means this Consent Decree and all Deliverables approved by EPA in accordance with Section VI (Deliverables), and all modifications made effective in accordance with Section XVII (Modification). In other words, any EPA-approved Deliverable or any duly effective modification is incorporated into, and enforceable under, this Consent Decree.

“Corps” means the United States Army Corps of Engineers, typically through its Mobile District.

“CWA” means the Clean Water Act, 33 U.S.C. §§ 1251-1388.

“Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day.

“Defendant” means Elmore Sand & Gravel, Inc.

“Deliverable” means any document that this Consent Decree requires or allows to be submitted to EPA for its review and approval pursuant to Section VI (Deliverables).

“DOJ” means the United States Department of Justice, typically through its Environment and Natural Resources Division.

“EPA” means the United States Environmental Protection Agency, typically through its Region 4.

“Effective Date” means the date provided in Section XV (Effective Date).

“Paragraph” means a portion of this Consent Decree identified by an Arabic numeral.

“Parties” means the United States and Defendant.

“Request for Termination” means the written request presented by Defendant to the United States in accordance with Section XVIII (Termination).

“Section,” when not used in conjunction with the CWA (e.g., Section 404 of the CWA) or the Internal Revenue Code, means a portion of this Decree identified by a Roman numeral.

“Site” approximately 1,665 acres of real property in Elmore County, Alabama, just north of the city of Elmore and north and south of Marion Spillway Road (near 32.568 degrees north latitude and 86.342 degrees west longitude).

“United States” means Plaintiff United States of America.

IV. CIVIL PENALTY

11. Although the United States requests in its Complaint that the Court award a civil penalty, at the time of the Parties' execution of this Consent Decree, the United States has not assessed or requested that Defendant pay any amount of a civil penalty. Any civil penalty award for the United States' claims alleged in the Complaint is held in abeyance pending Defendant's timely completion of the mandatory injunctive relief required by this Decree. Upon Defendant's timely completion of the mandatory injunctive relief required by this Decree, no such award shall be made. But if Defendant does not timely complete the mandatory injunctive relief required by this Decree, the Court, at the request of the United States, may conduct further proceedings and award a civil penalty in favor of the United States and against Defendant. This Paragraph does not apply to circumstances governed by Section VIII (Stipulated Penalties).

V. INJUNCTIVE RELIEF

12. Prohibitory injunctive relief. Except as in accordance with this Decree, Defendant and Defendant's agents, successors, and assigns are enjoined from discharging any pollutant to waters of the United States, unless such discharge complies with applicable provisions of the CWA and its implementing regulations.

13. Mandatory injunctive relief: stream stabilization and remediation.

a. Within 30 Days after the Effective Date, Defendant shall submit to EPA, for its review as a Deliverable pursuant to Section VI (Deliverables), a plan consistent with the *Design Brief for Restoration Options for Mortar Creek on the Elmore Sand & Gravel Site* prepared by 5 Smooth Stones Restoration PLLC and transmitted to EPA on or about September 27, 2023 and again on or about October 4, 2023, with corrections made to the appendices on or

about February 28, 2024. (The plan shall not be marked or treated as settlement confidential, even though the documents just referenced were.)

b. The plan shall include prompt deadlines for Defendant's completion of work, consistent with beginning the bid and selection process for a contractor in early Spring 2025 and conducting work between the years of 2025-2027.

c. Following EPA's approval of the plan, Defendant shall timely and completely perform the work under the terms and conditions of this plan, as approved.

14. Mandatory injunctive relief: stormwater/wastewater management.

a. Within 30 Days after the Effective Date, Defendant shall submit to EPA, for its review as a Deliverable pursuant to Section VI (Deliverables), a plan consistent with the *Stormwater/Wastewater Management Options: 100% Plans Submittal* prepared by TTL, Inc. and transmitted to EPA on or about October 4, 2023. (The plan shall not be marked or treated as settlement confidential, even though the document just referenced was.)

b. The plan shall include prompt deadlines for Defendant's completion of work.

c. Following EPA's approval of the plan, Defendant shall timely and completely perform the work under the terms and conditions of this plan, as approved.

15. Mandatory injunctive relief: wetlands enhancement.

a. Within 30 Days after the Effective Date, Defendant shall submit to EPA, for its review as a Deliverable pursuant to Section VI (Deliverables), a plan for the enhancement of approximately seven acres of degraded wetlands consistent with the Parties' December 2024 correspondence. (The plan shall not be marked or treated as settlement confidential, even though the Parties' December 2024 correspondence was.)

b. The plan shall include prompt deadlines for Defendant's completion of work.

c. Following EPA's approval of the plan, Defendant shall timely and completely perform the work under the terms and conditions of this plan, as approved.

16. Mandatory injunctive relief: wetlands mitigation credits.

a. Within 60 Days after the Effective Date, Defendant shall submit to EPA, for its review as a Deliverable pursuant to Section VI (Deliverables), a proposal for the timely purchase of a total of eight wetlands mitigation credits from the McLemore Mitigation Bank. However, if and to the extent that the McLemore Mitigation Bank does not have sufficient credits available for purchase, said Deliverable shall include a proposal for Defendant's timely purchase of the remaining wetlands mitigation credits due from one or more Corps-approved mitigation banks.

b. Within 15 Days after EPA's approval of the proposal, but in no event before 90 Days after the Effective Date of this Consent Decree, Defendant shall complete the purchase in accordance with this proposal, as approved.

c. Within 30 Days after the purchase set forth in the Deliverable as approved, Defendant shall provide written notice to DOJ and EPA at the addresses specified in Section XIV (Notices).

17. Mandatory injunctive relief: preservation.

a. Within 30 Days after the Effective Date, Defendant shall submit to EPA, for its review as a Deliverable pursuant to Section VI (Deliverables), a plan for the preservation of a total of approximately 131 acres, which encompass wetlands and open water (including all "delineated wetland" and "delineated open water" areas depicted in the "Proposed Wetland Preservation and Mortar Creek Buffer Areas" map figure prepared by TTL, Inc. in December 2024) and 200-foot Mortar Creek buffer areas, consistent with the Parties' December 2024

correspondence, which incorporated and add to the *Design Brief for Restoration Options for Mortar Creek on the Elmore Sand & Gravel Site* referenced in Paragraph 13. (The plan shall not be marked or treated as settlement confidential, even though the Parties' December 2024 correspondence and map figure were.) The plan shall include a restrictive covenant designed: (i) to ensure the preservation of the approximately 131-acre area in perpetuity as purely natural; (ii) to run with the land and bind Defendant and its agents, successors, and assigns; (iii) to provide the United States with the right to enforce the restrictive covenant by appropriate legal proceedings, including but not limited to enforcement of this Consent Decree; and (iv) to provide the United States with the right to access the approximately 131-acre area for the purpose of assessing compliance. In drafting the restrictive covenant, Defendant shall also consider any template available from the Mobile District of the Corps.

b. The plan shall include prompt deadlines for Defendant's completion of tasks.

c. Following EPA's approval of the plan, Defendant shall timely and completely perform the tasks under the terms and conditions of this plan as approved.

d. Within 30 Days after EPA's approval of the restrictive covenant (which is part of the preservation plan), Defendant shall execute and record the restrictive covenant as well as (if acceptable to the office of the recorder of deeds for Elmore County, Alabama) a true and correct copy of this Consent Decree. Thereafter, Defendant shall ensure that each deed, title, conservation easement, or other instrument conveying an interest in any portion of the approximately 131-acre area shall: (i) contain a notice stating that the area is subject to the restrictive covenant and Consent Decree; and (ii) refer to the recorded location of the restrictive covenant and this Consent Decree.

e. Within 30 Days after the recording required by subparagraph (d) above, Defendant shall provide a true and correct copy of the recordation to DOJ and EPA at the addresses specified in Section XIV (Notices).

f. Except as in accordance with this Decree, Defendant shall not disturb—or allow any other person to disturb—the approximately 131-acre area in any manner inconsistent with the foregoing subparagraphs or the EPA-approved restrictive covenant.

18. Mandatory injunctive relief: monitoring, adaptive management, and maintenance.

a. Within 30 Days after the Effective Date, Defendant shall submit to EPA, for its review as a Deliverable pursuant to Section VI (Deliverables), a plan for monitoring, adaptive management, and maintenance for the success of the work to be performed under Paragraphs 13 through 15 and the preservation under Paragraph 17. The plan shall include interim and final criteria to assess the success of the work, locations, parameters, and timing for monitoring, actions to address any failure to meet success criteria. Further, the plan shall address semi-annual reports in accordance with Section VII (Reporting) and provide for the completion of monitoring, adaptive management, and maintenance after a period of five years following the completion of the work performed under Paragraphs 13 through 15 (or beyond five years, if Defendant has not met performance criteria in year five, then monitoring, adaptive management, and maintenance continue until Defendant meets such criteria) and after a period of five years following the recording of the restrictive covenant under Paragraph 17. And, the plan shall be consistent with, as applicable: (i) the *Design Brief for Restoration Options for Mortar Creek on the Elmore Sand & Gravel Site* referenced in Paragraph 13; (ii) *Stormwater/Wastewater Management Options: 100% Plans Submittal* referenced in Paragraph 14 of this Decree; and

(iii) the Parties' December 2024 correspondence referenced in Paragraphs 15 and 17. (The plan shall not be marked or treated as settlement confidential, even though the foregoing items were.)

b. Following EPA's approval of the monitoring, adaptive management, and maintenance plan, Defendant shall timely and completely comply with the terms and conditions of this plan, as approved.

VI. DELIVERABLES

19. After Defendant submits any Deliverable required by this Consent Decree, EPA shall in writing: (a) approve the submission as written; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

20. If EPA approves the Deliverable submission as written, Defendant shall act in accordance with the schedules and requirements of the Deliverable, as approved. If EPA approves the Deliverable submission upon specified conditions, or approves the submission only in part, Defendant shall, upon written direction from EPA, take all actions required by the approved portions of the submission that EPA determines are technically severable from any disapproved portions.

21. If EPA disapproves the Deliverable submission in whole or in part, Defendant shall, within 30 Days after EPA serves such disapproval (or such other time as the Parties agree to in writing), correct all deficiencies and resubmit the Deliverable, or disapproved portion thereof, for approval in accordance with the preceding Paragraphs in this Section. If and to the extent that EPA approves the Deliverable resubmission in whole or in part, Defendant shall proceed in accordance with the immediately preceding Paragraph in this Section.

22. If and to the extent that EPA disapproves in whole or in part the Deliverable resubmission, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs in this Section, or EPA may itself correct any deficiencies.

23. If Defendant elects to invoke Dispute Resolution as set forth in Section X (Dispute Resolution) concerning a decision by EPA to disapprove, approve on specified conditions, or modify a Deliverable, Defendant shall do so by sending a notice of dispute in accordance with Section X (Dispute Resolution) within 30 Days after EPA serves the applicable decision (or such other time as the Parties agree to in writing).

24. Any stipulated penalties applicable to the original Deliverable submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 30 Day (or other agreed-upon) period that Defendant has to correct all deficiencies and resubmit the Deliverable, or disapproved portion thereof, for approval, but shall not be payable unless the resubmission is untimely or EPA disapproves it in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VII. REPORTING

25. Defendant shall submit semi-annual reports to DOJ and EPA at the addresses set forth in Section XIV (Notices) by July 31st and January 31st of each year after the Effective Date, until termination of this Consent Decree pursuant to Section XVIII (Termination). The semi-annual report shall address all relevant information during the preceding six months such as (for example) the status of Defendant's compliance with the mandatory injunctive relief required under this Consent Decree; status of any Deliverables pending before EPA; monitoring, adaptive

management, and maintenance information; and problems encountered or anticipated, together with implemented or proposed solutions.

26. Defendant shall submit its final report to DOJ and EPA at the addresses set forth in Section XIV (Notices) within 30 Days after Defendant's completion of all monitoring, adaptive management, and maintenance obligations under this Consent Decree.

27. Each report submitted by Defendant under this Section shall be signed by a senior management official of Defendant and include the following certification:

I certify under penalty of perjury 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 have no personal knowledge that the information submitted is other than 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.

28. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations otherwise required by federal, state, or local law, regulation, permit, or other requirement.

29. 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. STIPULATED PENALTIES

30. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless: (i) the violation is excused under Section IX (Force Majeure); (ii) the obligation violated has been modified under Section XVII (Modification); or (iii) the United States exercises its discretion as set forth in Paragraph 35 of

this Decree. A violation includes failing to perform any obligation required by the terms of this Consent Decree (including any Deliverable approved under this Decree) and within the specified time schedules established by or approved under this Consent Decree.

31. The following stipulated penalties shall accrue per violation per Day for each violation of any obligation of Section V (Injunctive Relief):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500.00	1st through 30th Day
\$ 2,000.00	31st through 60th Day
\$ 3,000.00	60th Day and beyond

32. The following stipulated penalties shall accrue per violation per Day for each violation of any obligation of Section VII (Reports):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250.00	1st through 30th Day
\$ 1,000.00	31st through 60th Day
\$ 1,500.00	60th Day and beyond

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

34. Defendant shall pay any stipulated penalty within 30 Days after service of the United States' written demand.

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

36. Stipulated penalties shall continue to accrue during the procedures of Section X (Dispute Resolution), but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of the United States that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest at the rate specified in 28 U.S.C. § 1961, to the United States within 30 Days after the effective date of the agreement or service of the United States' decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest at the rate specified in 28 U.S.C. § 1961, within 60 Days after service of the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest at the rate specified in 28 U.S.C. § 1961, within 15 Days after the appellate court's service of its mandate.

37. Defendant shall pay stipulated penalties owing to the United States in accordance with instructions to be provided to Defendant by DOJ, and Defendant shall provide notice that such payment has been made in accordance with Section XIV (Notices).

38. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall

be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

39. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

40. Defendant shall not deduct any stipulated penalties paid pursuant to this Section in calculating its federal income tax.

41. Non-exclusivity of remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Scope and Effect/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

42. "Force majeure," for purposes of this Consent Decree, means any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure, such that any delay or non-performance is, and any adverse effects of the delay are, minimized to the greatest extent

possible. “Force majeure” does not include, for example, financial inability to perform any obligation under this Consent Decree; increased costs of performance; changed economic circumstances; changed labor relations; normal precipitation or climate events; changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site; or failure to obtain federal, state, or local permits if Defendant has not submitted timely and complete applications or has not taken all other actions necessary to obtain all such permits.

43. If any event occurs for which Defendant will or may claim a force majeure, Defendant shall provide notice to DOJ and EPA at the addresses in Section XIV (Notices). The deadline for such initial notice is 72 hours after Defendant first knew or should have known that the event would likely delay or prevent performance. (The United States may, in its unreviewable discretion, extend the time within which notice must be given.) Defendant shall be deemed to know of any circumstance of which any contractor or, subcontractor of, or entity controlled by Defendant knew or should have known.

44. If Defendant seeks to assert a claim of force majeure, within seven Days after Defendant serves the notice required in the preceding Paragraph, Defendant shall submit a further notice to DOJ and EPA that includes: (a) an explanation and description of the event and its effect on Defendant’s completion of the requirements of the Consent Decree; (b) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (c) if applicable, the proposed extension of time for Defendant to complete the requirements of the Consent Decree; (d) Defendant’s rationale for attributing such delay to a force majeure; (e) a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health or welfare or the environment; and

(f) all available proof supporting Defendant's claim that the delay was attributable to a force majeure.

45. Failure to submit a timely or complete notice or claim under the preceding two Paragraphs regarding any particular event precludes Defendant from asserting any claim of force majeure regarding such event, provided, however, that the United States may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether Defendant has exercised its best efforts in accordance with the first Paragraph in this Section.

46. The United States, after a reasonable opportunity to review Defendant's force majeure claim, shall notify Defendant of its determination whether Defendant is entitled to relief under this Section and, if so, the excuse of, or the extension of time for, performance of the obligations affected by the force majeure event. An excuse of, or extension of the time for performance of, the obligations affected by the force majeure event does not, by itself, excuse or extend the time for performance of any other obligation.

47. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after the United States serves its determination under the preceding Paragraph. In any such proceeding, Defendant has the burden of proving that it is entitled to relief under this Section, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of this Section. If Defendant carries this burden, the delay or non-performance at issue shall be deemed not to be a violation by Defendant of the affected obligations of this Consent Decree identified to the United States and the Court.

X. DISPUTE RESOLUTION

48. The dispute resolution procedures in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section concerning an issue of which it had notice and an opportunity to dispute under this Section prior to an action by the United States to enforce any obligation of Defendant arising under this Decree precludes Defendant from raising any such issue as a defense to any such enforcement action.

49. Informal dispute resolution. Any dispute subject to the procedures in this Section shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends DOJ and EPA a written notice at the addresses set forth in Section XIV (Notices). Such notice shall clearly state the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below in this Section.

50. Formal dispute resolution. To properly invoke the formal dispute resolution procedures in this Section, Defendant shall, within the time period provided in the preceding Paragraph, serve DOJ and EPA at the addresses set forth in Section XIV (Notices) a written statement of position regarding the matter in dispute. Defendant shall include in its statement of position any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

51. The United States shall serve its response, which may include any relevant information, within 45 Days after Defendant serves its statement of position. The United States' response is binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

52. Judicial dispute resolution. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion (a) must be filed within 10 Days after service of the United States' response pursuant to the preceding Paragraph; (b) may not raise any issue not raised in the informal dispute resolution process required by this Section, unless the United States raises a new issue of law or fact in its response; (c) shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation; and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

53. The United States shall respond to Defendant's motion within the time period allowed by M.D. Ala. LR.

54. Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

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

payment shall be stayed pending resolution of the dispute as provided in Section VIII (Stipulated Penalties). If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. SITE ACCESS AND INFORMATION COLLECTION AND RETENTION

56. The United States and its representatives, including attorneys, contractors, consultants, and EPA and Corps personnel, shall have the right of entry into all areas covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

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

With respect to all areas covered by this Consent Decree (except the approximately 131-acre area that Paragraph 17 of this Decree requires Defendant to preserve in perpetuity), the United States' right of entry set forth above expires upon termination of this Consent Decree.

57. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention

requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

58. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify DOJ and EPA, at the addresses set forth in Section XIV (Notices), at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to the United States. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege, or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following, in writing: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

59. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

60. 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 (including EPA and the Corps) pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. SCOPE AND EFFECT/RESERVATION OF RIGHTS

61. This Consent Decree resolves and shall constitute a complete and final settlement of the civil claims of the United States alleged in the Complaint.

62. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

63. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

64. Notwithstanding Paragraph 63, the Parties acknowledge that, as of the Effective Date, Nationwide Permit 32, 86 Fed. Reg. 73522, 73579 (Dec. 27, 2021), provides CWA Section 404 authorization, subject to the conditions provided in Nationwide Permit 32 and this Consent Decree—including Defendant's timely completion of the Decree's mandatory injunctive relief throughout the Site, including in areas that Defendant leases—for: (i) discharges of dredged or

fill material that are necessary for Defendant to fulfill the mandatory injunctive relief requirements of this Consent Decree; and (ii) dredged or fill material that was placed at the Site before the United States filed the Complaint to remain in place regardless of Site ownership.

65. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional permit, nor shall this Consent Decree limit EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c). Likewise, nothing in this Consent Decree shall limit the ability of the State of Alabama, through the Alabama Department of Environmental Management, to take any permit action respecting Section 402 of the CWA, 33 U.S.C. § 1342.

66. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties to this Consent Decree, nor does it limit the rights of such third parties against Defendant, except as otherwise provided by law.

67. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party to this Consent Decree.

XIII. COSTS

68. The Parties shall bear their own costs of this action, including attorneys' fees, except that, should Defendant subsequently be determined by the Court to have violated any provision of this Consent Decree, the United States shall be entitled to collect the costs, including attorneys' fees, incurred in any action to enforce this Consent Decree.

XIV. NOTICES

69. Whenever notifications, submissions, or other communications are required by this Consent Decree, they shall be made in writing and sent by email as follows:

As to the United States or DOJ: andrew.doyle@usdoj.gov; martin.mcdermott@usdoj.gov;
MailProcessing_EDS.ENRD@usdoj.gov

As to EPA: earwood.rachel@epa.gov; hicks.matthew@epa.gov

As to Defendant: bstabo@standardsand.com

70. The Parties may, by written notice, change their designated notice recipient or notice email address provided above.

XV. EFFECTIVE DATE

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

XVII. MODIFICATION

72. Except as otherwise set forth in this Consent Decree (e.g., Paragraph 70), the terms of this Decree, including Deliverables approved pursuant to Section XIV (Deliverables), may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

73. Defendant represents that it intends to comply fully with this Consent Decree, and that it has made, is making, and will make all best and reasonable efforts (and has documented, is documenting, and will document all such efforts) to secure post-lease permission from Defendant's lessor (Alabama Department of Corrections, which is neither a party to the Complaint nor this Decree but which owns a portion of the Site) to implement the mandatory injunctive relief obligations of Section V (Injunctive Relief) and to facilitate the United States' right of entry pursuant to Paragraph 56. However, if and promptly after Defendant becomes aware of any post-lease access issues notwithstanding Defendant's best and reasonable efforts (and documentation of same), Defendant shall notify DOJ and EPA at the addresses specified in

Section XIV (Notices), and the Parties shall confer about potential resolutions to such issues, which may include further discussions with Defendant's lessor and, if necessary, developing alternative and equivalent relief and modifying this Decree under the process set forth in this Section to require Defendant to implement such alternative and equivalent relief.

74. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided in Section X, 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).

XVIII. TERMINATION

75. After Defendant has completed all the mandatory injunctive relief obligations of Section V (Injunctive Relief), completed all of reporting obligations of Section VII (Reports), and provided that Defendant has complied and is complying with all other requirements of this Consent Decree, Defendant may serve upon the United States a Request for Termination, certifying that Defendant has satisfied those requirements, together with supporting documentation beyond that provided in Defendant's semi-annual reports.

76. Within 30 Days of service of Defendant's Request for Termination, the Parties shall confer informally concerning Defendant's Request for Termination and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation or other appropriate document requesting termination of the Consent Decree.

77. If the United States does not agree that the Consent Decree may be terminated, Defendant may invoke the procedures of Section X (Dispute Resolution). However, Defendant may not invoke such procedures until 45 Days after service of its Request for Termination. If the United States disputes that the criteria for termination have been met, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

78. Irrespective of the preceding Paragraphs in this Section, termination of this Consent Decree does not extinguish the preservation-in-perpetuity requirement of Paragraph 17 and the United States' right to entry to such preservation area as stated in Paragraph 56. In addition, irrespective of the preceding Paragraphs in this Section, termination of this Consent Decree does not affect the expiration of Defendant's record retention obligations because, as provided in Paragraph 57, they expire five years after termination of this Consent Decree.

XIX. PUBLIC COMMENT

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

XX. SIGNATORIES/SERVICE

80. Each undersigned representative of DOJ and Defendant certifies that such individual is fully authorized to agree to the terms and conditions of this Consent Decree and to execute and legally bind the party such individual represents to this document.

81. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

82. Defendant agrees to accept service of process through counsel by email 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 M.D. Ala. LR including, but not limited to, service of a summons.

83. Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

84. This Consent Decree (including Deliverables that are approved pursuant to Section XIV (Deliverables)) constitutes the entire agreement among the Parties regarding the subject matter of the Consent Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the Consent Decree herein.

XXII. 26 U.S.C. § 162(f)(2)(A)(ii) IDENTIFICATION AND REQUIREMENTS

85. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the obligations set forth in Paragraphs 13 through 18 is restitution, remediation, or required to come into compliance with law.

86. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA sends to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to (*inter alia*) any court order that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s alleged violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA also furnishes a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). EPA is informed that failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Defendant to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to complete the foregoing tasks, Defendant agrees to take the following action:

- a. Defendant shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Defendant shall therein certify that its completed IRS Form W-9 includes Defendant’s correct TIN or that Defendant has applied and is waiting for issuance of a TIN;
- c. Defendant shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at cinwd_acctsreceivable@epa.gov, within 30 Days of the Consent Decree’s Effective Date (EPA recommends encrypting IRS Form W-9 email correspondence); and
- d. In the event that Defendant has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Defendant within 30 Days after the Effective Date, then Defendant, using the same email address identified in the preceding sub-

paragraph, shall further: notify EPA's Cincinnati Finance Center of this fact, via email, within 30 Days after the 30 Days after the Effective Date; and provide EPA's Cincinnati Finance Center with Defendant's TIN, via email, within five Days of Defendant's issuance and receipt of the TIN.

XXIV. FINAL JUDGMENT

87. Upon approval and entry of this Consent Decree by the Court, as recorded on the Court's docket, this Consent Decree shall constitute and have the force and effect of a final judgment of the Court as to the United States and Defendant.

IT IS SO ORDERED.

Dated and entered this ____ day of _____, 2025.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

KATHERINE E. KONSCHNIK
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

Dated: January 17, 2025

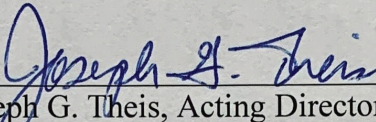
/s Andrew J. Doyle
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Counsel for Plaintiff United States of America

FOR EPA (part of the United States' signatures):

1-16-25
Date



Joseph G. Theis, Acting Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

FOR EPA (part of the United States' signatures):

**SUZANNE
RUBINI**

Digitally signed by SUZANNE RUBINI
Date: 2025.01.16 18:31:41 -0500

Jeanne M. Gettle
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 4

FOR DEFENDANT:

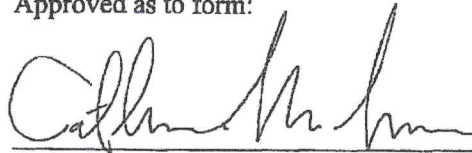
1/16/25
Date



Bob Stabo, Chief Executive Officer
Elmore Sand & Gravel, Inc.
c/o P.O. Box 1059
Davenport, FL 33836

Approved as to form:

01/16/2025
Date



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