

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

May 8, 2020

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Received by

EPA Region VIII

Hearing Clerk

IN THE MATTER OF:

Fisher Sand & Gravel Co.
497 Highway 200S
Glendive, Montana 59330

Respondent

)
)
) **CONSENT AGREEMENT**

) **[40 C.F.R. §§ 22.13(b) & 22.18(b) & (c)]**

) Docket No. CWA-08-2020-0010
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I. PRELIMINARY STATEMENT

1. This is an administrative penalty proceeding. The parties to this proceeding are undersigned U.S. Environmental Protection Agency official (Complainant), who has been delegated the authority to act in this capacity on behalf of the U.S. Environmental Protection Agency (EPA), and Fisher Sand & Gravel Co. (Respondent).

II. JURISDICTIONAL ALLEGATIONS

2. This Consent Agreement (Agreement) is issued under the authority of sections 309(g) and 311(b) of the Clean Water Act (Act), 33 U.S.C. §§ 1319(g) and 1321(b), which authorize the EPA to assess civil administrative penalties for, among other things, violations of sections 301 and 311 of the Act, 33 U.S.C. §§ 1311 and 1321.
3. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22, a copy of which has been provided to Respondent.

III. STATEMENTS OF THE PARTIES

4. With this Agreement, the parties intend to commence and conclude this matter simultaneously, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
5. Solely for the purposes of this proceeding, Respondent admits the jurisdictional allegations in paragraphs 2 and 3 of this Agreement. Respondent consents to the assessment of the administrative civil penalty referenced in paragraph 163, below, waives any right to a hearing before any tribunal or to contest any statement of law or fact in this Agreement, and waives any right to appeal any final order approving this Agreement (Final Order). Respondent does not admit or deny any matter the EPA has alleged in paragraphs 7 through 160, below.

IV. PARTIES BOUND

6. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, agents, successors, and assigns.

V. GOVERNING LAW

A. The National Pollutant Discharge Elimination System Program

7. In order to restore and maintain the integrity of the nation's waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
8. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA and states with authorization from the EPA may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
9. Storm water discharges associated with industrial activity are subject to the permit requirement referenced in paragraph 8, above. 33 U.S.C. § 1342(p)(2)(B).
10. Dischargers of storm water associated with industrial activity must either apply for an individual permit or seek coverage under a promulgated general permit. 40 C.F.R. § 122.26(c)(1).
11. Montana was approved by the EPA to administer the NPDES program on June 10, 1974 (39 Fed. Reg. 26061, July 16, 1974). A permit issued by the MDEQ under Montana's EPA-approved NPDES program is known as a MPDES permit.

B. The Spill Prevention, Control, and Countermeasure Program

12. Congress has directed the President to issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . ." 33 U.S.C. § 1321(j)(1)(C). The President delegated the authority to issue these regulations to the Administrator of the EPA in section 2(b)(1) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).
13. In response to the directive referenced in paragraph 12, above, the EPA promulgated 40 C.F.R. part 112, entitled "Oil Pollution Prevention."
14. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention, Control, and Countermeasure (SPCC) plan and to adhere to the discharge prevention and

containment practices specified in that regulation. The regulations in 40 C.F.R. part 112, subparts A through C will be referenced as the "SPCC Regulations."

15. The SPCC Regulations apply to "any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in [40 C.F.R. part 110], into or upon the navigable waters of the United States or adjoining shorelines." There are certain exceptions in 40 C.F.R. § 112.1(d) that are not relevant here.
16. For purposes of section 311(b)(4) of the Act, discharges of oil that may be harmful to the public health or welfare or the environment of the United States includes discharges of oil that (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.
17. The EPA promulgated 40 C.F.R. § 110.3 in response to the directive of section 311(b)(4) of the Act for the President to determine by regulation, for purposes of section 311 of the Act, those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches. The President delegated the authority to make this determination to the EPA, under section 8(a) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).

VI. ALLEGATIONS

The following allegations apply at all times relevant to this Agreement:

18. Respondent is a North Dakota corporation. Its registered agent for service of process in Montana is National Registered Agents Inc., 3011 American Way, Missoula, Montana, 59808.
19. Respondent is a "person" for purposes of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1362(5) and 1321(a)(7), and 40 C.F.R. § 122.2.
20. Respondent owns and operates a facility known as the Fisher Sand & Gravel Co. - Glendive Site (Site) located five miles west of Glendive, Montana in the Northwest ¼ Section 34, Township 16 North, Range 54 East, and Section 1, Township 15 North Range 54 East in Dawson County, Montana.
21. The Site has been in operation since 1962.

22. At the Site, Respondent conducts a sand and gravel (Standard Industrial Classification, or SIC, 1442) operation and a ready-mix concrete (SIC 3273) operation.
23. The Site encompasses approximately 95 acres.
24. The Site is bordered on the south and east sides by, and is immediately adjacent to, Upper Seven Mile Creek.
25. Upper Seven Mile Creek is at least an intermittent tributary of the Yellowstone River.
26. Approximately four and one-half miles downstream from the Site, Upper Seven Mile Creek flows into the Yellowstone River.
27. The Yellowstone River is an interstate, navigable-in-fact waterway.
28. Upper Seven Mile Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a “water of the United States” as defined in 40 C.F.R. § 122.2.
29. The Yellowstone River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a “water of the United States” as defined in 40 C.F.R. § 122.2.

B. NPDES Background

30. At the Site, Respondent is engaged in at least one “industrial activity” as defined in 40 C.F.R. § 122.26(b)(14).
31. The runoff and drainage from the Site are “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
32. The storm water Respondent has discharged from the Site contains “pollutants” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
33. According to the EPA’s December 2006, “Mineral Mining and Processing Facilities,” EPA-833-F-06-025, https://www3.epa.gov/npdes/pubs/sector_j_mineralmining.pdf (last visited January 17, 2018), sand and gravel operations are a type of mineral mining and processing facility, and pollutants associated with this type of facility include total suspended solids (TSS), total dissolved solids, turbidity, pH, dust, diesel/gas fuel, oil, solvents, heavy metals, acid/alkaline wastes, arsenic, lead, cadmium, chromium, benzene, polycyclic aromatic hydrocarbons, tetrachloroethylene, trichloroacetic acid, lime, solvents, nitrogen, and phosphorus.
34. According to the EPA’s December 2006, “Industrial Storm Water Fact Sheet Series – Sector E: Glass, Clay, Cement, Concrete and Gypsum Product Manufacturing Facilities,” EPA-833-F-06-020, https://www3.epa.gov/npdes/pubs/sector_e_glass.pdf (last visited January 17, 2018), pollutants associated with concrete facilities include TSS, pH, chemical

oxygen demand, potassium sulfate, oil and grease, lead, iron, zinc, aluminum, arsenic, cadmium, chromium, benzene, gas/diesel fuel, and fuel additives.

35. Effective February 1, 2013, the MDEQ issued MPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity Permit No. MTR000000 (2013 Permit). The 2013 Permit authorized discharges of storm water associated with industrial activities, if done in compliance with its terms and conditions.
36. Under the 2013 Permit, an individual discharger may obtain authorization to discharge by submitting a Notice of Intent (NOI) for coverage and a Storm Water Pollution Prevention Plan (SWPPP) to the MDEQ.
37. On March 13, 2013, Respondent submitted an NOI to the MDEQ for the Site to be covered under the 2013 Permit.
38. Effective March 13, 2013, the MDEQ authorized Respondent to discharge storm water from the Site in accordance with the 2013 Permit. The MDEQ assigned Permit No. MTR000278 to the Site. This authorization will be referenced below as the 2013 Permit Authorization.
39. The 2013 Permit Authorization authorized discharges from two outfalls at the Site, 001 and 002, both to Upper Seven Mile Creek.
40. Based on Respondent's NOI, MDEQ notified Respondent that its primary SIC was 3273, or Industrial Sector E2, making Respondent subject to the requirements in part 3.4.5 of the 2013 Permit.
41. On June 25, 2014, the MDEQ conducted a storm water industrial compliance evaluation inspection (the MDEQ Inspection) of the Site.
42. On July 23, 2014, the MDEQ transmitted a report of the MDEQ Inspection (the MDEQ Inspection Report) to Respondent. The MDEQ Inspection Report identified various deficiencies in Respondent's operations at the Site and stated that Respondent was required to respond in writing within 30 days with, among other things, a description of how it would correct the deficiencies and violations cited in the report and return to compliance.
43. Respondent failed to respond to MDEQ within 30 days of receiving the MDEQ's July 23, 2014 letter.
44. On September 10, 2014, MDEQ contacted Respondent by telephone to determine the status of the response to the MDEQ Inspection Report. In that telephone conversation, Respondent indicated that it would be able to respond to the MDEQ the following week.
45. On September 18, 2014, having submitted no response to the MDEQ's July 23, 2014 letter, Respondent emailed the MDEQ to request additional time to complete corrective actions and respond to the letter.

46. By letter dated September 25, 2014, the MDEQ extended Respondent's deadline for responding to the July 23, 2014, letter. The new deadline was October 10, 2014.
47. On October 20, 2014, Respondent transmitted a revised SWPPP to the MDEQ, which the MDEQ considered deficient.
48. By letter dated November 25, 2014, the MDEQ notified Respondent that Respondent remained in violation of the Montana Water Quality Act and the 2013 Permit Authorization. The MDEQ's letter requested a written response by December 15, 2014 addressing each of seven areas of noncompliance with storm water requirements.
49. On May 19, 2015, the EPA and the MDEQ conducted a joint inspection (the Joint Inspection) of the Site.
50. By letter dated January 28, 2016, the MDEQ provided Respondent with a letter identifying deficiencies in a SWPPP Respondent had provided MDEQ on September 11, 2015 and December 23, 2015. The MDEQ's letter also stated that Respondent's mining operations were not covered by a permit.
51. On June 15, 2017, the EPA transmitted a report of the Joint Inspection (the Joint Inspection Report) to Respondent.
52. Effective February 1, 2018, the MDEQ issued MPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity Permit No. MTR000000 (2018 Permit). The 2018 Permit authorizes discharges of storm water associated with industrial activities, if done in compliance with its terms and conditions.
53. Part 1.2 of the 2018 Permit describes the requirements for permittees requiring continued authorization beyond January 31, 2018, the expiration date of the 2013 Permit. These requirements include submitting a completed renewal Notice of Intent.
54. In April of 2018, Respondent entered into an Administrative Order on Consent (AOC) with the EPA, committing to provide documentation, e.g., a notice of intent for coverage under the 2018 Permit and an updated SWPPP, and to undertake various corrective actions within specified time periods. The docket number for the AOC was CWA-08-2018-0006.
55. By letter dated August 8, 2018, the EPA identified deficiencies in Respondent's submissions under the AOC, including, among other things, deficiencies in the notice of intent, SWPPP, descriptions of control measures, and implementation of control measures.
56. Although Respondent has notified the EPA it has undertaken certain corrective actions, e.g., as outlined in a letter to the EPA dated August 28, 2018, to date Respondent has not provided satisfactory proof under paragraph 95 of the AOC of having implemented appropriate control measures to correct all deficiencies identified in the following provisions of the AOC:

- a. AOC ¶ 51(a) – Lack of maintenance of the concrete washout BMP.
- b. AOC ¶ 51(b) – Lack of maintenance of the gravel berm BMPs.
- c. AOC ¶ 51(f) – Allowing stormwater discharges from points other than outfalls 001 and 002.
- d. AOC ¶ 51(g) – Allowing stormwater discharges from an area of hardened concrete into a tributary of Upper Seven Mile Creek.
- e. AOC ¶ 52(e) – Leakage from a water pipe that allowed a discharge into the source water pond.
- f. AOC ¶ 52(g) – Overflow from a former concrete washout to the source water pond.

B. SPCC Background

57. Respondent stores oil at the Site. The oil storage containers at the Site include:
- (a) a 10,000-gallon vertical welded steel tank for diesel fuel;
 - (b) a 6,000-gallon vertical double-walled steel tank for diesel fuel;
 - (c) a 560-gallon welded steel tank for gasoline;
 - (d) two 250-gallon formed plastic totes for waste oil; and
 - (e) approximately 2,750 gallons of various steel drums and five-gallon buckets for lubricants.
58. The 10,000-gallon oil storage tank referenced in paragraph 57, above, is situated within approximately 300 feet of Upper Seven Mile Creek. The land at the Site slopes from the tanks downward to the southeast, toward Upper Seven Mile Creek. An uncontained spill from that tank would flow downward for less than 300 feet and reach Upper Seven Mile Creek. Similarly, an uncontained spill from the 6,000-gallon tank referenced in paragraph 57, above, would flow downward for less than 350 feet to Upper Seven Mile Creek.
59. Due to its location, the Site could reasonably be expected to discharge oil and/or other pollutants to Upper Seven Mile Creek and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.
60. Due to its location, the Site could reasonably be expected to discharge oil and/or other pollutants to the Yellowstone River and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

61. The Site is an “onshore facility” as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).
62. The Site is a “non-transportation related” facility” as that term is defined in 40 C.F.R. § 112.2.
63. Respondent is an “owner or operator” of the Site as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
64. The Site is subject to the SPCC Regulations.
65. On August 30, 2017, EPA representatives conducted an SPCC inspection of the Site (the SPCC Inspection).
66. At the time of the SPCC Inspection, the Site’s total oil storage capacity was over 10,000 gallons.

Count I: Failure to Develop and Maintain an Updated SWPPP
(Parts 1.2.2 & 3.1 of the 2013 Permit)

67. Part 1.2.2 of the 2013 Permit requires Respondent to develop and maintain a complete, updated SWPPP based on the requirements of the 2013 Permit.
68. Part 3.1 of the 2013 Permit specifies what must be included in a SWPPP.
69. The MDEQ Inspection Report made findings that Respondent failed to include certain items in its SWPPP, as follows:
 - (a) missing from the Site map (see part 3.1.3 of the 2013 Permit):
 - (i) boundaries for the facility and the areas for the ready mix activities and the sand and gravel activities;
 - (ii) locations and extent of all structures and impervious surfaces;
 - (iii) locations of all storm water conveyances, including ditches, pipes, and swales;
 - (iv) pollutant sources identified under part 3.1.4.2 of the 2013 Permit;
 - (v) locations of all storm water monitoring outfall points;
 - (vi) locations of fueling stations;
 - (vii) locations of vehicle equipment maintenance or cleaning areas;
 - (viii) locations of loading or unloading areas;

- (ix) locations of areas used for treating, storing, or disposing of wastes;
 - (x) locations of liquid storage tanks;
 - (xi) locations of manufactured products, waste material, or byproducts used or created at the Site; and
 - (xii) locations of transfer areas for substances in bulk.
- (b) missing from the SWPPP narrative:
- (i) identification of the SWPPP team (see part 3.1.1 of the 2013 Permit);
 - (ii) adequate summary of potential pollutant sources (see part 3.1.4 of the 2013 Permit);
 - (iii) adequate description of the control measures at the Site (see part 3.1.5 of the 2013 Permit);
 - (iv) adequate documentation of monitoring and inspection (see part 3.1.6.2 of the 2013 Permit); and
 - (v) a non-storm water certification describing measures to ensure process wastewaters resulting from washing trucks, mixers, transport buckets, forms, or other equipment are discharged in accordance with MPDES requirements or are recycled (see part 3.4.5.3.2 of the 2013 Permit).
70. On July 23, 2014, when MDEQ transmitted the MDEQ Inspection Report to Respondent, MDEQ stated that it was requiring Respondent to submit an updated SWPPP for the ready mix operation at the Site within 30 days.
71. Respondent did not submit an updated SWPPP to MDEQ within 30 days of the MDEQ's July 23, 2014 letter.
72. As mentioned above, on September 25, 2014, the MDEQ extended Respondent's deadline to complete corrective actions and send a written response by October 10, 2014.
73. On October 20, 2014, the MDEQ received an updated copy of Respondent's SWPPP for the Site, which indicated that it had been signed and dated by Respondent on October 10, 2014.
74. By letter dated November 25, 2014, the MDEQ notified Respondent that the SWPPP received on October 20, 2014 (referenced in paragraph 73, above):
- (a) did not cover the ready mix operation in accordance with 2013 Permit requirements;

and

- (b) did not address the deficiencies identified in the records review section of the MDEQ Inspection Report.

75. The Joint Inspection Report made findings that Respondent failed to include certain items in the Site's SWPPP, as follows:

- (a) missing from the Site map (see part 3.1.3 of the 2013 Permit):
 - (i) locations of structures and impervious surfaces;
 - (ii) directions of storm water flow;
 - (iii) locations of all existing storm water control measures;
 - (iv) locations of potential pollutant sources;
 - (v) locations of storm water outfall monitoring points;
 - (vi) locations of non-storm water discharges;
 - (vii) locations of fueling stations;
 - (viii) locations of vehicle and equipment maintenance/cleaning areas;
 - (ix) locations of loading/unloading areas;
 - (x) locations used for treatment or storage of wastes;
 - (xi) locations of liquid storage tanks;
 - (xii) locations of major, permanent structures; and
 - (xiii) locations of bulk transfer areas such as cement, mined sand or deicing salt piles.
- (b) missing from the SWPPP narrative:
 - (i) a list of pollutants associated with each identified activity (see part 3.1.4.2 of the 2013 Permit);
 - (ii) documentation of non-storm water discharge evaluation including: date of evaluation; description of evaluation used; a list of outfalls or onsite drainage points directly observed during the evaluation; different types of non-storm water discharges and sources; and, actions taken to eliminate any non-storm water discharges (see part 3.1.4.4 of the 2013 Permit);

- (iii) locations of salt (see part 3.1.4.5 of the 2013 Permit) or chemical storage (see part 3.4.1.4.1);
- (iv) documentation of locations and types of control measures installed and implemented (see part 3.1.5 of the 2013 Permit);
- (v) documentation on how control measure selection and design were addressed (see part 3.1.5 of the 2013 Permit);
- (vi) documentation of design and maintenance criteria for permanent and temporary control measures (see part 3.1.5 of the 2013 Permit);
- (vii) a description of good housekeeping measures (see part 3.1.6 of the 2013 Permit);
- (viii) preventive maintenance measures (see part 3.1.6 of the 2013 Permit);
- (ix) locations where samples were being collected, determination that outfalls are substantially similar, parameters for monitoring and frequency, schedules for monitoring, benchmark control values for each outfall, and procedures for collecting storm event data (see part 3.1.6.2 of the 2013 Permit);
- (x) identification of the person(s) or position(s) responsible for inspections (see part 3.1.6.2 of the 2013 Permit);
- (xi) a description of general industrial activities conducted in the drainage area of each outfall (see part 3.1.6.2 of the 2013 Permit);
- (xii) a description of the control measures implemented in the drainage area of each outfall (see part 3.1.6.2 of the 2013 Permit);
- (xiii) a description of the exposed materials located in the drainage area of each outfall that are potential pollutants (see part 3.1.6.2 of the 2013 Permit);
- (xiv) an estimate of the runoff coefficient of each drainage area (see part 3.1.6.2 of the 2013 Permit);
- (xv) the identify of persons or positions responsible for inspections (see part 3.1.6.2 of the 2013 Permit);
- (xvi) schedules for conducting inspections (see part 3.1.6.2 of the 2013 Permit); and
- (xvii) a list of specific items to be covered by inspections (see part 3.1.6.2 of the 2013 Permit).

76. On September 11, 2015, Respondent submitted an updated SWPPP to the MDEQ.
77. On January 28, 2016, MDEQ notified Respondent that even after the September 11, 2015 update, the Respondent's SWPPP was missing various items, as follows:
- (a) missing from the Site map (see part 3.1.3 of the 2013 Permit):
 - (i) accurate Site boundaries or the location of a storage area along the railroad tracks;
 - (ii) direction of storm water flow;
 - (iii) all storm water conveyances, including ditches, pipes, and swales; and
 - (iv) all potential pollutant sources.
 - (b) missing from the SWPPP narrative:
 - (i) a description of the nature of the industrial activities at the Site (part 3.1.2 of the 2013 Permit);
 - (ii) a list of pollutants associated with each identified industrial activity (part 3.1.4.2 of the 2013 Permit);
 - (iii) documentation that non-storm water discharges were evaluated (part 3.1.4.4 of the 2013 Permit);
 - (iv) the location and type of control measures installed and implemented (part 3.1.5 of the 2013 Permit);
 - (v) a description of how Respondent had addressed the considerations in part 2.1.1 of the 2013 Permit for selecting and designing control measures (part 3.1.5 of the 2013 Permit);
 - (vi) the design and maintenance criteria for permanent and temporary structural control measures (part 3.1.5 of the 2013 Permit);
 - (vii) spill prevention and response procedures (part 3.1.6 of the 2013 Permit); and
 - (viii) adequate documentation of locations of sampling outfalls, sampling parameters and frequency, monitoring schedules, benchmark control values, and procedures for gathering storm event data (parts 3.1.6.2 and 2.5.1 of the 2013 Permit).

78. The MDEQ's January 28, 2016 letter stated that the site map needed to be updated to meet the minimum requirements of the 2013 Permit and to match Site conditions at all times, and that the SWPPP needed to be updated to address all deficiencies identified in the letter.
79. On September 26, 2017, Respondent provided the EPA with an updated SWPPP. The EPA found that the updated SWPPP was missing the following:
- (a) missing from the Site map (see part 3.1.3 of the 2013 Permit):
 - (i) current conditions of settling ponds;
 - (ii) distinction between structural control measures (berms) on site and property boundary;
 - (iii) current conditions and location of water conveyances including ditches, pipes, and swales; and
 - (iv) locations of spills and leaks (past or potential) that could contribute pollutant to storm water discharges as identified under part 3.1.4.3.
 - (b) missing from the narrative (see part 3.1.6.2 of the 2013 Permit):
 - (i) sample collection locations;
 - (ii) parameters for sampling and the frequency of sampling for each parameter;
 - (iii) benchmark control values applicable to discharges from each outfall;
 - (iv) procedures (e.g., responsible staff, logistics, laboratory to be used) for gathering storm event data;
 - (v) description of the general industrial activities conducted in the drainage area of each outfall;
 - (vi) description of the control measures implemented in the drainage area of each outfall;
 - (vii) description of the exposed materials located in the drainage area of each outfall that are likely to be contributors of pollutants to storm water discharges;
 - (viii) an estimate of the runoff coefficient of each of the drainage areas; and

- (ix) Documentation of procedures for performing, as appropriate, routine facility inspections, significant storm event inspections, and comprehensive site inspections.
80. Each of Respondent's failures to include a required element in the SWPPP narrative or SWPPP map, and each day Respondent failed to do so, has constituted a violation of parts 1.2.2 and 3.1 of the 2013 Permit.

Count II: Failure to Implement Control Measures
(Parts 2.1 & 2.2 of the 2013 Permit)

81. Part 2.1 of the 2013 Permit requires Respondent to select, design, install, and implement control measures, including Best Management Practices (BMPs) to minimize pollutant discharges.
82. Part 2.1 of the 2013 Permit requires Respondent to address the selection and design considerations listed in part 2.1.1 of the 2013 Permit and to meet the non-numeric technology-based effluent limitations in part 2.2 of the 2013 Permit. These non-numeric effluent limitations are specific types of control measures, such as minimizing exposure of industrial processes to inclement weather, using good housekeeping measures, performing maintenance, implementing spill prevention and response procedures, controlling erosion and sediment, managing runoff, enclosing salt storage piles, providing employee training on control measures, eliminating non-storm water discharges (other than those allowed by the 2013 Permit), and ensuring that waste, garbage, and floatable debris are not discharged, as described in parts 2.2.1 - 2.2.11 of the 2013 Permit.
83. As documented in the MDEQ Inspection Report, an MDEQ inspector observed instances in which Respondent failed to employ control measures to minimize pollutant discharges, as evidenced, for example, by:
- (a) the failure to maintain a concrete washout BMP for reducing and/or eliminating non-storm water discharges, a failure that resulted in the discharge of concrete washout from the former designated concrete washout area to the holding pond in Upper Seven Mile Creek;
 - (b) the failure to operate and maintain gravel berm BMPs, which had been breached at Outfalls 001 and 002 and at a low water crossing on a haul road and caused pollution;
 - (c) a waste oil tank with oil stains on the tank and on the ground;
 - (d) the presence of a plastic barrel floating in the water source pond;
 - (e) the presence of hardened concrete on a bank of Upper Seven Mile Creek, which has the potential to flow into the creek;

- (f) evidence of storm water discharges from points other than Outfalls 001 and 002;
 - (g) storm water discharges from an area of hardened concrete into a tributary of Upper Seven Mile Creek; and
 - (h) storm water discharges from the haul road the tributary of Upper Seven Mile Creek, with no BMPs in the area to prevent discharges of sediment from the Site.
84. As documented in the Joint Inspection Report, EPA and/or MDEQ inspectors observed additional instances in which Respondent failed to implement control measures, as evidenced, for example, by:
- (a) vehicle drivers not always using the designated concrete washout area;
 - (b) the presence of diesel fuel on the ground outside of secondary containment structures;
 - (c) the lack of proper labelling on a used oil disposal container;
 - (d) the presence of a grate in the office parking area that allowed storm water to leave the site;
 - (e) a leaking of a water pipe, causing a discharge into the source water pond;
 - (f) construction of storm water control berms with loose gravel; and
 - (g) an overflow from a former concrete washout area to the source water pond.
85. Each of Respondent's failures to operate and maintain its BMPs, as described in paragraphs 83 and 84, above, and each day Respondent failed to do so, has violated parts 2.1 and 2.2 of the 2013 Permit.

Count III: Failure to Perform Corrective Actions
(Part 2.4 of the 2013 Permit)

86. Section 2.4 of the 2013 Permit requires Respondent to perform corrective actions if an unauthorized discharge occurs, if it or the MDEQ determines that control measures are not stringent enough for discharges to meet applicable water quality standards, if an inspection by an MDEQ representative indicates that modifications to control measures are necessary to meet the 2013 Permit's non-numeric effluent limits, or if Respondent finds, based on its own Site inspections, that control measures are not being properly maintained.
87. On July 23, 2014, after its June 25, 2014, inspection had documented deficiencies in Respondent's 2013 Permit compliance at the Site, the MDEQ notified Respondent by letter that Respondent was required, within 30 days, to provide a written explanation of how it had corrected various deficiencies in the MDEQ Inspection Report.

88. Respondent failed to respond to the MDEQ within 30 days.
89. As of May 19, 2015, as documented by the Joint Inspection Report, Respondent had failed to implement control measures to address the deficiencies in the MDEQ Inspection Report.
90. Each day Respondent failed to implement control measures to address the deficiencies cited in the MDEQ Inspection Report has constituted a violation of part 2.4 of the 2013 Permit.

Count IV: Failure to Monitor
(Parts 2.5 and 3.4 of the 2013 Permit)

91. Parts 2.5 and 3.4 of the 2013 Permit require Respondent to monitor its storm water discharges.
92. On March 26, 2013, as part of its notification to Respondent of coverage under the 2013 Permit, MDEQ notified Respondent that it was required to conduct benchmark monitoring at Outfalls 001 and 002, in accordance with the requirements of part 3.4.5 of the 2013 Permit, for Industrial Subsector E2.
93. Part 2.5.1 of the 2013 Permit specifies requirements for benchmark and subsequent quarterly monitoring.
94. The MDEQ Inspection Report found that Respondent had failed to conduct benchmark monitoring.
95. The MDEQ Inspection Report found that Respondent had failed to collect samples of discharges from Outfalls 001 or 002 or from any other location at the Site.
96. In its July 23, 2014 letter transmitting the MDEQ Inspection Report to Respondent, MDEQ stated that Respondent was to obtain sample collection bottles for benchmark monitoring and to keep them at the Site for use in collecting water quality samples when discharges occurred.
97. The Joint Inspection Report found that Respondent was not conducting storm water monitoring.
98. Each of Respondent's failures to monitor discharges from the Site has violated parts 2.5 and 3.4 of the 2013 Permit.

Count V: Failure to Conduct and Document Site Inspections
(Part 2.7 of the 2013 Permit)

99. Part 2.7 of the 2013 Permit requires Respondent:
- (a) to conduct routine facility inspections, on at least a quarterly basis, of all areas of the Site where industrial materials or activities are exposed to storm water and of all storm water control measures used to comply with the effluent limits in the 2013 Permit (see part 2.7.1.1 of the 2013 Permit);
 - (b) to document the findings of each routine Site inspection and to maintain this documentation at the Site with the SWPPP (see part 2.7.1.2 of the 2013 Permit);
 - (c) to conduct additional inspections of the Site following significant rainfall or snowmelt events (see part 2.7.2 of the 2013 Permit);
 - (d) to conduct annual comprehensive inspections of the Site, including, but not limited to, storm water control measures (especially those needing replacement, maintenance, or repair), monitoring data, all areas identified in the SWPPP as potential pollutant sources, any areas where control measures are used to comply with effluent limitations, materials that may have or could come into contact with storm water, leaks or spills from any containers, offsite tracking, and areas of potential noncompliance; and
 - (e) to document the findings of each inspection of the Site.
100. The Joint Inspection Report made a finding that Respondent had failed to conduct or document Site inspections as required by the 2013 Permit.
101. On September 26, 2017, Respondent provided inspection reports to the EPA, indicating:
- (a) Respondent did not prepare Routine Inspection reports for first and second quarters of 2015, the first quarter of 2016, or the first quarter of 2017; and
 - (b) Respondent's Routine Inspection reports dated 9/7/2015, 9/30/2015, 12/31/2015, 05/10/2016, 05/15/2016, 07/7/2016, 09/5/2016, 09/30/2016, 10/3/2016, 12/29/2016, 6/13/2017, 06/27/2017, 07/19/2017, 09/23/2017, 09/14/2017, 09/15/2017, and 09/16/2017 were missing the following required elements:
 - (i) time of the inspection;
 - (ii) name of the inspector (for each report mentioned above except the 9/7/2015, 9/30/2015, 12/31/15, and 9/5/2016 reports);

- (iii) weather information including time when storm events took place; and
- (iv) rainfall data for three of the 11 storm events reports dated 5/10/2016, 6/13/2017, and 9/23/2017.

102. Each quarter during which Respondent failed to conduct or document Site inspections as required by the 2013 Permit has violated part 2.7 of the 2013 Permit.

Count VI: Failure to Submit Timely and Accurate Reports
(Part 2.9 of the 2013 Permit)

103. In the March 26, 2013 letter cited above, MDEQ stated that annual monitoring was required and that discharge monitoring reports (DMRs) for the quarterly monitoring requirements in part 2.9.1 of the 2013 Permit would be mailed separately to Respondent.
104. Part 2.9.1 of the 2013 Permit requires Respondent to submit DMRs to MDEQ for each of Respondent's quarterly sampling events.
105. During the MDEQ Inspection, an MDEQ representative noted evidence of discharges at Outfalls 001 and 002. However, Respondent's DMRs indicated that no discharge had occurred.
106. Part 2.9.3 of the 2013 Permit requires Respondent to submit an annual report to MDEQ no later than February 1st following the year covered by the report.
107. The Joint Inspection Report made a finding that Respondent had not timely completed annual reports.
108. On September 26, 2017, Respondent provided the EPA with information on monitoring Respondent had conducted. Based on this information and data from the Integrated Compliance Information System database, it appears that Respondent:
- (a) was late in submitting DMRs for the third quarter of 2015 (68 days late), the fourth quarter of 2015 (523 days late) and the third quarter of 2016 (157 days late);
 - (b) in its DMR for the second quarter of 2016, omitted the results of benchmark sampling conducted on 5/10/16 as a result of a weather-related event (0.8 inches of rainfall); and failed to report likely discharges from Outfall 001A on 9/7/2015 (recorded rainfall of 1 inch), 9/5/2016 (recorded rainfall of 1 inch), and 9/15/2017 (recorded rainfall of 0.9 inch).
109. Each of Respondent's failures to submit complete reports in a timely fashion has violated part 2.9 of the 2013 Permit.

Count VII: Failure to Maintain Records On-Site
(Part 2.10 of the 2013 Permit)

110. Part 2.10 of the 2013 Permit requires Respondent to keep specified records at the Site at all times during active 2013 Permit coverage. These include, but are not limited to, copies of annual reports, DMRs, records of routine, significant storm event and comprehensive site inspections, employee training records, and documentation of maintenance and repair of control measures.
111. The MDEQ Inspection Report found that Respondent had failed to maintain copies of its annual report form for 2013, its DMR for the first quarter of 2014, and employee training records at the Site.
112. The Joint Inspection Report found that Respondent had failed to maintain the following records at the Site:
 - (a) DMRs for Outfalls 001 and 002 from March 2012 through December 2013 and from the fourth quarter of 2014;
 - (b) the DMR for Outfall 001 from the first quarter of 2014;
 - (c) annual reports for 2011, 2013, and 2014;
 - (c) records of employee training; and
 - (d) records of Respondent's annual, routine, and storm event inspections of the Site.
113. The EPA's additional communications with Respondent indicated that Respondent has failed to maintain the following records at the Site:
 - (a) Annual Comprehensive Inspection Reports;
 - (b) documentation of corrective actions taken in response to Site inspections;
 - (c) DMRs, and
 - (d) documentation of maintenance and repairs of control measures.
114. Each of Respondent's failures to maintain copies of DMRs at the Site is a violation of part 2.10 of the 2013 Permit.
115. Each of Respondent's failures to maintain copies of annual reports at the Site has violated part 2.10 of the 2013 Permit.

116. Each day Respondent failed to maintain copies of employee training at the has violated part 2.10 of the 2013 Permit.
117. Each day Respondent failed to maintain copies of inspection reports at the Site had violated part 2.10 of the 2013 Permit.

Count VIII: Unauthorized Discharges
(Section 301(a) of the Act)

118. As mentioned above, the 2013 Permit authorized discharges only from Outfalls 001 and 002.
119. As indicated in the MDEQ Inspection Report and the Joint Inspection Report, Respondent has discharged pollutants from the Site from points other than Outfalls 001 and 002.
120. Each day Respondent has discharged any pollutant from a point other than Outfall 001 or Outfall 002 has constituted a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

Count IX: Failure to Prepare an Adequate SPCC Plan
(40 C.F.R. part 112)

121. Respondent is required to prepare an SPCC plan for the Site in accordance with the requirements of 40 C.F.R. part 112.
122. Respondent is required to maintain a complete copy of its SPCC Plan at the Site. 40 C.F.R. § 112.3(e)(1).
123. As of the time of the EPA's inspection referenced in paragraph 65, above, Respondent had not prepared an SPCC plan for the Site, and no SPCC plan for the Site existed.
124. At no time before December of 2017 was the Site covered by an SPCC plan.
125. In January of 2018, Respondent submitted an SPCC plan to the EPA. The plan indicated it had been prepared in December of 2017.
126. Each day prior to December of 2017 Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having prepared and maintained an SPCC plan for the Site is a violation of 40 C.F.R. part 112.

Count X: Failure to Provide Adequate Secondary Containment

127. Respondent is required to provide adequate containment and/or diversionary structures or equipment at the Site to prevent a discharge of oil (with an exception not relevant here). Among other things, the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary

containment system, such as a tank, will not escape the containment system before containment occurs. 40 C.F.R. §§ 112.7(c) and 112.8(a).

128. Respondent's containment system is required by 40 C.F.R. §§ 112.7(c) and 112.8(a) to include at least one of the following prevention systems or its equivalent:
- (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil
 - (ii) Curbing or drip pans;
 - (iii) Sumps and collection systems;
 - (iv) Culverting, gutters, or other drainage systems;
 - (v) Weirs, booms, or other barriers;
 - (vi) Spill diversion ponds;
 - (vii) Retention ponds; or
 - (viii) Sorbent materials.
129. Respondent is required to construct all bulk storage tank installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. 40 C.F.R. § 112.(c)(2).
130. The SPCC Inspection revealed that an earthen berm surrounding a dented 10,000-gallon diesel storage tank (since replaced by the 10,000-gallon tank referenced in paragraph 57, above) had allowed soil to erode into, and fill much of, the containment area, thus compromising the ability of the containment system to function.
131. The SPCC Inspection revealed that two 250-gallon oil storage totes and all of the drums at the Site had no secondary containment.
132. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without providing adequate secondary containment is a violation of 40 C.F.R. §§ 112.7(c), 112.8(a), 112.8(c)(2), and 112.12(c)(2).

Count XI: Failure to Conduct and Maintain Records of Inspections

133. Respondent is required to conduct inspections and tests required by 40 C.F.R. part 112 in accordance with written procedures for the Site. 40 C.F.R. § 112.7(e).
134. Respondent is required to keep its written inspection procedures and a record of the inspections and tests, signed by an appropriate supervisor or inspector, with its SPCC plan for the Site, for at least three years. 40 C.F.R. § 112.7(e).
135. The SPCC Inspection revealed Respondent had no written inspection procedures or records of inspections of the Site relating to SPCC requirements.
136. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15,

above) without maintaining written inspection procedures or records of inspections and tests relating to SPCC requirements at the Site constitutes a violation of 40 C.F.R. § 112.7(e).

Count XII: Failure to Provide Adequate Training

137. Respondent is required to train its oil-handling personnel in the operation and maintenance of equipment to prevent discharges, in discharge procedure protocols, in applicable pollution control laws, rules, and regulations, in general facility operations, and in the contents of the Site's SPCC plan. 40 C.F.R. § 112.7(f)(1).
138. The SPCC Inspection revealed Respondent had no program for training oil-handling personnel in preventing discharges, discharge procedure protocols, applicable pollution control laws, rules, and regulations, and general facility operations. Nor was there a program for training personnel in the Site's SPCC plan, there being no such plan.
139. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having trained its oil-handling personnel in the operation and maintenance of equipment to prevent discharges, in discharge procedure protocols, in applicable pollution control laws, rules, and regulations, in general facility operations, and in the contents of the Site's SPCC plan constitutes a violation of 40 C.F.R. § 112.7(f)(1).

Count XIII: Failure to Designate Person Responsible for Spill Prevention

140. Respondent is required to designate a person accountable for discharge prevention and who reports to Site management. 40 C.F.R. § 112.7(f)(2).
141. The SPCC Inspection revealed Respondent had not designated a person accountable for discharge prevention at the Site and who reported to Site management.
142. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having designated a person accountable for discharge prevention at the Site and reporting to Site management constitutes a violation of 40 C.F.R. § 112.7(f)(2).

Count XIV: Failure to Restrain Facility Drainage

143. Respondent is required to restrain drainage from diked storage areas by valves to prevent a discharge into the Site's drainage or effluent treatment system. Respondent is allowed to empty diked areas by pumps or ejectors but must manually activate those pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil discharge. Valves for restraining drainage must be of the open-and-closed design. Facility drainage systems must be designed to flow into ponds lagoons, or catchment basins designed to retain oil or return it to the Site; otherwise, the final discharge of all ditches inside the facility must be equipped with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility. 40 C.F.R. § 112.8(b).

144. The SPCC Inspection revealed Respondent did not restrain drainage from diked storage areas by valves, did not design drainage from the Site to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the Site, and had not engineered a diversion system to retain oil at the Site in the event of an uncontrolled discharge.
145. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having restrained drainage from diked storage areas by valves, implemented facility drainage to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the Site, and engineered a diversion system to retain oil at the Site in the event of an uncontrolled discharge constitutes a violation of 40 C.F.R. § 112.8(b).

Count XVI: Failure to Conduct Testing on Containers

146. Respondent is required to test or inspection each aboveground oil container for integrity on a regular schedule and whenever material repairs are performed. Respondent is also required to maintain records of such testing. 40 C.F.R. § 112.8(c)(6).
147. During the SPCC Inspection, EPA inspectors observed a dent or depression in a 10,000-gallon diesel storage tank, which suggested the tank may have been hit by a vehicle. The inspectors were informed Respondent had never conducted integrity testing on that tank to determine if the dent could have affected the tank's integrity. They were also informed Respondent had no records of tank integrity testing.
148. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having tested or inspected each aboveground oil container for integrity constitutes a violation of 40 C.F.R. § 112.8(c)(6).

Count XVII: Failure to Employ Overflow Prevention Devices

149. Respondent is required to engineer or update each container with at least one of the following devices or methods to prevent overflows: high liquid level alarms, high liquid level cutoff devices, direct audible or code signal communication between the container gauger and the pumping station a fast response system for determining the liquid level of each bulk storage container, or regularly testing liquid sensing devices to ensure proper operation. 40 C.F.R. §§ 112.6(a)(3)(iii) and 112.8(c)(8).
150. The SPCC Inspection revealed the Site lacked liquid level sensing devices or other overflow prevention devices.
151. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having implemented liquid level sensing devices or other overflow prevention devices at the Site constitutes a violation of 40 C.F.R. §§ 112.6(a)(3)(iii) and 112.8(c)(8).

Count XVIII: Failure to Locate Portable Containers to Prevent Discharge

152. Respondent is required to position or locate the mobile or portable oil storage containers at the Site to prevent a discharge. 40 C.F.R. §§ 112.6(a)(3)(ii) and 112.8(c)(11).
153. The SPCC Inspection revealed at least one portable used oil tote container and multiple oil storage drums at the Site with no containment and thus not positioned in a way to prevent a discharge.
154. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having located its portable containers to prevent a discharge constitutes a violation of 40 C.F.R. §§ 112.6(a)(3)(ii) and 112.8(c)(11).

Count XIX: Failure to Inspect Valves and Piping

155. Respondent is required to inspect all aboveground valves, piping, and appurtenances regularly. 40 C.F.R. § 112.8(d)(4).
156. The SPCC Inspection revealed Respondent had not inspected its aboveground valves, piping, and appurtenances regularly.
157. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having inspected its aboveground valves, piping, and appurtenances regularly constitutes a violation of 40 C.F.R. § 112.8(d)(4).

Count XX: Failure to Certify Regarding Substantial Harm Criteria

158. Respondent is required, upon determining the Site could not, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, complete a Substantial Harm Certification Form and maintain it at the Site. 40 C.F.R. § 112.20(e); see also Appendix C to section 112.20 for the relevant form.
159. The SPCC Inspection revealed Respondent had not prepared a Substantial Harm Certification Form for the Site.
160. Each day Respondent stored oil at the Site (in excess of the threshold cited in paragraph 15, above) without having prepared a Substantial Harm Certification Form for the Site constitutes a violation of 40 C.F.R. § 112.20(e).

VII. CIVIL PENALTY

161. The EPA is authorized to assess a civil administrative Class II penalty of \$10,000 for each day during which a violation of an NPDES permit or an unpermitted discharge continues,

with a maximum of \$125,000. 33 U.S.C. § 1319(g)(2)(B). The amounts of such daily and maximum penalties have been adjusted for inflation by 40 C.F.R. part 19. For violations occurring after December 6, 2013 through November 2, 2015, the daily and maximum amounts are \$16,000 and \$187,500, respectively. For violations occurring after November 2, 2015, the daily and maximum amounts are greater. (See 78 Fed. Reg. 66643, 66647 (November 6, 2013); 82 Fed. Reg. 3633, 3636 (January 12, 2017)); 85 Fed. Reg. 1190, 1193 (January 10, 2018); 84 Fed. Reg. 2056, 2059 (February 6, 2019); 84 Fed. Reg. 5955 (February 25, 2019); and 85 Fed. Reg. 1751, 1754 (January 13, 2020).)

162. The EPA is authorized to assess a civil administrative Class II penalty of up to \$10,000 for each day during which a violation of any provision of the SPCC Regulations continues, with a maximum of \$125,000. 33 U.S.C. § 1321(b)(6)(B). The amounts of such daily and maximum penalties have been adjusted for inflation by 40 C.F.R. part 19. For violations occurring after December 6, 2013 through November 2, 2015, the daily and maximum amounts are \$16,000 and \$187,000, respectively. For violations occurring after November 2, 2015, the daily and maximum amounts are greater. (See 78 Fed. Reg. 66643, 66647 (November 6, 2013); 82 Fed. Reg. 3633, 3636 (January 12, 2017)); 85 Fed. Reg. 1190, 1193 (January 10, 2018); 84 Fed. Reg. 2056, 2059 (February 6, 2019); 84 Fed. Reg. 5955 (February 25, 2019); and 85 Fed. Reg. 1751, 1754 (January 13, 2020).)
163. After consideration of the facts of this case as they relate to the factors set forth in sections 309(g)(3) and 311(b)(8) of the Act, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8), the EPA has determined that a civil penalty of \$95,000, for violations occurring on or after October 1, 2014, is appropriate to settle this matter.
164. Respondent consents and agrees to pay a civil penalty in the amount stated in paragraph 163, above, in the manner described below:
 - a. The civil penalty shall be in two payments, one of \$60,000 payable to “U.S. Treasury” and the other of \$35,000 payable to “Oil Spill Liability Trust Fund-311.” Each payment is due no later than 30 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. Each payment shall be made by any method provided on the website <https://www.epa.gov/financial/makepayment>, following the instructions under the heading “Civil Penalties.”

- c. Copies of each check or record of payment shall be sent to:

Michael Boeglin
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of each check.

165. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

VIII. PUBLIC NOTICE

166. As required by sections 309(g)(4)(A) and 311(b)(6)(C) of the Act, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(g)(6)(C), and 40 C.F.R. § 22.45, prior to submitting this Agreement to EPA Region 8's Regional Judicial Officer for approval, the EPA will provide the public notice of this Agreement and a reasonable opportunity to comment on the agreed-upon penalty. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate.
167. The EPA has consulted with the Montana Department of Environmental Quality regarding this Agreement.

IX. GENERAL PROVISIONS

168. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.
169. Any failure by Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

170. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as any failure by Respondent to comply with this Agreement.
171. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
172. Each party shall bear its own costs and attorney's fees in connection with this matter.
173. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged above.
174. The parties consent to service of this Agreement and the Final Order by email at the following valid email addresses: livingston.peggy@epa.gov for Complainant and tpriebe@fisherind.com for Respondent.


**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: _____

By: _____
Colleen Rathbone, Chief
Water Enforcement Branch
Enforcement and Compliance
Assurance Division
Complainant

**FISHER SAND & GRAVEL CO.,
Respondent**

Date: 4/20/20

By: 
Michael Newton
Materials Manager – Montana Operations
Fisher Sand & Gravel Co.
P.O. Box 1246
Glendive, MT 59330