

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Laura Berry 9/27/16  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CWA-01-2016-0058

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Bird, Inc. and Certainteed Corporation  
1077 Pleasant Street  
Norwood, MA 02062

Total Dollar Amount of Receivable \$ 120,800 Due Date: 10/6/16

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>st</sup> \$ 76,000 on 10/6/16  
2<sup>nd</sup> \$ 44,800 on 10/6/16  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number



# U.S. Environmental Protection Agency

Region 1  
5 Post Office Square – Suite 100  
Boston, MA 02109-3912

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September 26, 2016

## VIA HAND DELIVERY

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912



Re: *In the Matter of Bird, Inc. and Certainteed Corporation, Docket No. CWA-01-2016-0058*

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry  
Enforcement Counsel  
U.S. EPA, Region 1

Enclosure

cc: Lauren Alterman, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the matter of	)	Docket No. CWA-01-2016-0058
	)	
BIRD, INC. AND	)	
CERTAINTeED CORPORATION	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER FOR CLASS II</b>
1077 Pleasant St.	)	<b>CIVIL PENALTY UNDER THE</b>
Norwood, MA 02062	)	<b>CLEAN WATER ACT</b>
	)	
Respondents.	)	

The Regional Administrator of the United States Environmental Protection Agency, Region 1 (“EPA”) issues this Consent Agreement and Final Order (“CAFO”) to Bird, Inc. (“Bird”) and CertainTeed Corporation (“CertainTeed”) (collectively, “Respondents”). EPA alleges that Respondents violated Sections 301(a), 311(b)(3), and 311(j) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1321(b)(3), and 1321(j). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Part 22”).

**I. DESCRIPTION OF VIOLATIONS**

1. EPA alleges that Respondents: (1) failed to comply with the terms and conditions of the facility’s National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); (2) failed to comply with the terms and conditions of the Final NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”) in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); (3) failed to comply with the Oil Pollution Prevention regulations, specifically,

**RECEIVED**

the Oil Spill Pollution Prevention, Control, and Countermeasure (“SPCC”) Rule, set forth at 40 C.F.R. Part 112, promulgated under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j); and (4) discharged oil into or upon the navigable waters of the United States or adjoining shorelines in a quantity that has been determined may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

### **Statutory and Regulatory Authority**

2. EPA takes this action under the authority of Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts Department of Environmental Protection of this action.

### **General Allegations**

#### National Pollutant Discharge Elimination System

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership, [or] association.”

6. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to include “an individual, firm, corporation, association, [or] partnership.”

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a

pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, garbage, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

11. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

12. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

13. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

14. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

15. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be

authorized by a NPDES permit.

16. Forty C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

17. Forty C.F.R. § 122.26(b)(14)(ii) specifies that facilities engaging in industrial activity includes facilities classified as Standard Industrial Classification (“SIC”) codes 29 and 32 (except 323), including SIC codes 2952 (asphalt felts and coatings) and 3295 (minerals and earths, ground or otherwise treated).

18. Forty C.F.R. § 122.26(b)(14) specifies that, for the categories of facilities classified in SIC codes 29 and 32 (except 323), the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among other things, immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility, material handling sites, and storage areas for raw materials and intermediate and final products.

19. On September 29, 1995, EPA issued the NPDES Stormwater Multi-Sector General Permit for Industrial Activities (“1995 MSGP”). 60 Fed. Reg. 50804 (Sept. 29, 1995). EPA reissued the Multi-Sector General Permit for Industrial Activities on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746 (Oct. 30, 2000), and again on September 29, 2008 (“2008 MSGP”), 73 Fed. Reg. 56572 (Sept. 29, 2008), and again on June 4, 2015 (“2015 MSGP”), 80 Fed. Reg. 34403 (June 16, 2015). The 2008 MSGP became effective on the date of issuance.

20. The 2008 MSGP contains terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharge associated with industrial activity.

21. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

#### Oil and Hazardous Substances Liability

22. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges . . . .”

23. Under the authority of Section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

24. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities unto or upon the navigable waters of the United States must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.

25. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil, as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), into or upon the

navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined under Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).

26. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined that an oil discharge “may be harmful” to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; or, (2) a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or, (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (“harmful quantity”).

27. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), provides for the assessment of penalties for violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112.

### **Findings of Violation**

#### Failure to Comply with 2005 Permit Terms and Conditions/Discharge of Stormwater Not in Compliance with NPDES Permit

28. Bird is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Norwood, Massachusetts.

29. CertainTeed is a corporation organized under the laws of the State of Delaware with its principal place of business in Valley Forge, Pennsylvania.

30. Each Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7), 1362(5), and 40 C.F.R. § 112.2.

31. Respondents own and/or operate a fiberglass/asphalt roofing materials manufacturing facility located at 1077 Pleasant Street in Norwood, Massachusetts (the “Facility”), which is classified under SIC codes 2952 (asphalt felts and coatings) and 3295 (minerals and earths, ground or otherwise treated).

32. At the Facility, Respondents manufacture roofing shingles. The site includes approximately 32 acres of industrial activity exposed to stormwater. Raw materials used at the Facility include fiberglass rolls, asphalt, rock granules, rock dust filler, sand, Mylar tape, latex paint, and biocide coating. The Facility also produces its own ceramic-coated granules and solar-reflective granules, using raw materials such as quarry rock, kaolin clay, inorganic pigments, and mineral oil.

33. Respondents control all daily business and industrial operations at the Facility, and otherwise meet the definition of “operators” of the Facility, as defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

34. Since at least July 1, 2010, Respondents have conducted “industrial activity,” within the meaning of 40 C.F.R. § 112.26(b)(14)(ii), at the Facility.

35. On September 20, 2005, EPA issued a NPDES permit MA0003531 to Respondents (the “2005 Permit”). The 2005 Permit became effective 60 days from the date of signature, on November 19, 2005, and expired on November 19, 2010.<sup>1</sup>

36. The 2005 Permit authorizes Respondents to discharge the following to the Neponset River, subject to the terms and conditions in the 2015 Permit: treated contact cooling water from the roofing fabrication process from outfall serial number 001; treated cleaning, dust control, and noncontact cooling water from the granule processing plant from outfall serial number 002; and treated stormwater from the containment area around the Facility’s tank farm and still yard from outfall serial numbers 003 and 004, respectively.

37. On January 13, 2015, EPA issued a new NPDES permit MA0003531 to Respondents (the “2015 Permit”). The 2015 Permit became effective on April 1, 2015.

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<sup>1</sup> Because Respondents timely submitted a reapplication for their NPDES permit, the permit was administratively continued until issuance of the new permit.

38. The 2015 Permit authorizes Respondents to discharge the following to the Neponset River, subject to the terms and conditions in the 2015 Permit: treated contact cooling water from a cooling water system used to cool asphalt-coated roofing shingles from outfall serial number 001; treated contact process water (i.e., cleaning and dust control water), noncontact cooling water, boiler condensate, boiler blowdown, and stormwater from the granule plant from outfall serial number 002; and treated stormwater from the containment area around two tank farms from outfall serial numbers 003 and 004.

39. At times, during certain wet weather events, the Facility also discharged and continues to discharge stormwater associated with industrial activity to the Neponset River and to the Norwood municipal stormwater sewer collection system, which discharges to the Neponset River, from eleven additional outfalls referred to as 5A, 5B, 5C, 5D, 6, 7A, 7B, 7C, 7D, 8A, and 8B in the Facility's March 2013 Storm Water Pollution Prevention Plan (the "2013 SWPPP").

40. At times, during certain wet weather events, the Facility also discharged stormwater associated with industrial activity to the Norwood municipal stormwater sewer collection system, which discharges to the Neponset River, through a catch basin located along Pleasant Street immediately north of outfall 8B at the entrance to the Granule Plant, which captures runoff from what is referred to in the Facility's March 2013 SWPPP as Drainage Area 2.

41. The outfalls described in paragraphs 36, 38, 39, and 40 above are "point source[s]" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

42. The discharges from the outfalls described in paragraphs 36, 38, 39, and 40 above contain garbage, chemical wastes, rock, sand, and industrial waste, among other things, which

are “pollutant[s]” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

43. Respondents submitted an NOI seeking coverage to discharge stormwater from the outfalls described in paragraph 39 above under the 2008 MSGP on June 4, 2013.

44. EPA provided acknowledgment to Respondents on June 4, 2013, indicating that the Facility’s authorization to discharge stormwater associated with industrial activity under the 2008 MSGP was effective on July 4, 2013 (permit number MAR05EA93).

45. Respondents store, transfer, and consume more than 1,320 gallons of oil at the Facility, and the Facility’s stormwater sewer collection system discharges to the Neponset River and to the Norwood municipal stormwater collection system, which discharges to the Neponset River, from the outfalls described in paragraphs 36, 38, 39, and 40 above.

46. The Neponset River, and the Boston Harbor and Massachusetts Bay to which it flows, are waters of the United States and, thereby, “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

47. On November 27, 2012, authorized representatives of EPA inspected the Facility for compliance with federal environmental laws and regulations under the CWA and the Oil Pollution Act (the “Inspection”).

*Failure to comply with effluent limitations in 2005 Permit*

48. Parts I.A.1 and I.A.3 of the 2005 Permit require regular monitoring of total suspended solids (“TSS”), hydrogen ion (“pH”), and oil and grease concentrations, and flow, among other things, in wastewater discharges from outfalls 001, 003, and 004 at the Facility.

49. Part I.A.2 of the 2005 Permit requires regular monitoring of TSS and pH concentrations and flow, among other things, in wastewater discharges from outfall 002 at the Facility.

50. Part I.A.1 of the 2005 Permit requires that the average monthly and maximum

daily concentrations of TSS in effluent from outfall 001 shall not be greater than 40 micrograms per liter and 70 micrograms per liter, respectively.

51. Part I.A.2 of the 2005 Permit requires that the average monthly and maximum daily concentrations of TSS in effluent from outfall 002 shall not be greater than 20 micrograms per liter and 30 micrograms per liter, respectively.

52. Part I.A.3 of the 2005 Permit requires that the average monthly and maximum daily concentrations of TSS in effluent from outfalls 003 and 004 shall not be greater than 10 micrograms per liter and 15 micrograms per liter, respectively.

53. Parts I.A.1, I.A.2, I.A.3, and I.A.4.b of the 2005 Permit require that the pH of discharges from outfalls 001, 002, 003 and 004 shall not be less than 6.5 standard units nor greater than 8.3 standard units.

54. Parts I.A.1 and I.A.3 of the 2005 Permit require that the maximum daily concentration of oil and grease in effluent from outfalls 001, 003, and 004 shall not be greater than 15 milligrams per liter.

55. During the month of October 2010, Respondents discharged effluent from outfall 001 to the Neponset River having a TSS concentration above the daily maximum limit (70 milligrams per liter) set forth in Part I.A.1 of the 2005 Permit.

56. During the months of November 2011 and October 2012, Respondents discharged effluent from outfall 002 to the Neponset River having a TSS concentration above the daily maximum (30 milligrams per liter) and monthly average (20 milligrams per liter) limits set forth in Part I.A.2 of the 2005 Permit.

57. Respondents failed to report the estimated flow discharged from outfall 002 on the discharge monitoring report submitted for October 2012, as required by Parts I.A.2 and I.D

of the 2005 Permit.

58. During the months of March 2011 and April 2011, Respondents discharged effluent from outfall 003 to the Neponset River having a TSS concentration above the daily maximum (15 milligrams per liter) and monthly average (10 milligrams per liter) limits set forth in Part I.A.3 of the 2005 Permit. In addition, during the month of May 2013, Respondents discharged effluent from outfall 003 to the Neponset River having a TSS concentration above the monthly average limit (10 milligrams per liter) set forth in Part I.A.3 of the 2005 Permit.

59. During the month of October 2011, Respondents discharged effluent from outfall 003 to the Neponset River having a pH less than the 6.5 standard units limit set forth in Parts I.A.3 and I.A.4.b of the 2005 Permit.

60. During the months of April 2011, June 2011, and June 2012, Respondents discharged effluent from outfall 004 to the Neponset River having a TSS concentration above the above the daily maximum (15 milligrams per liter) and monthly average (10 milligrams per liter) limits set forth in Part I.A.3 of the 2005 Permit. In addition, during the months of May 2011 and April 2012, Respondents discharged effluent from outfall 004 to the Neponset River having a TSS concentration above the monthly average limit (10 milligrams per liter) set forth in Part I.A.3 of the 2005 Permit.

61. During the month of May 2011 and October 2011, Respondents discharged effluent from outfall 004 to the Neponset River having a pH less than the 6.5 standard units limit set forth in Parts I.A.3 and I.A.4.b of the 2005 Permit.

62. During the month of November 2013, Respondents discharged effluent from outfall 004 to the Neponset River having an oil & grease concentration above the daily maximum limit (15 milligrams per liter) set forth in Part I.A.3 of the 2005 Permit.

63. Accordingly, by discharging effluent that violated the effluent limitations in Parts I.A.1, I.A.2, I.A.3, I.A.4.b, and I.D of the 2005 Permit as described above, Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

*Failure to comply with discharge requirements in the 2005 Permit*

64. Part I.B of the 2005 Permit requires that the permittee may discharge only in accordance with the terms and conditions of the 2005 Permit and only from the outfalls listed in Parts I.A.1 through I.A.3.

65. Since at least September 2010, Respondents have been discharging and continue to discharge stormwater associated with industrial activity from outfalls referred to as 5A, 5B, 5C, 5D, 6, 7A, 7B, 7C, 7D, 8A, and 8B in the Facility's 2013 SWPPP, none of which were outfalls identified in the 2005 Permit. Respondents also discharged stormwater associated with industrial activity through a catch basin located along Pleasant Street immediately north of outfall 8B at the entrance to the Granule Plant, which captures runoff from what is referred to in the Facility's March 2013 SWPPP as Drainage Area 2, from at least September 2010 through March 2016.

66. Respondents obtained authorization to discharge stormwater associated with industrial activity from the Facility under the 2008 MSGP on July 4, 2013 (permit number MAR05EA93).

67. By discharging stormwater discharges associated with industrial activity from outfalls other than those listed in Parts I.A.1 through I.A.3 of the 2005 Permit as described above, in violation of Part I.B of the 2005 Permit, and without authorization under any other NPDES permit, Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Comply with 2008 MSGP Terms and Conditions

68. Paragraphs 1 through 67 are incorporated herein by reference.

69. Part 5.1.2 of the 2008 MSGP requires that a permittee's SWPPP must contain a site map showing, among other things, (a) locations of all potential pollutant sources exposed to stormwater, including but not limited to material handling equipment and activities; (b) locations of stormwater inlets and outfalls, with a unique identification code for each outfall, and an approximate outline of the areas draining to each outfall; (c) municipal separate storm sewer systems, where your stormwater discharges to them; and (d) locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; locations used for the treatment, storage, or disposal of wastes; liquid storage tanks, processing and storage areas; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; transfer areas for substances in bulk; and machinery.

70. Respondents developed a "Stormwater Pollution Prevention Plan Drainage Area and Stormwater Collection Plan" diagram, dated February 2013 (the "2013 Site Diagram"), which was included in the Facility's 2013 SWPPP. Respondents developed an updated version of the 2013 Site Diagram in February 2014 (the "2014 Site Diagram"). Neither the 2013 Site Diagram nor the 2014 Site Diagram include the location or a unique identification code for the catch basin located along Pleasant Street immediately north of outfall 8B at the entrance to the Granule Plant, which captures runoff from what is referred to in the Facility's March 2013 SWPPP as Drainage Area 2, nor the location of where that outfall and outfalls 8A and 8B discharge to the Norwood municipal stormwater sewer collection system, as required by Part 5.1.2 of the 2008 MSGP. Moreover, neither the 2013 Site Diagram nor the 2014 Site Diagram include the locations of conveyer belts, hoppers, dust collection units, rubbish roll-off containers,

and other material handling equipment and activities that are potential pollutant sources in Drainage Areas 2 and 8, nor do they include the locations of loading/unloading docks in those Drainage Areas.

71. By failing to develop an adequate site map for inclusion in the Facility's SWPPP as described above, in violation of Part 5.1.2 of the 2008 MSGP, Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Failure to Maintain and Fully Implement a Spill Prevention, Control and Countermeasure Plan

72. Paragraphs 1 through 71 are incorporated herein by reference.

73. At all times relevant to the allegations in this CAFO, Respondents engaged in storing, using, and consuming "oil" or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

74. At all times relevant to the allegations in this CAFO, the Facility had an aboveground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

75. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

76. The Facility became operational prior to August 16, 2002.

77. The Facility is a "non-transportation-related" facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

78. The Facility is bordered on the west by the Neponset River, and the Facility's stormwater sewer collection system discharges to the Neponset River and the Norwood municipal stormwater collection system, which discharges to the Neponset River, from the outfalls described in paragraphs 36, 38, 39, and 40 above. The topography leading from the Facility through the stormwater sewer collection system to the Neponset River presents a clear

path into navigable waters. Due to the location of the Facility with respect to the Neponset River and the topography of the area, the Facility could reasonably be expected to discharge oil into the Neponset River and downstream bodies of water.

79. The Neponset River, and the Boston Harbor and Massachusetts Bay to which it flows, are “navigable waters of the United States” and are subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

80. Based on the allegations in paragraphs 72 through 79 above, Respondents are owners and/or operators of a non-transportation-related facility engaged in storing, using, and consuming oil or oil products that could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States, and are, therefore, subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

81. During the Inspection and based on additional information submitted by Respondents, EPA determined that Respondents had a SPCC plan for the Facility, but the SPCC plan was deficient, in violation of Section 311(j) of the CWA.

82. Respondents failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8, in accordance with good engineering practice. Respondents’ failure to maintain and fully implement a SPCC plan includes but is not limited to the following deficiencies:

- a. Respondents failed to include in the Facility’s SPCC plan a diagram identifying the location of each fixed oil storage container and the storage area where mobile or portable containers are located and a description of the type of oil in each fixed container and its storage capacity, as required by 40 C.F.R. § 112.7(a)(3);

- b. Respondents failed to provide adequate secondary containment for all oil storage containers, including but not limited to drums stored at the Granule Plant and the Solaris Plant and an unhitched mobile oil tank wagon stored at the Solaris Plant, in order to prevent a discharge of oil, as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)(2);
- c. Respondents failed to inspect stormwater accumulated in diked areas before discharging the stormwater to ensure no oil will be discharged and/or keep adequate records of such events, as required by 40 C.F.R. §§ 112.8(b) and 112.8(c)(3); and
- d. Respondents failed to ensure that the May 2010 SPCC plan was certified by a Professional Engineer in accordance with the requirements in 40 C.F.R. § 112.3(d).

83. According to a letter submitted by Respondents, secondary containment was provided for all oil containers and a log book was developed and implemented to ensure document the date and appearance of stormwater accumulated in diked containment areas prior to discharge by December 17, 2012.

84. On February 14, 2013, Respondents submitted a revised SPCC plan that had been properly certified by a Professional Engineer and included the location of each fixed oil storage container and the storage area where mobile or portable containers are located and a description of the type of oil in each fixed container and its storage capacity.

85. By failing to maintain and fully implement a SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondents violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

#### Discharge of Oil into Waters of the United States

86. Paragraphs 1 through 85 are incorporated herein by reference.

87. On November 30, 2011, representatives of EPA and the Massachusetts Department of Environmental Protection (“MassDEP”) conducted a site visit at the Facility, which included a site walk of the Facility’s interior and exterior areas. During the site walk,

EPA and MassDEP representatives observed out-of-service oil skimmer(s) in an area on the north side of the site near the Facility's cooling towers. EPA representatives observed residual oil in the skimmer(s) and an oily sheen on an adjacent section of the Neponset River.

88. On November 27, 2012, during the Inspection, Respondents' representatives unearthed rocks and disturbed soils in the same area along the Neponset River shoreline described in paragraph 87 above. Immediately after, EPA's inspector observed a bubbling effect in the Neponset River near the area where rock and soils, followed by an oil sheen which appeared on the surface of the Neponset River. EPA's inspector recommended that an oil boom be deployed and the discharge be reported to the National Response Center. Respondents' representatives deployed booms and mats in the water.

89. On May 2, 2013, representatives of GZA GeoEnvironmental, Inc. ("GZA"), Respondents' contractor, observed a petroleum sheen on the surface of the Neponset River at a location north of monitoring well GZ-103, as described in Immediate Response Action Status Reports prepared by GZA and submitted to MassDEP on behalf of Respondents (Release Tracking Number 4-0024105). According to GZA, the sheen appeared to emanate in small episodic bubbles from the underwater sediment at a location near the southern bank of the river proximate to the Facility's existing cooling towers. GZA immediately shared its observations with a representative of Respondents, who then deployed an absorbent boom. Respondents then authorized GZA to report the release to MassDEP.

90. Based on a recommendation by MassDEP, Respondents subsequently installed a supplemental floating containment boom and instituted routine periodic inspections of the boom and absorbent pad conditions.

91. According to Respondents' inspection logs, Respondents and/or GZA observed an

oil sheen on the Neponset River within the boom containment area and, on some occasions, beyond the containment area, almost every day from at least May 5, 2013 to August 4, 2014.

92. Each of Respondents' discharges of oil from the Facility, as described in paragraphs 87 through 91 above, caused a sheen upon or discoloration of the surface of the Neponset River and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

## **II. CONSENT AGREEMENT**

93. EPA and Respondents agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

94. Respondents admit the jurisdictional allegations set forth in Section I above and hereby waive any defenses they might have as to jurisdiction and venue.

95. Respondents neither admit nor deny the factual or non-jurisdictional allegations contained in Section I above.

### **Waiver of Rights**

96. Respondents waive the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii). Respondents consent to the issuance of a Final Order without further adjudication.

### **Penalty**

97. EPA proposes, and Respondents consent to, the assessment of a civil penalty of

one hundred twenty thousand eight hundred dollars (\$120,800) for all violations contained in this CAFO.

### **Payment Terms**

98. In agreeing to the penalty described in paragraph 97 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8).

99. Respondents shall pay a total penalty of \$120,800 for violations of Section 301 and 311 of the CWA, 33 U.S.C. §§ 1311 and 1321, within ten (10) days of the date this Agreement becomes final. Of the total amount, 63 percent shall represent payment for Respondents' violations of Section 301 of the CWA, and 37 percent shall represent payment for Respondents' violations of Section 311 of the CWA.

a. Respondents shall pay a penalty of \$76,000 for the violations of Section 301 of the CWA, and shall make this payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Bird Inc. and CertainTeed Corporation*, No. CWA-01-2016-0058) on the face of the check. The payment shall be made via regular U.S. Postal Service mail to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

b. Respondents shall pay a penalty of \$44,800 for the violations of Section 311 of the CWA, and shall make this payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Bird Inc. and CertainTeed Corporation*, No. CWA-01-2016-0058) and

“Oil Spill Trust Liability Fund – 311” on the face of the check. The payment shall be made via regular U.S. Postal Service mail to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

c. At the time of payment, Respondents shall simultaneously send notice of the payments and copies of the checks to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)  
Boston, MA 02109-3912

and

Laura J. Berry  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code OES 04-2)  
Boston, MA 02109-3912

100. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), a failure by Respondents to pay the penalty assessed by this CAFO in full by its due date shall subject Respondents to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney’s fees, costs for collection proceedings, and a quarterly nonpenalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent

of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

### **Supplemental Environmental Projects**

101. Respondents shall undertake the following Supplemental Environmental Project ("SEP" or "Project"), which the parties agree is intended to secure environmental and public health protection and benefits. The SEP consists of (1) a hotspot monitoring program, to collect and analyze water quality samples from known chronically polluted stream reaches and other problem points; and (2) a stormwater retrofit design project, to identify, prioritize, and design structural stormwater retrofit projects that will reduce the discharge of stormwater pollutants to the Neponset River watershed.

102. Respondents shall complete the SEP according to the requirements and schedule set forth in Appendix A to this CAFO, which is incorporated herein by reference and is enforceable under this CAFO. The SEP is projected to cost approximately \$100,190 in total.

103. **SEP Completion Report.** Respondents shall submit a SEP Completion Report within 60 days of completion of the Project. The SEP Completion Report shall contain the following information for each component of the SEP: (i) a detailed description of the SEP component as implemented; (ii) a description of any implementation problems encountered and the solutions thereto; (iii) a description of the environmental and public health benefits resulting from implementation of the SEP; (iv) evidence of SEP completion (which may include but is not limited to photos, vendor invoices or receipts, and/or correspondence from the SEP Recipient); (v) a list of itemized costs for implementing the SEP; and (vi) certification by a corporate official of each Respondent that the SEP has been fully implemented pursuant to the provisions of this

CAFO and in accordance with Appendix A.

104. **SEP Update Report(s).** Respondents, or their designees, shall submit a written SEP Update Report each quarter until the SEP Completion Report in paragraph 103 above has been submitted. The SEP Update Report(s) shall outline work completed and funds spent to date. The reports shall be submitted to EPA by the 30th day of the month following each quarter (January, April, July, October).

105. Respondents agree that failure to submit the reports required by paragraphs 103 and 104 shall be deemed violations of this CAFO, and Respondents shall become liable for stipulated penalties pursuant to paragraph 109 below.

106. Respondents shall submit all notices, submissions, and reports required by this CAFO to Laura J. Berry by email at [Berry.LauraJ@epa.gov](mailto:Berry.LauraJ@epa.gov), to Joseph Canzano by email at [Canzano.Joseph@epa.gov](mailto:Canzano.Joseph@epa.gov), and by First Class mail or any other commercial delivery service to EPA at the addresses set forth below:

Laura J. Berry, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: OES 04-2)  
Boston, MA 02109-3912

and

Joseph Canzano  
Stormwater Compliance Coordinator Engineer  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code OES04-4)  
Boston, Massachusetts 02109-3912

The submission will be deemed to be made upon tendering the delivery to a commercial delivery service for overnight delivery or upon the date of the postmark in the event of use by First Class mail.

107. After receipt of the SEP Completion Report described in paragraph 103 above,

EPA will notify Respondents in writing:

a. That EPA concludes that the SEP has been completed satisfactorily;

b. That EPA has determined that the Project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or

c. That EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with paragraph 109 herein.

108. If EPA notifies Respondents pursuant to paragraph 107.b above that the SEP itself or the SEP Completion Report or a SEP Update Report does not comply with the requirements of this CAFO, Respondents shall make corrections to the SEP and/or modify the SEP Completion Report or SEP Update Report in accordance with the schedule specified by EPA. If EPA notifies Respondents that the SEP itself does not comply with the requirements of this CAFO, Respondents shall pay stipulated penalties in accordance with paragraph 109 herein.

109. Stipulated Penalties.

a. In the event that Respondents fail to comply with any of the terms or provisions of this CAFO relating to performance of the SEP, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

i. For failure to submit the SEP Completion Report or a required SEP Update Report, Respondents shall pay a stipulated penalty in the amount of \$200 for each day that Respondents are late; and

ii. For each SEP or any portion thereof that has not been completed satisfactorily pursuant to this CAFO, Respondents shall pay a stipulated penalty of the dollar value of the portion of the SEP not satisfactorily completed times 1.25 plus interest from the date

this Agreement becomes final. The definition of “satisfactory completion” is set out in Appendix A to this CAFO. However, if Respondents spend less than approximately \$100,190 but otherwise satisfactorily complete the SEP, Respondents shall only be required to pay a stipulated penalty in the amount equal to the difference between \$100,190 and the actual amount spent on the Project.

b. The determination(s) of whether the SEP has been satisfactorily completed and whether the Respondents have made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 99. Notice shall be given in accordance with the provisions of paragraph 99.c. Interest and late charges shall be paid as stated in paragraph 100.

e. Payment of stipulated penalties shall be in addition to any other relief available under federal law.

f. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

110. With regard to the SEP described herein and in Appendix A, Respondents certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that Respondents in good faith estimate that the cost to implement the SEP is approximately \$100,190;

b. That, as of the date of executing this CAFO, Respondents are not required to perform or develop the SEP by any federal, state, or local law or regulation, nor are Respondents required to perform the SEP by agreement, grant, or as injunctive relief awarded in this or any other action in any forum;

c. That the SEP is not a project that Respondents were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. That Respondents have not received and will not receive credit for the SEP in any other enforcement action;

e. That Respondents will not receive reimbursement for any portion of the SEP from another person or entity;

f. That for federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;

g. That Respondents are not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP; and

h. That Respondents have inquired of the SEP Recipient whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and have been informed by the SEP Recipient that it is not a party to such a transaction.

111. For the purposes of the certifications in paragraphs 110.g and 110.h, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, federal loan, federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

112. Respondents agree that any public statement, oral or written, in print, film, or other media, made by Respondents making reference to any portion of the SEP under this CAFO from the date of Respondents' execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *In the matter of Bird, Inc. and CertainTeed Corporation*, taken by the U.S. Environmental Protection Agency to enforce federal laws."

### **General Provisions**

113. The provisions of this CAFO shall apply to and be binding on Respondents, their officers, directors, agents, servants, employees, successors, and assigns.

114. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

115. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondents' liability for federal civil penalties for the violations and facts alleged in Section I above.

116. This CAFO in no way relieves Respondents or their employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the

public health, welfare, or the environment.

117. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondents' violation of any applicable provision of law.

118. Except as described in paragraph 100 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

119. Respondents' obligations under the CAFO shall end when they have paid in full the scheduled civil penalty, performed the SEP, paid any stipulated penalties, and submitted the documentation required by this CAFO.

120. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Administrator or his or her properly authorized delegate.

121. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

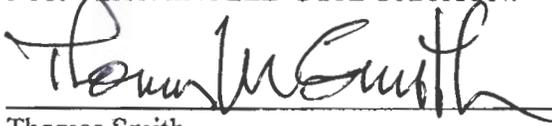
FOR BIRD INCORPORATED:



Thomas Smith  
President  
Bird Incorporated

Date: 7/28/16

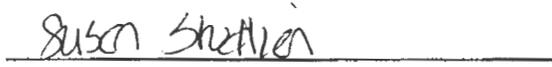
FOR CERTAINTEED CORPORATION:

  
\_\_\_\_\_

Thomas Smith  
Vice President  
CertainTeed Corporation

Date: 7/28/16

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_

Susan Studien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

Date: 09/23/2016

## APPENDIX A

### SCOPE OF WORK FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT

Bird Inc. and CertainTeed Corporation  
Norwood, Massachusetts

EPA Docket No. CWA-01-2016-0058

1. As part of the settlement in the matter referenced above, Bird Inc. and CertainTeed Corporation (“Respondents”) have agreed to conduct a Supplemental Environmental Project (“Project” or “SEP”) that is designed to reduce the impact of stormwater pollution on the Neponset River. The SEP has two principal components: (1) a hotspot monitoring program, to collect and analyze water quality samples from known chronically polluted stream reaches and other problem points; and (2) a stormwater retrofit design project, to identify, prioritize, and design structural stormwater retrofit projects that will reduce the discharge of stormwater pollutants to the Neponset River watershed. These components are described in more detail below.

2. Respondents have selected the Neponset River Watershed Association (“NRWA”) to implement this SEP, the commencement of which shall begin no less than 60 days after the date this CAFO becomes final. As set forth below, Respondents shall expend a total of at least \$100,190 in completing this SEP in accordance with the requirements of paragraphs 1, 2, and 3 of this Appendix, which shall be applied to the costs of supervision, field investigation, monitoring, analysis, coordination with stakeholders, preparation of design plans, and public dissemination of results of the following programs:

a. Hotspot Monitoring: Water quality samples shall be collected and analyzed from problem stream reaches and discharge points identified on the attached diagram. Samples will be analyzed for different parameters based on particular issues identified at each location. Samples may be analyzed for *E. coli* and/or *enterococcus bacteria*, surfactants, ammonia, turbidity, temperature, optical brighteners, conductivity, and dissolved oxygen. Additional analytical parameters may be added as field conditions or investigation requirements warrant. Sample collection and analysis shall be done in accordance with an EPA-approved Quality Assurance Project Plan (“QAPP”). The goal of the Hotspot Monitoring program is to pinpoint specific problem outfalls and catchments contributing to each hotspot, in order to identify and prioritize specific sources of pollutants in the watershed. Respondents shall provide quarterly funding for completing the Hotspot Monitoring program described herein. Respondents shall provide the first such funding no later than 60 days after the date this CAFO becomes final or December 31, 2016, whichever occurs later.

b. Stormwater Retrofit Design Project: Conceptual design plans, construction cost estimates, and pollution load reduction estimates for structural stormwater retrofit projects shall be developed for a number of top priority sites in various communities in the Neponset River watershed. The stormwater retrofit projects shall include the use of appropriate Green-Infrastructure (“GI”) and Low-Impact Development (“LID”) techniques.

Computer mapping analysis shall be conducted to identify potential sites based on soil type, existing drainage infrastructure, and other factors. Field inspections, feasibility evaluations, and preliminary designs will be conducted and reviewed in order to create a short list of top priority sites. A project engineering consultant shall be engaged to develop formal conceptual design plans, cost estimates, and pollution reduction estimates for the top priority sites and a more limited analysis for second tier sites identified. Respondents shall provide quarterly funding for completing the Stormwater Retrofit Design project described herein. Respondents shall provide the first such funding no later than 60 days after the date this CAFO becomes final or December 31, 2016, whichever occurs later.

c. Dissemination of Results: Data from each Hotspot Monitoring sampling event shall be reported in accordance with the applicable QAPP. Data from each Hotspot Monitoring sampling event also shall be incorporated into a spreadsheet and accompanied by a map of the sample locations. The spreadsheet and map from each Hotspot Monitoring sampling event shall be posted on an internet site, where the data shall be accessible for free by the general public, within 60 days of completion of the sampling event. In addition, such data from each sampling event, in the form of the spreadsheet and map, shall be provided to EPA by electronic mail within 60 days of the completion of the sampling event.

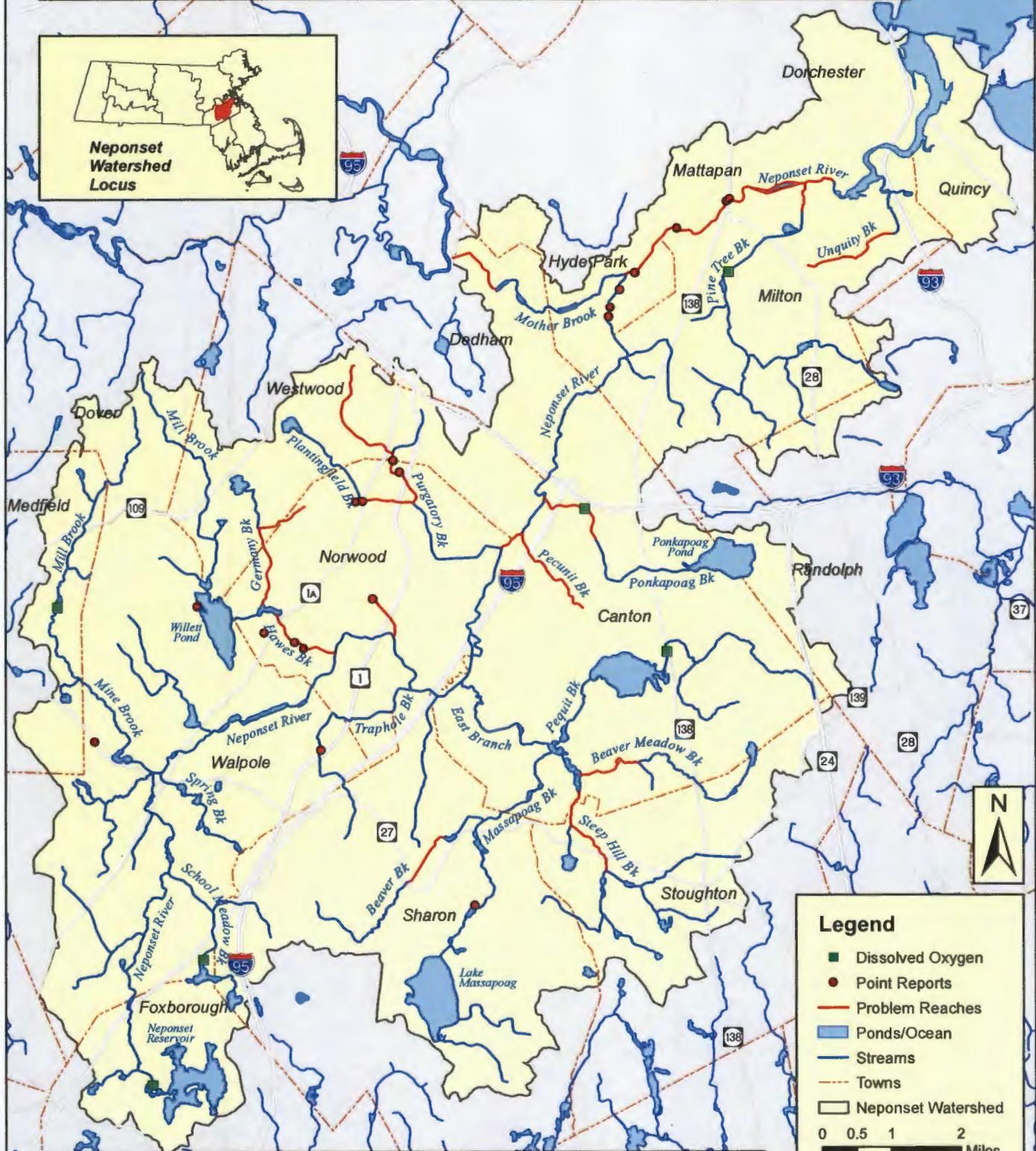
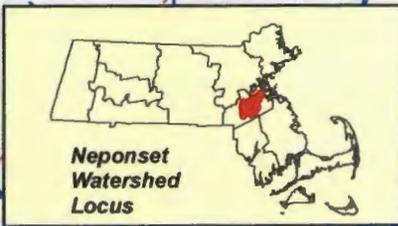
### 3. Satisfactory Completion

a. Hotspot Monitoring; Excess Funds: Samples shall be collected and analyzed during approximately twenty field sampling days. Monitoring shall continue until a minimum of six stream reaches and ten discharge points identified on the attached diagram (and a minimum of 120 total sample sets, *i.e.*, a group of samples collected at a single location), have been sampled and analyzed. The expected cost of the Hotspot Monitoring program is estimated at \$30,520. Should actual costs for six stream reaches and ten discharge points identified on the attached diagram (and a minimum of 120 total sample sets) be lower, Respondents will require NWRA to use the excess funds for additional Hotspot Monitoring events at other locations identified on the attached diagram until NRWA has expended at least \$30,520.

b. Stormwater Retrofit Design Project; Excess Funds: Preliminary field evaluations will be conducted for at least 60 potential stormwater retrofit sites identified through computer mapping analysis. Of those, a minimum of nine sites will be categorized as top priority sites, for which an engineering consultant shall prepare 25% design plans for structural stormwater retrofit projects, along with construction cost and pollution reduction estimates. The expected cost of the Stormwater Retrofit Design project is estimated at \$69,672. Should actual costs for the preparation of 25% design plans for stormwater retrofits at nine sites be lower, Respondents will require NWRA to use the excess funds for preparation of additional design plans for stormwater retrofits or additional Hotspot Monitoring events (as described above) until NRWA has expended at least \$69,672.

c. Deadline for Completing SEP: Respondents shall attempt to complete the SEP within two years of the date this CAFO becomes final, but in any event shall complete the SEP by no later than three years after the date this CAFO becomes final.

# Neponset River Watershed Water Quality Hotspots and Problem Streams



**Legend**

- Dissolved Oxygen
- Point Reports
- Problem Reaches
- Ponds/Ocean
- Streams
- Towns
- Neponset Watershed

0 0.5 1 2 Miles

Map/data by Neponset River Watershed Association. Software donated by ESRI. Some data by MassGIS.

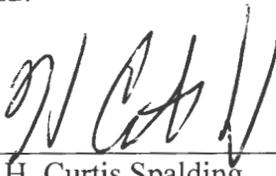
**FINAL ORDER**

122. EPA has provided public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

123. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order.

124. Respondents are hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Administrator unless a petition to set aside the order is filed by a commenter pursuant to Sections 309(g)(4)(C) and 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C) and 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date: 9/26/16

  
\_\_\_\_\_

H. Curtis Spalding  
Regional Administrator  
U.S. Environmental Protection Agency, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the matter of	)	Docket No. CWA-01-2016-0058
	)	
BIRD, INC. AND	)	
CERTAINTEED CORPORATION	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER FOR CLASS II</b>
1077 Pleasant St.	)	<b>CIVIL PENALTY UNDER THE</b>
Norwood, MA 02062	)	<b>CLEAN WATER ACT</b>
	)	
Respondents.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I (ORA18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Copy, by Certified Mail,  
Return Receipt Requested:

Lauren P. Alterman, Esq.  
Vice President, Environment, Health & Safety  
Saint-Gobain Corporation  
20 Moores Road  
Malvern, PA 19355

Dated: 9/26/16

  
\_\_\_\_\_  
Laura J. Berry  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-2)  
Boston, MA 02109-3912  
Tel (617) 918-1148  
Fax (617) 918-0148