

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
)  
) **ADMINISTRATIVE ORDER**  
) **ON CONSENT**  
Fisher Sand and Gravel Company )  
497 Highway 200S )  
Glendive, Montana 59330 ) Docket No. **CWA-08-2018-0006**  
)  
Respondent )

**I. INTRODUCTION**

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the U.S. Environmental Protection Agency (EPA) and Fisher Sand and Gravel Company (Respondent) to carry out the goals of the Clean Water Act (CWA), 33 U.S.C. §§ 1251-1387, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

**II. STATUTORY AUTHORITY**

2. This Consent Order is issued under section 309(a) of the CWA, 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the undersigned EPA official.

**III. PARTIES BOUND**

3. This Consent Order shall apply to and be binding upon the EPA and upon Respondent and Respondent’s agents, successors and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent to the terms and conditions of this Consent Order. No change in the ownership or operation of Respondent shall alter its responsibilities under this Consent Order unless the EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, no later than 30 calendar days prior to such transfer, Respondent shall notify the EPA and the Montana Department of Environmental Quality (MDEQ) of the transfer at the addresses specified in Paragraphs 99 and 100, respectively, of this Consent Order.

#### IV. STATEMENT OF THE PARTIES

4. The FINDINGS OF FACT AND LAW AND OF VIOLATION in Section V of this Consent Order are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies any of the FINDINGS OF FACT AND LAW AND OF VIOLATION. Without any admission of liability, Respondent consents to issuance of this Consent Order and agrees to abide by its terms. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review Respondent may have with respect to any issue of fact or law set forth in this Consent Order including, but not limited to, any right of judicial review under the Administrative Procedures Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND LAW AND OF VIOLATION, below, in any proceeding to enforce this Consent Order or in any action taken pursuant to this Consent Order.

#### V. FINDINGS OF FACT AND LAW AND OF VIOLATION

5. 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.
6. Respondent is a “person” for purposes of section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
7. Respondent owns and operates a facility known as the Fisher Sand and Gravel Company - 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 (Site).
8. At the Site, Respondent conducts a sand and gravel (Standard Industrial Classification, or SIC, 1442) operation and a ready-mix concrete (SIC 3273) operation.
9. The Site encompasses approximately 95 acres in size.
10. At the Site, Respondent is engaged in at least one “industrial activity” as defined in 40 C.F.R. § 122.26(b) (14).
11. The runoff and drainage from the Site are “storm water” as defined in 40 C.F.R. 122.26(b) (13).
12. 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](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.

13. 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](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.
14. The storm water Respondent has discharged from the Site contains "pollutants" within the meaning of section 502(6) of the CWA, and 33 U.S.C. § 1362(6).
15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
16. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA or states with approved NPDES programs may issue permits authorizing discharges into navigable waters, subject to specific terms and conditions.
17. 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.
18. 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.
19. 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.
20. On March 13, 2013, Respondent submitted an NOI to the MDEQ for the Site to be covered under the 2013 Permit.
21. 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.
22. The 2013 Permit Authorization authorized discharges from two outfalls, 001 and 002, both to Upper Seven Mile Creek.
23. Upper Seven Mile Creek is a year-round tributary of the Yellowstone River. The Yellowstone River is an interstate, navigable-in-fact waterway.

24. 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.
25. On June 25, 2014, the MDEQ conducted a storm water industrial compliance evaluation inspection (the MDEQ Inspection) of the Site.
26. 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.
27. Respondent failed to respond to MDEQ within 30 days of receiving the MDEQ's July 23, 2014 letter.
28. 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.
29. 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.
30. On September 25, 2014, the MDEQ extended Respondent's deadline for responding to the July 23, 2014, letter. The new deadline was October 10, 2014.
31. On May 19, 2015, the EPA and the MDEQ conducted a joint inspection (the Joint Inspection) of the Site.
32. The EPA and MDEQ inspectors who conducted the Joint Inspection signed a joint NDPS Inspection Report (the Joint Inspection Report) on June 17, 2015.
33. 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.
34. Part 1.2 of the 2018 Permit describes the requirements for permittees requiring continued authorization beyond the January 31, 2018, expiration date of the 2013 Permit. These requirements include submitting a completed renewal Notice of Intent. According to the MDEQ, Respondent has been provided a deadline of March 31, 2018 for submitting the renewal Notice of Intent. Respondent has advised the EPA that Respondent intends to submit the renewal Notice of Intent.

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

35. 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.
36. Part 3.1 of the 2013 Permit specifies what must be included in a SWPPP.
37. 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).
- 38. 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.
- 39. Respondent did not submit an updated SWPPP to MDEQ within 30 days of the MDEQ's July 23, 2014 letter.
- 40. 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.
- 41. 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.
- 42. By letter dated November 25, 2014, the MDEQ notified Respondent that the SWPPP received on October 20, 2014 (referenced in paragraph 41, 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.
- 43. 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).
44. On September 11, 2015, Respondent submitted an updated SWPPP to the MDEQ.
45. 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).
46. 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.
47. 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.
48. 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)**

49. 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.
50. 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.

51. 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 the 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 the 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.
52. 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.
53. Each of Respondent's failures to operate and maintain its BMPs, as described in paragraphs 49 and 50, 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)**

54. 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.
55. 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.
56. Respondent failed to respond to the MDEQ within 30 days.
57. 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.
58. 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)**

59. Parts 2.5 and 3.4 of the 2013 Permit require Respondent to monitor its storm water discharges.
60. 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.
61. Part 2.5.1 of the 2013 Permit specifies requirements for benchmark and subsequent quarterly monitoring.
62. The MDEQ Inspection Report found that Respondent had failed to conduct benchmark monitoring.
63. 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.

64. 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.
65. The Joint Inspection Report found that Respondent was not conducting storm water monitoring.
66. 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)**

67. 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.
68. The Joint Inspection Report made a finding that Respondent had failed to conduct or document Site inspections as required by the 2013 Permit.
69. 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, 5/10/2016, 5/15/2016, 7/7/2016, 9/5/2016, 9/30/2016, 10/3/2016, 12/29/2016, 6/13/2017, 6/27/2017, 7/19/2017, 9/23/2017, 9/14/2017, 9/15/2017, and 9/16/2017 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.
70. 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)**

71. 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.
72. Part 2.9.1 of the 2013 Permit requires Respondent to submit DMRs to MDEQ for each of Respondent's quarterly sampling events.
73. 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.
74. Part 2.9.3 of the 2013 Permit requires Respondent to submit an annual report to MDEQ no later than February 1<sup>st</sup> following the year covered by the report.
75. The Joint Inspection Report made a finding that Respondent had not timely completed annual reports.
76. 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

(c) 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).

77. 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)**

78. 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.

79. 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.

80. 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;

(d) records of employee training; and

(e) records of Respondent's annual, routine, and storm event inspections of the Site.

81. 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.

82. Each of Respondent's failures to maintain copies of DMRs at the Site is a violation of part 2.10 of the 2013 Permit.
83. Each of Respondent's failures to maintain copies of annual reports at the Site has violated part 2.10 of the 2013 Permit.
84. Each day Respondent failed to maintain copies of employee training at the has violated part 2.10 of the 2013 Permit.
85. 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 CWA)**

86. As mentioned above, the 2013 Permit authorized discharges only from Outfalls 001 and 002.
87. 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.
88. Each day Respondent 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).

**VI. ORDER**

Based on the EPA's FINDINGS OF FACT AND LAW AND OF VIOLATION in Section V of this Consent Order, the EPA orders, and Respondent agrees, as follows:

89. No later than 30 days after the effective date of this Consent Order (see paragraph 108, below), Respondent shall submit a complete NOI to the MDEQ for coverage under the 2018 MDEQ Permit, with all appropriate documentation of Site operations, i.e., not only concrete operations, but also sand and gravel operations. Thereafter, Respondent shall comply with the 2018 Permit, including but not limited to all requirements applying to its concrete operations and its sand and gravel operations under Sector E: Glass, Clay, Cement, Concrete, and Gypsum Products, and Sector J: Mineral Mining and Dressing, respectively.
90. No later than 30 days after the effective date of this Consent Order, Respondent shall submit to the EPA and MDEQ the following documentation:
  - (a) Proof of the NOI submission (see paragraph 89) for coverage under the 2018 Permit;
  - (b) an updated SWPPP narrative and Site map that meets all requirements of the 2018 Permit; and



(c) a copy of a Spill Prevention and Response Procedures Plan as described under part 2.2.4 of the 2018 Permit to prevent any unauthorized discharges.

91. Respondent shall submit its annual report for 2018 to the MDEQ and the EPA by February 1, 2019. Thereafter, by February 1 of each year following the year covered by the report, Respondent shall submit annual reports to the MDEQ as required by part 2.10.3 of the 2018 Permit.
92. No later than 30 days after the effective date of this Consent Order, Respondent shall submit to the MDEQ and the EPA the results of any missing 2015, 2016, and 2017 inspection reports including all routine, storm event and annual comprehensive inspection site reports. If any of this information does not exist, Respondent's submittal shall indicate which information is missing. Thereafter, Respondent shall submit hard (paper) copies of the discharge monitoring reports (DMRs) required by the 2018 Permit to the MDEQ and the EPA within 30 days of the end of each calendar quarter. Reports are due April 30, 2018; July 30, 2018; October 30, 2018; and January 30, 2019 for the DMR covering the previous calendar quarter. This is in addition to the submittal through NetDMR required by the 2018 Permit.
93. Respondent shall provide the EPA and MDEQ with copies of all reports documenting routine facility inspections and all logs for corrective actions conducted and implemented at the Site during the previous calendar quarter. The first group of reports shall be due no later than 30 days after the effective date of this Consent Order. It shall cover the most recent calendar quarter (January 1 - March 31, April 1 - June 30, July 1 - September 30, or October 1 - December 31) ending prior to the effective date of this Order. Respondent shall provide a set of reports for each of the subsequent three quarters, with each submission due no later than 30 days after the end of the relevant quarter due April 30, 2018; July 30, 2018; October 30, 2018; and January 30, 2019.
94. Respondent shall provide the EPA and the MDEQ with copies of all logs for corrective actions implemented at the Site during the previous calendar quarter. The first set of logs shall be due no later than 30 days after the effective date of this Consent Order. It shall cover the most recent calendar quarter (as defined in paragraph 93) ending prior to the effective date of this Order. Respondent shall provide a set of logs for each of subsequent three quarters, with each submission due no later than 30 days after the end of the relevant quarter due April 30, 2018; July 30, 2018; October 30, 2018; and January 30, 2019.
95. No later than 30 days after the effective date of this Consent Order, Respondent shall provide the EPA and the MDEQ written documentation, including photographs, of having implemented appropriate control measures to correct all deficiencies identified under Count II, above.

96. No later than 30 days after the effective date of this Consent Order, Respondent shall provide the EPA and the MDEQ with a description of the procedures it has implemented to ensure that (a) it will maintain documents and records on-site as required by sections 2.9 and 2.10 of the 2018 Permit and (b) these documents and records are accessible by all Respondent's employees, contractors, and other agents.
97. No later than 30 days after the effective date of this Consent Order, Respondent shall provide the EPA and MDEQ a list with all 2016 and 2017 employee training related to storm water control, including the date of such training and the names and titles of the employees who attended the training.
98. All submittals required by this Consent Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer:

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

99. All submittals to the EPA required by this Consent Order shall be provided to:

Michael Boeglin (8ENF-W-NP)  
U.S. EPA Region 8  
Office of Enforcement, Compliance  
and Environmental Justice  
NPDES Enforcement Unit  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

100. All submittals to the MDEQ required by this Consent Order shall be provided to:

Dan Freeland  
Montana Department of Environmental Quality  
Water Protection Bureau  
Permitting and Compliance Division  
P.O. Box 200901  
Helena, Montana 59620-0921


101. Issuance of this Consent Order shall not be deemed an election by the EPA to forego any civil or criminal action to seek civil penalties, fines or other appropriate relief under the CWA for the violations giving rise to the Consent Order.

102. This Consent Order does not constitute a waiver or modification of any requirements of the CWA, all of which remain in full force and effect, nor does it otherwise affect the EPA's ability to enforce or implement the CWA.
103. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of its obligation to comply with any applicable federal, state, or local law regulation.
104. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties of up to \$52,414 per day for each violation of this Consent Order, pursuant to section 309(d) of the CWA, 33 U.S.C. § 1319(d). The penalty amount has been adjusted for inflation as described in 40 C.F.R. part 19.
105. Respondent shall allow, or use its best efforts to allow, access by any authorized representatives of the EPA and MDEQ or any of the EPA's or MDEQ's contractors, upon proper presentation of credentials, to sites and records relevant to this Consent Order for any of the following purposes:
  - (a) To inspect and monitor progress of the activities required by this Consent Order;
  - (b) To inspect and monitor compliance with this Consent Order; and
  - (c) To verify and evaluate data and other information submitted by Respondent to the EPA or the MDEQ.
106. This Consent Order shall in no way limit the EPA's or the MDEQ's authority, or the authority of any governmental agency, to enter the Site, conduct investigations, have access to records, issue notices and orders for enforcement, compliance or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit or court order.
107. Each party shall bear its own costs and attorney fees in connection with this matter.
108. This Consent Order shall become effective upon receipt by Respondent of a fully executed copy. All time periods herein shall be calculated from the date of receipt of a fully executed copy of the Consent Order, unless otherwise provided in this Consent Order.

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

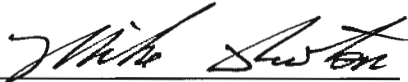
Date: \_\_\_\_\_

4/11/18

  
\_\_\_\_\_  
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**FISHER SAND AND GRAVEL  
COMPANY**

Date: April 17, 2018

  
\_\_\_\_\_  
Mike Newton  
Materials Manager – Montana Operations

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order for Compliance on Consent was sent or delivered on this day as follows:

Original and one copy hand delivered to:

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

Copy by certified mail, return receipt requested (no. 7809 3410 0000 2601 1145)  
to:

Tommy Fisher, President  
Fisher Sand and Gravel  
P.O. Box 1034  
Dickinson, North Dakota 58602

4/25/18  
Date

By: JOAN DeTTY