

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:
Aggregate Industries – Northeast Region, Inc.

Enforcement Document Number:
00002599
Issuing Bureau: BWSC
Issuing Region/Office: NERO
Issuing Program: BWSC
Primary Program Cited: BWSC
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FMF/Program ID #

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street, Wilmington, Massachusetts 01887.
2. Aggregate Industries - Northeast Region, Inc. (“Ainer” or the “Respondent”) is a Massachusetts limited liability corporation with its principal offices located at 1715 Broadway, Saugus, MA 01906. Ainer’s mailing address for the purpose of this Consent Order is the same.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 142A-142O and the associated Air Pollution Control Regulations at 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00; M.G.L. c. 131, § 40 and the associated Wetlands Regulations at 310 CMR 10.00; M.G.L. c. 111, §§ 150A and 150A1/2 and the associated Solid Waste Management Regulations at 310 CMR 19.000 and Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00; and M.G.L. c. 21E and the Massachusetts Contingency Plan (“MCP”) at 310 CMR 40.0000. MassDEP has authority under M.G.L. c. 21E, § 6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases.

MassDEP also has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. AINER is the current owner of approximately 60 acres of land with a street address of 1831 Broadway/Route 99 in Saugus, Massachusetts by virtue of the deeds recorded at the South Essex Registry of Deeds at: Book 25349, Page 190; Book 27588, Page 513; Book 27588, Page 516; Book 29365, Page 404; and Book 32396, Page 78 (collectively, the “Land”) and depicted on plans prepared by Tighe & Bond, entitled “Site Location Map” dated June 2013 (“Plans”)¹ subject to various mortgages, ground leases, and easements. A portion of the non-quarry property at its south-west perimeter is located in the Town of Melrose. The Land is surrounded by mixed commercial, light industrial and residential uses. Within this Land is an area comprised of approximately 31 acres that is located in the Northeast portion of the Land and is depicted on Figure 4 of the Plans. These approximately 31 acres shall be referred to herein as the “Property” or the “Site.” AINER has proposed reclaiming the Property through the acceptance and placement of soils and other material (“the Project”), as specified in the “Aggregate Industries Saugus Quarry Fill Management Plan” dated March 2017 and prepared by Tighe & Bond, (the “FMP”), attached this Consent Order as Attachment A.
5. The following facts and allegations have led MassDEP to issue this Consent Order:
 - A. Respondent conducts construction material activities including but not limited to quarrying, gravel pit reclamation, a ready mix concrete plant, portable stone/RAP crushing and screening, an asphalt batch plant and asphalt drum plant, asphalt and concrete recycling facilities and supporting activities and operations. These activities will continue during the importation and placement of fill material at the Property and indefinitely upon completion of the Project.
 - B. A portion of the Project site is located within mapped Priority Habitat for a state-listed species, the Peregrine Falcon.
 - C. On March 8, 2017, an Environmental Notification Form was published in the Environmental Monitor for review and comment under the Massachusetts Environmental Policy Act (MEPA), 301 CMR 11.00. On April 7, 2017, MEPA issued a Certificate and determined that, although no Environmental Impact Report was required for the Project, the Project would require a Conservation and Management Permit pursuant to the Massachusetts Endangered Species Act. The MEPA Certificate also stated that the Certificate does not address any subsequent redevelopment of the site and potential environmental impacts related to it. Redevelopment would be subject to MEPA review if a State Agency Action was required.

¹ The Plans consist of a cover page plus sheets marked as follows: PAGE NUMBERS and SWPPP.

- D. The placement, dumping, disposing or reuse of soil containing oil or hazardous material (“OHM”) into the environment is a release as that term is defined in M.G.L. c. 21E § 2. Depending on the site-specific conditions and the nature of the OHM present in the soil, such releases may have significant adverse human health and environmental effects.
- E. MassDEP has authority under Section 277 of Chapter 165 of the Acts of 2014 to establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for the reclamation of quarries, sand pits and gravel pits. The regulations, standards or procedures shall ensure the reuse of soil poses no significant risk of harm to health, safety, public welfare or the environment considering the transport, filling operations and the foreseeable future use of the filled land.
- F. MassDEP has authority under M.G.L. c. 21E, §6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases.
- G. MassDEP has authority under M.G.L. c. 21E, § 9 to order potentially responsible parties (“PRPs”) to conduct assessment, containment and removal actions, or to require the production or analysis of samples or records, consistent with the requirements of the MCP and as MassDEP reasonably deems necessary. Issuance of an order pursuant to § 9 does not preclude MassDEP from recovering damages, costs, civil penalties, criminal fines and sanctions, injunctive relief, or any action authorized by M.G.L. c. 21E, § 4.
- H. M.G.L. c. 21E, §5 sets out liability for the release or any threat of release of oil or hazardous material. This liability includes the owner or operator of a site from or at which there is a release or threat of release as well as any person who at the time of storage or disposal of any hazardous material owned or operated the site at or on which such hazardous material is stored or disposed of and from which there is a threat of release and any person who contracts to arrange for the transport, disposal, storage or treatment of hazardous material to or in a site from or at which there is a threat of a release.
- I. Pursuant to M.G.L. c. 21E, §3, MassDEP promulgated the regulations found at 310 CMR 40.0000, commonly known as the Massachusetts Contingency Plan (“MCP”).
- J. 310 CMR 40.0032(3), known as the “similar soils” sections of the MCP, states:

Soils containing oil or waste oil at concentrations less than an otherwise

applicable Reportable Concentration and that are not otherwise a hazardous waste, and soils that contain one or more hazardous materials at concentrations less than an otherwise applicable Reportable Concentration and that are not a hazardous waste, may be transported from a disposal site without notice to or approval from the Department under the provisions of...[MCP], provided that such soils:

- (a) are not disposed or reused at locations where the concentrations of oil or hazardous materials in the soil would be in excess of a release notification threshold applicable at the receiving site, as delineated in 310 CMR 40.0300 and 40.1600; and
- (b) are not disposed or reused at locations where existing concentrations of oil and/or hazardous material at the receiving site are significantly lower than the levels of those oil and/or hazardous materials present in the soil being disposed or reused.

K. 310 CMR 40.0006 contains the following useful definitions:

Contaminated soil means soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Hazardous Material means material, including, but not limited to, any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. ... The term shall also include, but is not limited to, material regulated as hazardous waste or recyclable material under 310 CMR 30.000.

No Significant Risk means a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time.

Oil means insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble derivatives of mineral, animal or vegetable oils and white oil. The term shall not include waste oil, and

shall not include those substances which are included in 42 U.S.C. §9601(14).

Reportable Concentration and RC each means the concentration of oil or hazardous material in soil or groundwater which requires notification to the Department under MGL c. 21E, § 7 and/or 310 CMR 40.0360 through 310 CMR 40.0362.

- L. On August 28, 2015, MassDEP issued the “Interim Policy on the Re-Use of Soil for Large Reclamation Projects” (COMM-15-01 or “Reclamation Soil Policy”) pursuant to Section 277 of Chapter 165 of the Acts of 2014. The Reclamation Soil Policy describes MassDEP’s intent to issue site-specific approvals, in the form of an Administrative Consent Order, to ensure the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of releases of oil or hazardous materials.
- M. On or about March 23, 2017, Respondent submitted the FMP to MassDEP, for MassDEP’s review and approval. The FMP establishes the criteria for the acceptance of soil and other fill materials at the Property. The FMP also describes the protocols for monitoring and recording environmental conditions before, during and after Site activities and construction impact mitigation for the Project.
- N. The Project is intended to provide soil to grade level and raise the existing grade of the approximately 31 acre quarry that is located on the Property. Reclamation of the quarry is proposed by importing fill material and grading the area. An estimated 4.8 million cubic yards of fill material are proposed for the Project. It is anticipated that the Project will take approximately fifteen (15) years to complete based upon the size of the area to be filled, projections of volumes of fill material likely available, and anticipated daily operations at the Property.
- O. The Project is to be completed in three phases:
- | <u>Phase</u> | <u>Area</u> | <u>Fill Volume</u> |
|--------------|--------------|--------------------|
| Phase 1 | 18.94+ acres | 3,172,000+ cy |
| Phase 2 | 6.9+ acres | 721,000+ cy |
| Phase 3 | 6.0+ acres | 932,000+ cy |
- P. The FMP does not include a conceptual grading plan (the “Grading Plan”). The Grading Plan, which defines the Project’s final grades, will be completed once the Respondent finalizes the Master Planning Process for the Project with the Town of Saugus. The Respondent anticipates submittal of the Grading Plan to MassDEP for approval within one year of the effective date of this Consent Order. .

- Q. The Property is in an area zoned by the City of Saugus and Melrose for industrial, commercial, and residential use and approximately thirty-one (31) acres will be for the reuse of soils that meet the Acceptance Criteria specified in the FMP.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.
7. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.
8. Respondent shall perform the following actions:
 - A. Upon the effective date of this Consent Order and thereafter, Respondent shall perform any and all activities related to the Project in compliance with all applicable provisions of M.G. L. c.21E, the MCP, MassDEP's Reclamation Soil Policy, and all other applicable local, state and federal laws and regulations.
 - B. Upon the effective date of this Consent Order and thereafter, Respondent shall perform any and all activities related to the Project in compliance with the FMP, as amended from time to time with the written consent of all parties.
 - C. Respondent shall ensure that Project activities do not result in a Condition of Air Pollution with respect to dust, noise and odors pursuant to 310 CMR 7.01. Upon notification by MassDEP that the Project activities create a Condition of Air Pollution, Respondent shall immediately cease all Project activities until nuisance conditions are resolved to the satisfaction of MassDEP.
 - D. Respondent shall ensure that the Project activities do not result in the alteration of any Areas Subject to Protection under M.G.L. c 131, § 40, unless approved in accordance with M.G.L. c 131, § 40 and 310 CMR.10.00, the Wetlands Protection Act Regulations.
 - E. Respondent shall install and maintain groundwater monitoring wells and monitor

the groundwater quality at these wells in accordance with the FMP to assess potential changes to groundwater quality at the Property from the Project during and after the Project, as specified in Section 3.3.3.2 and 3.3.3.3 of the FMP.

- i. Respondent shall submit to MassDEP the Annual Groundwater Monitoring results within thirty (30) days of sample collection.
 - ii. Respondent shall submit to MassDEP the Post Reclamation Groundwater Monitoring results within thirty (30) days of sample collection.
- F. Respondent shall not accept soil and fill materials that exceed or are inconsistent with the Acceptance Criteria defined in the approved FMP.
- G. Respondent shall ensure that all reasonable and appropriate steps are undertaken to adequately characterize soil and fill materials accepted and reused at the Property, to ensure compliance with the Acceptance Criteria, including, but not limited to, the testing and characterization regimen specified in the FMP.
- H. Respondent shall not accumulate any materials on Site for purposes of the Project that do not meet the Acceptance Criteria delineated in the FMP.
- I. Respondent shall ensure that soils and fill materials imported to the Property during the Project, with the exception of loads quarantined or rejected in accordance with the procedures articulated in the FMP, shall not be removed from the Property either during or at any time after completion of the Project without the prior written consent of MassDEP.
- J. Respondent shall cease accepting soil from a sending site when any load from such site is rejected as a result of field screening; visual or olfactory inspection by Respondent, as specified in the FMP; or soil testing conducted by site workers, the Project LSP (as defined below), or the Independent Third Party (as defined below), as specified in paragraph P below, until Respondent receives a written explanation and assurance from the sending site that no additional similar loads will be transported to the Property.
- K. Pursuant to the FMP, Respondent shall ensure that soil and fill materials segregated for soil testing by site workers, the Project LSP (as defined below), or the Third Party Inspector (as defined below) are either accepted and reused, or rejected and removed from the Property, within thirty (30) days of deposition. Loads of soil or fill materials that are rejected as a result of field screening, visual or olfactory inspection by Respondent or by analytical testing data results (“Rejected Materials”) shall be removed from the Property within seven (7) days after being rejected. The owner of the site from which any Rejected Materials was shipped shall be responsible for removing and disposing of such Rejected

Materials in accordance with applicable regulatory requirements; however, if such owner fails to remove the Rejected Materials, Respondent shall dispose of the Rejected Materials in accordance with applicable regulatory requirements. Nothing in the Consent Order shall limit Respondent's right or ability to recover the costs it incurs rejecting and/or disposing of Rejected Materials (including without limitation Project LSP (as defined below) and Third Party Inspector (as defined below) fees) from the parties responsible for shipping any such Rejected Materials. For each rejected load, Respondent shall collect the following information for reporting to MassDEP in the next Construction Status Report:

- i. the reasons the load was rejected;
 - ii. the name and address of the hauler;
 - iii. the license plate number of the truck/tractor;
 - iv. the name and address of the generator; and
 - v. the corrective actions taken by Respondent.
- L. Respondent shall engage the services of a Licensed Site Professional ("Project LSP") to oversee the activities required by this Consent Order. The Project LSP shall, at a minimum:
- i. Oversee the work for compliance with the FMP and this Consent Order and provide recommendations for corrective actions to Respondent;
 - ii. Review all Soil Profile Packages, as that term is used in the FMP, and provide written recommendations to Respondent; and
 - iii. Perform the collection and analysis of groundwater samples pursuant to the FMP.
- M. Respondent shall comply with the following restrictions:
- i. Any soil and fill materials approved and brought onto the Site for use at the Project shall contain no more than a total of 5% (by volume) of Asphalt, Brick and Concrete ("ABC") material, determined by visual inspection. Any such ABC material must measure less than 6 inches in any dimension. Respondent may transport ABC material greater than 6 inches to its RAP/concrete recycling area for processing provided it complies with the requirements of 310 CMR 16.03(2)(b)5.
 - ii. Respondent may accept, store and place clean fill materials for uses, such as landscaping, other than quarry reclamation at the Project site. Provided,

- that all such materials shall be segregated from all reclamation soils at the Project site to prevent cross contamination.
- iii. Respondent may accept, store and place clean fill materials for uses, such as landscaping, other than quarry reclamation at the Project site. Provided, that all such materials shall be segregated from all reclamation soils at the Project site to prevent cross contamination.
 - iv. Soil and fill materials approved for use at the Property for the Project may contain only incidental, randomly dispersed, *de minimis* quantities of ash and/or Solid Waste (e.g. Municipal Solid Waste and/or Construction and Demolition Waste) as defined in 310 CMR 16.00 and 310 CMR 19.000, which collectively shall comprise less than 1% by volume of the soil and fill materials, determined by visual inspections.
 - v. The acceptance of Remediation Waste, as defined at 310 CMR 40.0006, is prohibited.
 - vi. This Consent Order shall serve to authorize Respondent only to fill the Property as it is described in Paragraph II.4 above and no other area, parcel or section of the Land beyond that.
- N. Respondent shall have an authorized representative on-site to observe all off-loading of trucks, and perform inspections of all soil and fill materials, for the Project as specified in the FMP.
- O. Respondent shall obtain all applicable local, state and federal permits or approvals that are required by the Project.
- P. Independent Third Party Inspections: Respondent shall engage the services of a qualified, independent individual (the “Independent Third Party”) to perform monthly inspections of the Property for compliance with the requirements of this Consent Order including, but not limited to, the FMP, the National Pollution Discharge Elimination System (“NPDES”) Multi-Sector Industrial Stormwater General Permit, and Grading Plan. The Independent Third Party must hold certification as a Massachusetts Registered Professional Engineer or as an LSP, and must be approved, in writing, by MassDEP. Respondent may replace the Independent Third Party so long as the replacement Independent Third Party meets the criteria in the foregoing sentence and provided that the termination of the Third Party Inspector does not result in any delay of the timely performance of the activities required of the Independent Third Party. Respondent shall be responsible for the timely performance of the activities required of the Independent Third Party in the FMP.

- i. The Independent Third Party inspections shall be unannounced and randomly timed during normal operating hours.
 - ii. The service agreement with the Independent Third Party shall provide that the Independent Third Party has the authority and shall take the necessary steps to immediately stop work on the Project for any significant noncompliance with the approved FMP and immediately notify MassDEP.
 - iii. The Independent Third Party shall provide a monthly report (Third Party Inspector Report) containing, but not limited to, all items specified in Section 3.5.2 of the FMP.
- Q. Respondent shall submit to MassDEP each month a written status report (“Construction Status Report”) on the status of the Project. The Construction Status Report shall notate the status of all activities overseen by the Project LSP. The initial Construction Status Report shall be submitted within thirty (30) days of the issuance of this Consent Order but not later than seven days before the date Respondent starts construction of the Project. The initial Construction Status Report shall include, without limitation:
- i. The projected phasing for the Project, including, but not limited to:
 - a) Commencement of the Project construction,
 - b) Major Project milestones, and
 - c) Completion of the Project construction;
 - ii. The name and contact information for an on-call Property contact; and
 - iii. The results of the groundwater monitoring upgradient and downgradient to the reclamation area done prior to the commencement of the Project, including boring logs and well construction reports for all of the monitoring wells, well elevations, groundwater gauging measurements, tabulated analytical results and laboratory analysis reports with chains of custody.
- R. After submittal of the initial Construction Status Report, Respondent shall submit each subsequent monthly Construction Status Report and the Third Party Inspector Report on or before the 21st day of the month until construction of the Project is completed as described in Paragraphs III.Y through III.CC of this Consent Order. Provided, Respondent shall submit a final Construction Completion Report after Respondent submits to MassDEP the Post Reclamation Groundwater Monitoring results.

i. Each such Construction Status Report shall include, at a minimum, all items specified in Section 3.5.2 of the FMP for monthly reporting, excluding items contained within the Third Party Inspector Report, along with the results of any annual groundwater monitoring conducted during the reporting period.

ii. The Construction Status Report shall be signed by the Project LSP and shall include the following certification signed by Respondent:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

iii. The Third Party Inspector Report shall include the following certification signed by the Third Party Inspector:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

iv. The Construction Status Report and Third Party Inspector Report shall be electronically submitted to MassDEP using eDEP Transmittal Form BWSC 126, Section B(2), under a Release Tracking Number that will be issued by MassDEP for the site.

S. Upon request of MassDEP, the Parties agree that at the conclusion of each Phase of the Project, a discussion may be held to determine whether any modifications to the Project or this Consent Order are necessary.

T. Upon and after completion of final capping, Respondent shall maintain all slopes to be no steeper than 3:1 horizontal to vertical.

U. As of the effective date of this Consent Order, Respondent did not include a Grading Plan as part of the FMP. Accordingly, unless and until a Grading Plan

for this Project is submitted to and approved by MassDEP in writing, Respondent shall not place any fill material at an elevation exceeding three feet below the quarry rim. MassDEP reserves the right to modify the fill elevation level at any time until the Final Grading Plan is approved by MassDEP.

- V. Within thirty days (30) of the effective date of this Consent Order, Respondent shall submit to MassDEP for review and approval the draft conceptual Grading Plan as submitted to the Town of Saugus to be incorporated into the Master Plan for the Project.
- W. Within five (5) days of the Town of Saugus's approval of the Master Plan, Respondent shall submit to MassDEP the Final Grading Plan, as approved in the Town of Saugus's Master Plan for this Project. The Final Grading Plan must include construction details for the stabilization of the top of the fill as specified in III.8.Z and CC below.
- X. Respondent shall not place any soils or fill materials subject to this Consent Order within or on the areas of the Property that are proposed for future mining until these areas have been mined to the proposed extents shown in the Existing Conditions Plan of the FMP.
- Y. In areas with vegetative cover, the final stabilization of the top of the fill material and all slopes shall be a minimum of six inches of topsoil overlaying a minimum of thirty (30) inches of granular fill (fine sandy loam or coarser).
- Z. The final cover shall be installed over all areas of fill material as specified in III.8.Y and III.8.CC and pursuant to the Final Grading Plan.
- AA. Respondent shall notify MassDEP, in writing, no later than six (6) months prior to the date that Project-related filling activities will be terminated, including, without limitation, if Respondent intends to terminate the Project before achieving the maximum finish grading shown in the Final Grading Plan. Respondent may only terminate the Project provided that all capping and groundwater monitoring activities specified in this Consent Order and FMP are implemented.
- BB. Respondent's failure to perform Project related filling activities pursuant to this Consent Order for any consecutive 6-month period shall be deemed by MassDEP to be Respondent's termination of the Project.
- CC. Respondent shall perform the following closure activities upon achieving the proposed fill subgrade elevations, as approved by MassDEP, or upon Respondent's termination of the Project before achieving the proposed fill subgrade elevations:

- i. Within 60 days of achieving the approved fill subgrade elevations or terminating the Project, Respondent shall complete all outstanding recommendations made by the Project LSP and/or Independent Third Party;
 - ii. Within 90 days of achieving the approved fill subgrade elevations or terminating the Project, Respondent shall stabilize all slopes by applying suitable materials approved by MassDEP in the Final Grading Plan and establishing a vegetative cover or final cover over all areas of fill as specified in III.8.Y and III.8.CC and in the Final Grading Plan;
 - iii. Within 180 days of achieving the approved fill subgrade elevations or terminating the Project, Respondent shall submit to MassDEP an As-Built Plan prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer. The As-Built Plan shall show the final elevations at the Property and any permanent stormwater management features; and
 - iv. After achieving the MassDEP approved fill subgrade elevations or terminating the Project, Respondent shall monitor the groundwater in accordance with Section 3.3.3.3 of the FMP.
- DD. Respondent shall maintain records of all soil accepted at the Property, including but not limited to Generator applications, Soil Submittal Packages, soil profiles, Project LSP Recommendations and Acceptance/Approval documents, for a minimum of twenty years after the completion of the activities in III.8.Y and CC. Any and all records, including records in electronic and paper form, shall be made available to MassDEP and the Town of Saugus for inspection and reproduction upon request.
- EE. The FMP shall become effective upon the date this Consent Order is executed by MassDEP.
- FF. Respondent may submit written requests for minor modifications to the FMP to MassDEP for review and approval. MassDEP may approve minor modifications, at its sole discretion and in writing, without revising this ACO. This does not negate any other approvals Respondent may require from the Town of Saugus for such modifications.
- GG. Any violation of the FMP shall be a violation of this Consent Order.

9. MassDEP reserves the right to require Respondent to take any and all actions necessary to ensure that the activities conducted at the Property do not cause any nuisance conditions including, but not limited to, dust, noise, odor, or wetlands impacts. Upon notification by

MassDEP that the Project activities create such a nuisance condition(s), Respondent shall immediately abate any nuisance condition(s) to the satisfaction of MassDEP.

10. MassDEP reserves the right to require Respondent to take any and all corrective actions recommended by the Project LSP and/or the Independent Third Party within a specific time period. Respondent's failure to complete such corrective actions shall be considered a violation of this Consent Order.

11. For the purposes of this Consent Order, the Project will commence upon the execution of this Consent Order by MassDEP. Soil and fill materials placed, dumped, disposed or reused at the Property prior to execution of this Consent Order are not included in the Project.

12. Unless submitted via eDEP per the requirements of III.8.R.iv, or except as otherwise provided herein, all notices, submittals and other communications required by this Consent Order shall be directed to:

Eric S. Worrall, Regional Director
MassDEP Northeast Regional Office
205 B Lowell Street
Wilmington, MA 01887

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

13. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

14. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

15. This Consent Order may be modified only by written agreement of the parties hereto.

16. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

17. If any soil or fill material is accepted in connection with the Project in violation of the requirements of paragraph 8, then the Respondent shall be deemed to have violated this Consent

Order and shall perform one or more of the following actions as may be required by the Department at its sole discretion and as set out by MassDEP in writing:

1. Respondent shall immediately stop accepting any additional truckload(s) of soil or fill material and shall immediately stop placing any additional soil or fill materials that may be contained within truckload(s) that are already on site; and
2. Respondent shall take any and all actions to return to compliance with this Consent Order as may be deemed necessary by MassDEP in writing, including but not limited to an Order by MassDEP to remove and properly dispose of any materials that are deemed by MassDEP to be in violation of this Consent Order.

18. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

19. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.

20. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP's authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.

21. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

22. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent

shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

23. Force Majeure.

A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondents and Respondents' employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondents or Respondents' employees, agents, consultants, and contractors.

B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.

C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondents shall immediately, but in no event later than five (5) days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondents intend to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondents' right to request an extension based on the event.

D. If MassDEP determines that Respondents' failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondents otherwise comply with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

24. Respondent shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondent violates any provision of this Consent Order:

For each day, or portion thereof, of each violation, Respondent shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 st through 15 th days	\$250 per day
16 th through 30 th days	\$500 per day
31 st day and thereafter	\$1,000 per day

False Submittals to MassDEP

Respondent shall pay, upon written demand, the stipulated administrative penalty of \$5,000.00 to the Commonwealth for each false or misleading statement in any document, required by this Consent Order, submitted to MassDEP.

Stipulated civil administrative penalties (except for those relating to false submittals) shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.


25. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

26. Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Property for purposes of conducting any activity related to its oversight of this Consent Order, including the collection of groundwater and/or soil for analysis. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

27. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

28. This Consent Order shall become effective on the date that it is executed by MassDEP.

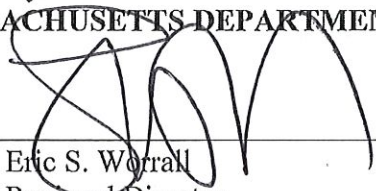
Consented To:
AGGREGATE INDUSTRIES – NORTHEAST REGION, INC.

By: 
Guy Edwards
President
8700 West Bryn Mawr Ave.
Suite 300
Chicago, IL 60631

Federal Employer Identification No.: 042079391

Date: June 15, 2017

Issued By:
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
Eric S. Worrall
Regional Director
Northeast Regional Office
205 B Lowell Street
Wilmington, MA 01887

Date: June 16, 2017

(ATTACHMENTS)