

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

In the matter of:
540 Groton Road, LLC and
Newport Materials, LLC

Enforcement Document Number:
00002805
Issuing Bureau: BWSC
Issuing Region/Office: NERO
Issuing Program: BWSC
FMF/Program ID # 3-33905

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY
AND
NOTICE OF NONCOMPLIANCE**

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. 540 Groton Road, LLC is a Massachusetts limited liability corporation with its principal offices located at 31 Milk Street, Suite 501, Boston, MA 02109. Groton Road's mailing address for the purpose of this Consent Order is the same.
3. Newport Materials, LLC is a foreign limited liability corporation with its principal offices located at 145 Temple Street, Nashua, New Hampshire 03060. Newport Materials' mailing address for the purpose of this Consent Order is 20 Commerce Way, Westford, Massachusetts 01886.
4. Groton Road and Newport Materials are collectively referred to herein as the "Respondents."

II. STATEMENT OF FACTS AND LAW

5. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.0000. MassDEP 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.

6. Unless otherwise indicated, the terms used herein shall have the meaning given to them by the MCP, and if such terms are not defined in the MCP, they shall have the meanings given to them by M.G.L. c. 21E. "Property" shall mean the real property located at 540 Groton Road, Westford, Massachusetts. The "Site" shall mean the particular Site (as that term is defined in the MCP) resulting from releases of oil and/or hazardous materials at the Property. The Site shall include, without limitation, any place or area within or outside the Property where oil and/or hazardous material resulting from such releases has come to be located. Respondents are a Responsible Party ("RP") or Potentially Responsible Party ("PRP") for the Site.

7. The following facts and allegations have led MassDEP to issue this Consent Order:

- A. On November 1, 2016, MassDEP issued Administrative Consent Order No. ACO-NE-16-3R004 ("ACO") concerning the filling and reclamation of a sand pit at the Property ("Project"). The ACO specified that the Respondents would undertake a series of actions and provide MassDEP with a series of submittals within designated timeframes, and included a requirement to install and sample groundwater monitoring wells to "assess potential changes to environmental conditions." The ACO also required the Respondents to perform any and all activities related to the reclamation Project in compliance with M.G.L. c.21E and the MCP and in compliance with a Soil Management Plan ("SMP") provided in Attachment A to the ACO and incorporated therein by reference.
- B. The ACO specifies that a Massachusetts Licensed Site Professional ("Project LSP") oversee Project activities. The SMP, on page 3, states that the Project LSP is Keith W. Veren of Spectrum Environmental Services, Inc.
- C. The ACO specifies that an Independent Third Party, approved in writing by MassDEP, perform monthly inspections of the Property. By letter dated November 4, 2016, MassDEP approved Matthew Waterman of LandTech Consultants as the Third Party Inspector.
- D. The SMP, on page 3, states that the Respondents' Soil Acceptance and Facility Oversight designee is Millennium Environmental, Inc.
- E. On November 22, 2016, an email was sent from Millennium Environmental to MassDEP to provide an update on the installation of the four groundwater monitoring wells required at the site. This email indicated that "two of the downgradient wells were installed on November 21, 2016, and sampled today. The upgradient well and one of the other downgradient wells could not be advanced due to obstructions (boulders) and we have scheduled a larger drill rig in at the beginning of next week."

- F. On November 22, 2016, two of the newly installed monitoring wells at the site were sampled by Millennium Environmental.
- G. On December 5, 2016, Capitol Engineering constructed the remaining two monitoring wells at the site. According to the construction logs that were provided to MassDEP later in the January 2017 Construction Status Report, these two wells were excavated to 7 feet and 12 feet below grade. Groundwater was not encountered in either test-pit well. The Capitol Engineering well construction log described the encountered soils in both test-pit wells to be “dry”.
- H. On December 5, 2016, Respondents submitted the initial Construction Status Report for the Project to MassDEP. The report, which was not timely submitted, did not include, among other things, monitoring well boring logs or test results.
- I. On December 6, 2016, the two groundwater monitoring wells that had been dug the day before were sampled by Millennium. Both sets of samples were delivered for analysis to GeoLabs, Inc. in Braintree MA. Millennium Environmental identified these samples as “Well 3” and “Well 4.”¹
- J. On January 19, 2017, Respondents submitted a monthly Construction Status Report (“January 2017 Construction Status Report”) to MassDEP, which was not submitted pursuant to the schedule set out in the ACO. This report provided well construction details for all four monitoring wells. This report stated that rather than a “larger drill rig” as referenced in Paragraph 7.E., Respondents had used an excavator or backhoe to construct the two wells that were dug on December 5, 2016.
- K. The January 2017 Construction Status Report also stated that the first two wells constructed on or about November 21, 2016² were Small Diameter Driven Wells (“SDDWs”) and installed using a GeoProbe rig. The SDDW installation approach may not be effective at sites containing boulders. Both of the SDDWs were driven less than 1 foot into the groundwater table at the time of installation. When the wells were later sampled on February 24, 2017, there was greater than 7.7 and 9.13 feet of standing water, respectively.
- L. None of the four wells extended more than 12 feet below the ground surface.

¹ The approved SMP specified four groundwater monitoring wells, labeled MW-1, MW-2, MW-3, and MW-4, at four designated locations. The well names/locations identified for the groundwater samples obtained by Millennium did not correspond to the SMP designations (e.g., the samples obtained on December 6, 2016 for “MW-3” and “MW-4” were from wells designated in the SMP as “MW-1 and “MW-2”, though the exact well-specific correlation remains unclear). Compounding this confusion is the subsequent use of a third well naming convention by Capitol Engineering, which did not correspond to the SMP or to Millennium’s naming convention.

² The exact construction date is unclear; the November 22, 2016 email from Millennium Environmental stated they were constructed on November 21, 2016, while the well construction logs contained in the January 2017 report (by Capitol Engineering) indicated that these wells were constructed on November 20, 2016).

- M. On February 1, 2017, MassDEP received an Amended January 2017 Construction Status Report (the "Amended Report") from the Respondents. This was the Respondents' first submittal that contained well construction logs and all testing data for all four groundwater monitoring wells, information that, per the terms of the ACO, should have been provided 60 days earlier in the initial Construction Status Report. The Amended Report included the analytical reports for the analyses of samples analyzed by GeoLabs of Braintree, MA. Millennium Environmental selected GeoLabs to provide the Respondents' analytical support services for the Project. MassDEP, upon reviewing these reports, identified the following concerns that were conveyed to the Respondents via email sent on February 3, 2017 by MassDEP, to the Project LSP with cc's to Millennium:
- i. The Respondents did not provide the required "MassDEP Analytical Protocol Certification Form" for the samples obtained from "MW-3" and "MW-4" as required by the SMP.
 - ii. Although the "MassDEP Analytical Protocol Certification Form" was provided for the data from "MW-1" and "MW-2," a notation was made in section H of this form that all Quality Control performance standards were not achieved. Furthermore, a notation was made in Section I that testing was not conducted for all required analytes. Additionally, for the packages for "MW-1" and "MW-2" samples, the method blank and laboratory control sample data did not include results for all reported metals, and the laboratory control sample ("LCS") recoveries for 1,4-dioxane and Diethyl ether was 0%.
 - iii. The Reporting Limits for analytes, including Silver and Cadmium, exceeded MCP GW-3 standards, which apply at the site.
- N. The Amended Report indicated that samples from test pit wells "MW-3" and "MW-4" contained elevated concentrations of Bromodichloromethane (12.7 and 11.1 $\mu\text{g/L}$), Chloroform (18.1 and 16.1 $\mu\text{g/L}$), and Dibromochloromethane (3.9 and 4.4 $\mu\text{g/L}$). The differences in concentrations of each of these compounds in each well – which are over 500 feet apart - are analytically insignificant.
- O. Bromodichloromethane, Chloroform, and Dibromochloromethane are halogenated organic compounds collectively known as Trihalomethanes or "THMs". THMs are created when water is disinfected using a chlorine-based agent. THMs are commonly present in chlorinated public drinking water supply systems, including the Westford drinking water system prior to and since 2016. THMs are rarely detected in groundwater; according to the 2006 USGS publication "Occurrence of Trihalomethanes in the Nation's Ground Water and Drinking-Water Supply Wells", less than one percent of 5642 groundwater samples examined nationwide contained total THMs at a concentration greater than 1 $\mu\text{g/L}$.

- P. Consistent with the USGS finding, analysis of both of the SDDWs that were installed on or about November 21, 2016 and that encountered groundwater on the day of their installation did not indicate any presence of THMs.
- Q. Based upon an examination of recent routine THM testing data collected by the Town of Westford, the reported concentration and ratios of the THM compounds identified in the Amended Report for Test Pit Wells MW-3 and MW-4 are similar to the concentrations and ratios of THM compounds in drinking water samples collected within the Town Westford.
- R. Following a conversation with MassDEP, the Project LSP proposed in an email sent to MassDEP on February 8, 2017, to resample all four groundwater monitoring wells at the site. In an email from MassDEP dated February 21, 2017, the Project LSP was informed that, initially, it was only necessary to resample "MW-3" and "MW-4" for Volatile Organic Compounds ("VOCs"), in order to confirm the previously reported detections of THMs. This sampling was undertaken on February 24, 2017, by Capitol Engineering. In a report subsequently submitted by Capitol Engineering, dated February 24, 2017, it was noted that "MW-2" and MW-3" were sampled, not "MW-3" and "MW-4", as requested by MassDEP. It was eventually discerned, however, that Capitol Engineering had used a different (third) well-naming convention as described in footnote 1, above. Therefore, Capitol Engineering sampled neither of the Millennium Environmental defined "MW-3" or "MW-4" wells; the wells that were previously reported to contain elevated concentrations of THMs.
- S. On February 22, 2017, March 21, 2017, and May 19, 2017, MassDEP received additional monthly Construction Status Reports for the Project from the Respondents. All of these Construction Status Reports were submitted beyond the deadline for such submission.
- T. Included in each of the Construction Status Reports identified in Paragraph 7.S, above, was a report from the Independent Third Party, containing analytical testing data for a soil sample that was obtained during the previous monthly inspection. None of these reports from the Independent Third Party included any information on observations made on recently received soil with respect to staining, odors, or contamination by solid waste. None of these reports provided any details on how the soil samples were obtained; whether they were grab or composite samples; or whether any sample was stained, discolored, or exhibited elevated readings on a Photoionization Detector ("PID"). None of these reports included a tabulation of analytical results for these soil samples, nor a clear statement as to whether any Acceptance Criteria was exceeded.

- U. In the March 21, 2017 monthly Construction Status Report, included as Appendix C was the report from the Independent Third Party inspector, who indicated that soil samples were not collected “since trucks were not in operation due to the anticipated blizzard on the following day.” According to the monthly report, the Respondents deposited over 12,000 tons of soil at the site during the previous month.
- V. On April 18, 2017, MassDEP received the monthly Construction Status Report for April 2017, which, again, was not submitted pursuant to the schedule established in the ACO. Appendix B of this submittal is a report on the monthly inspection conducted by the Independent Third Party. According to this report, Giovanni Fodera conducted the site inspection on April 14, 2017. However, Mr. Fodera is not the approved Third Party Inspector, nor a Massachusetts registered Professional Engineer, nor a Licensed Site Professional.
- W. Paragraph 11.A of the ACO states: “Upon the effective date of this Consent Order, Respondents shall perform any and all activities related to the Project in compliance with M.G.L. c.21E, the MCP....”
- X. The MCP, at 310 CMR 40.0191(1) states, in relevant part “[t]he Response Action Performance Standard (“RAPS”) is the level of diligence reasonably necessary to obtain the quantity and quality of information adequate to assess a site...”
- Y. Per 310 CMR 40.0191(2), “RAPS shall be employed during the performance of all response actions conducted pursuant to 310 CMR 40.0000, and shall include, without limitation, the following:
- (a) consideration of relevant policies and guidelines issued by the Department and EPA;
 - (b) use of accurate and up-to-date methods, standards and practices, equipment and technologies which are appropriate, available and generally accepted by the professional and trade communities conducting response actions in accordance with M.G.L. c. 21E and 310 CMR 40.0000 under similar circumstances; and
 - (c) investigative practices which are scientifically defensible, and of a level of precision and accuracy commensurate with the intended use of the results of such investigations.”
- Z. Per MassDEP Guidance WSC-310-91, “Standard References for Monitoring Wells, SSDW Supplement (1999)”, page 12, “there are potential limitations when using SDDWs. SDDW methods can be ineffective or technically infeasible in areas where the overburden consists of ...boulders.”

AA. Per MassDEP Guidance WSC-310-91, "Standard References for Monitoring Wells (1991)", section 3.1-1, "Installation of observation wells in test pits is not recommended; if installed, they should be used for water level data only, not water quality sampling."

BB. By installing and using the wells described above in Paragraphs 7.E and 7.G, Respondents have violated M.G.L. c.21E, the MCP, specifically 310 CMR 40.0191(1), and the terms of the ACO, specifically Paragraph 11.A because the installation and use of such wells are not: (a) appropriate for the site conditions; (b) scientifically defensible; (c) reflective of up-to-date methods and technologies generally accepted by the professional and trade communities conducting response actions in accordance with the MCP; and (d) suitable to obtain data that adequately assess potential changes to environmental conditions.

CC. The ACO in Paragraph 11.L states, in relevant part:

Respondents shall engage the services of a Licensed Site Professional ("Project LSP") to oversee the activities agreed to in this Consent Order. The Project LSP shall, at a minimum...

iii. Perform the periodic collection and analysis of groundwater samples pursuant to the SMP.

DD. By failing to have the Project LSP perform the collection of any of these samples as discussed in Paragraphs 7.F, 7.I, 7.M and 7.R above, Respondents violated Paragraph 11.L of the ACO.

EE. The ACO in Paragraph 11.Q states, in relevant part:

The initial Construction Status Report shall include, without limitation...

iii. The results of the groundwater monitoring in and adjacent 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.

FF. By failing to timely submit the initial Construction Status Report for the Project that included information regarding the boring logs or analytical test results as described in Paragraph 7.H, above, Respondents violated Paragraph 11.Q.iii of the ACO.

- GG. The ACO in Paragraph 11.R states, in part, “[a]fter submittal of the initial Construction Status Report, Respondents shall submit each subsequent monthly Construction Status Report on or before the 15th day of the month until the Project is completed.
- HH. By failing to timely submit all Construction Status Reports following the initial one as discussed in Paragraphs 7.J, 7.M, 7.S, and 7.V, above, Respondent has violated Paragraph 11.R of the ACO.
- II. The ACO in Paragraph 11.A states, in part, “[u]pon the effective date of this Consent Order, Respondents shall perform any and all activities related to the Project in compliance with M.G.L. c.21E, the MCP....” The MCP, at 310 CMR 40.0022(2), states, in part “No person shall make, or cause any person to make, any false, inaccurate, incomplete or misleading statement in any document which that person submits, or causes any person to submit, to the Department pursuant to M.G.L. c. 21E, 310 CMR 40.0000 or any order or determination issued by the Department.”
- JJ. By the Respondent’s consultant, Millennium Engineering, submitting the Report discussed above in Paragraph 7.M, M.G.L. c. 21E, the MCP, specifically the provisions of 310 CMR 40.0022(2), and Paragraphs 11.A and 11.Q of the ACO, have been violated.
- KK. The MCP at 310 CMR 40.0017(1) states,
- Any person undertaking response actions under the provisions of this Contingency Plan shall ensure that analytical and environmental monitoring data used in support of recommendations, conclusions, or LSP Opinions with respect to assessment, removal, or containment actions is scientifically valid and defensible, and of a level of precision and accuracy commensurate with its stated or intended use.
- LL. The deficiencies that the Respondents did not identify or discuss in the Amended Report as discussed in Paragraph 7.M, above, indicate that the submitted data did not comply with the requirements of 310 CMR 40.0017(1). This constitutes a violation of M.G.L. c.21E, the MCP, the ACO, specifically Paragraphs 11. A, 11.B, 11.E, and 11.R.
- MM. The ACO, in Paragraph 11.B, states, in relevant part “Upon the effective date of this Consent Order, Respondents shall perform any and all activities related to the Project in compliance with the SMP....” The SMP, on page 15 states, in part: “During each inspection, the Independent Third Party shall, at a minimum...Collect a grab sample of any area or load of soil that appears to be contaminated, based upon staining, discoloration, odors, or PID readings. If no area or load appears to be

contaminated, collect a composite sample [consisting of]... a minimum of 5 to 10 subsamples from the load(s) under evaluation.”

NN. The SMP, on page 16, further states, in relevant part:

The Independent Third Party shall prepare an inspection report documenting the findings for each inspection and shall submit such report to the Facility Operators and MassDEP on or before the 15th of each month. Each inspection report shall include, but not be limited to:

1. Observations of practices that are not compliant with the SMP and/or Consent Order;
2. Observations of solid or hazardous waste, stained soils, odors and sheens;
3. The results of the soil testing of the soil samples collected during the inspection, including, but not limited to ...

b. The analytical results in a tabular format comparing the results to the applicable RCS-2 Reportable Concentrations and Acceptance Criteria identified in the Soil Management Plan,

c. A clear statement regarding whether any of the Acceptance Criteria were exceeded....

OO. By failing to collect and analyze soil samples during the March 2017 monthly inspection and by failing to present the requisite information and findings required by the ACO as described above in Paragraphs 7.T and 7.U, the Respondents have violated Paragraph 11.B of the ACO.

PP. The ACO, in Paragraph 11.P, states, in relevant part:

Respondents 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... 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.

QQ. By using Mr. Fodera as the Third Party Inspector as discussed in Paragraph 7.V, above, the Respondents have violated Paragraph 11.P of the ACO.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondents hereby consent to, this Order:

8. 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. Respondents enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondents agree not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

9. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

10. Respondents shall perform the following actions:

- A. The Respondents shall comply with all provisions and requirements of Administrative Consent Order No. ACO-NE-16-3R004, including the provisions to comply with the approved SMP and to conduct all investigative actions in compliance with the MCP.
- B. Upon the effective date of this Consent Order, the Respondents shall provide to the Department and to the Westford Board of Health a copy of all future soil characterization packages approved for filling at the subject site. This may be accomplished by providing an internet web link or "drop box", or by the mailing of a Compact Disk (CD). Such information must be posted or provided to the Department and Westford Board of Health within 14 days of the deposition of the soil at the site.
- C. Within 30 days of the effective date of this Consent Order, the Respondents shall submit to MassDEP for its review, comment, and approval, a detailed plan, prepared by the Project LSP, to install, develop, gauge, and sample 4 new groundwater monitoring wells at the site.
 - i. The new wells shall be placed in the general locations depicted on the approved SMP, but no closer than 20 feet from the existing shallow monitoring wells that were installed in November and December 2016. The four monitoring wells must be installed in four borings that extend at least ten (10) feet into groundwater. If necessary, this must be accomplished by drilling or coring into rock.
 - ii. Within 60 days of approval of the plan by MassDEP, the wells must be installed and properly developed and must be sampled for all parameters specified in the SMP. The installation and development of each well must be overseen and approved by the Project LSP. The sampling of each well must be performed by the Project LSP, and all samples must be analyzed in compliance with the MassDEP CAM.
 - iii. The testing results must be obtained from the laboratory within 21 days and must be subsequently included in the next monthly Construction Status Report for the site. The designation of the wells, i.e., the well numbers and corresponding locations, shall be as presented in the SMP.

11. Unless submitted via eDEP 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
205B Lowell Street
Wilmington, MA 01887

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

12. 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 Respondents or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

13. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondents' noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondents hereby agree, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondents to take the actions described.

14. Respondents shall pay to the Commonwealth a civil administrative penalty for the violations identified in Part II above, as follows:

A. Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay to the Commonwealth Twenty Thousand and 00/100 Dollars (\$20,000.00); and

B. If Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within 1 year of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the remaining amount of Seven Thousand and 00/100 Dollars (\$7,000.00) within thirty (30) days of the date MassDEP issues Respondent a written demand for payment.

This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

15. Respondents 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.

16. This Consent Order may be modified only by written agreement of the parties hereto.
17. 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.
18. If any soil or fill material is accepted in violation of the above requirements, 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 stored on site or 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.
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 enforce this Consent Order in an administrative or judicial proceeding.
20. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of MassDEP to recover costs incurred by MassDEP in connection with response actions conducted at the Site.
21. The payment of any penalty in this matter shall not be construed or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of MassDEP to recover damages in any separate action for injury to and for destruction or loss of natural resources, including the costs of assessing and evaluating such injury, destruction or loss, pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.
22. 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 Respondents 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.

23. 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 Respondents with respect to any subject matter not covered by this Consent Order.

24. This Consent Order shall be binding upon Respondents and upon Respondents' heirs, successors and assigns. Respondents shall not violate this Consent Order and shall not allow or suffer Respondents' directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondents has fully complied with this Consent Order, Respondents shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

25. In addition to the penalty set forth in this Consent Order, Respondents shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondents violate any provision of the Consent Order:

For each day, or portion thereof, of each violation, Respondents shall pay stipulated civil administrative penalties in the following amounts, except that the amount of the stipulated civil administrative penalty shall be \$5,000.00 for violation of Paragraph 18:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 st through 15 th days	\$250.00 per day
16 th through 30 th days	\$500.00 per day
31 st day and thereafter	\$1000.00 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondents corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondents 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 Respondents 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 Respondents' 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 Respondents' failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondents shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondents reserves whatever rights it may have to contest MassDEP's determination that Respondents 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, Respondents 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.

26. Respondents shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondents shall clearly print on the face of its payment Respondents' full name, the enforcement document number appearing on the first page of this Consent Order, and the Respondents' Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

If payment is made by electronic funds transfer, Respondents must complete the attached form "Electronic Funds Transfer Request" and, within 10 days of the effective date of this Consent Order, submit it to Director, BAS Division of Fiscal Management via Facsimile at the MassDEP Revenue Fax Number 617-292-5824 or via mail to:

Department of Environmental Protection
Attn: Revenue Unit
1 Winter Street, 4th Floor
Boston, MA 02108

In the event Respondents fail to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondents shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

27. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondents 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.

28. To the extent authorized by the current owner, Respondents agree 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.

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Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

29. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

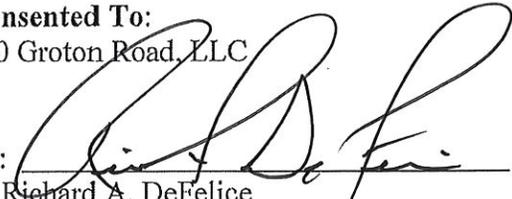
30. All applicable transmittal fees shall accompany any submission(s) required by this Consent Order.

31. The Respondents shall comply with all applicable Public Involvement activities regarding the Site, as described in 310 CMR 40.1400.

32. 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.

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

Consented To:
540 Groton Road, LLC

By: 

Richard A. DeFelice
Manager
164 Burke Street
Nashua, New Hampshire 03060

Federal Employer Identification No.:

46-3368819

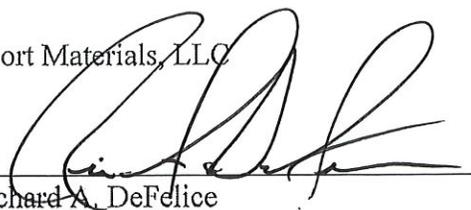
Date:

In the Matter of: 540 Groton Road, LLC and Newport Materials, LLC
ACOP No. 00002805

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AND

Newport Materials, LLC

By: 

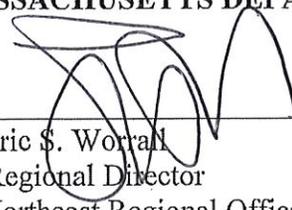
Richard A. DeFelice
Manager
145 Temple Street
Nashua, New Hampshire 03060

Federal Employer Identification No.: 26-4672199

Date:

Issued By:

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 

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

Date: 7/28/17

In the Matter of: 540 Groton Road, LLC and Newport Materials, LLC
ACOP No. 00002805

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ATTACHMENT

(Respondents' Letterhead required)

Department of Environmental Protection
Attn: Revenue Unit
1 Winter Street, 4th Floor
Boston, MA 02108

RE: Electronic Funds Transfer Request
[Respondents fill in Enforcement Document Number]

Director, BAS Division of Fiscal Management:

In order to complete a wire transfer for payment of the penalty assessed under (list enforcement number here), (put Respondents' names here) requests the following information:

DEP's legal address,
DEP's Federal Tax Identification Number,
The name and address of DEP's bank,
DEP's account name and number, and
The ABA/routing number for DEP's account.

Please mail or fax this information to:
Respondents' contact name:
Address:

Fax number:

Sincerely,

Signed:
Print name:
Title:
Work number:

Date:

