

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

July 20, 2009

V. Mark Johnson, General Manager
Asphalt Specialties Co., Inc.
10100 Dallas Street
Henderson, Colorado 80640

RE: Compliance Order on Consent, Number: IC-090715-1

Dear Mr. Johnson:

Enclosed for Asphalt Specialties Co., Inc.'s records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period (paragraph 29). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Kelly Morgan at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Kelly Morgan
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

cc: Adams County Health Department
MS-3 File

cc: Aaron Urdiales, EPA Region VIII
Kelsey Baertschi, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE

Enclosure(s)



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: IC-090715-1

IN THE MATTER OF: ASPHALT SPECIALTIES CO., INC.
CDPS PERMIT NO. COG-500000
CERTIFICATION NO. COG-500395
ADAMS COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Asphalt Specialties., Inc. ("Asphalt Specialties"). The Division and Asphalt Specialties may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: IO-051107-2) that the Division issued to Asphalt Specialties on November 7, 2005.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Asphalt Specialties, and Asphalt Specialties' compliance with the Act and its implementing permit.
3. At all times relevant to the violations cited herein, Asphalt Specialties was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
4. Asphalt Specialties is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Asphalt Specialties operates a sand and gravel mining, washing, crushing, screening and stockpiling facility located at or near 12021 Brighton Road (T1S, R67W, Sec. 34, SE¼ & SW¼), near the Town of Henderson, Adams County, Colorado (the "Facility").
6. The Facility was the subject of a Colorado Discharge Permit System general permit, Permit No. COG-500000 (the "Permit"). The Permit became effective on October 1, 2002 and expired September 30, 2007. Asphalt Specialties was authorized to discharge under the Permit via a permit certification (Number COG-500395), which became effective October 1, 2002. The Facility is currently covered under the new amended Colorado Discharge Permit System general permit, Permit No. COG-500000
7. The Permit authorized Asphalt Specialties to discharge process wastewater and stormwater from the Facility through Outfalls 001A, 002A and 003A into the South Platte River. The discharge was subject to the specific effluent limitations and other conditions of the Permit.
8. The South Platte River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
9. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of the permit.
10. On or about August 7, 2005, representatives from the Adams County Parks Department noted that the Asphalt Specialties' discharge to the South Platte River was very dark and muddy.
11. On August 25 and 26, 2005, a representative from the Adams County Planning and Development Department visited the site to observe and photograph the discharge from Asphalt Specialties to the South Platte River. The county representative observed that the discharge from the Asphalt Specialties Facility to the South Platte River was very dark and muddy.
12. On August 26, 2005, the Adams County Planning and Development Department representative reported concerns regarding the quality of the discharge from Asphalt Specialties to the Division.
13. On August 29, 2005, a representative from the Division (the "Inspector") conducted an on-site inspection of the Facility, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Asphalt Specialties compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector spoke with Facility representatives and performed a physical inspection of the Facility.
14. During the August 29, 2005 inspection, the Division representative took a sample of the discharge from the Facility's outfall (outfall 001A) to the South Platte River. Pursuant to 25-8-405 C.R.S. a representative portion of the sample was provided to Asphalt Specialties.
15. Pursuant to Part I, Section B.2.a of the Permit, Asphalt Specialties' permitted discharge shall not exceed the effluent limitations specified below:

EFFLUENT PARAMETER	<u>DISCHARGE LIMITATIONS</u>		
	30-Day Average	7-Day Average	Daily Maximum
Flow Units = MGD	Report	N/A	Report
pH (minimum-maximum) Units = s.u.	N/A	N/A	6.5-9.0
Total Suspended Solids Units = mg/l	30	45	N/A
Oil and Grease Units = mg/l	N/A	N/A	10

16. Laboratory analysis of the Division's August 29, 2005 discharge water sample, conducted by the Department's Laboratory Services Division, determined that the August 29, 2005 discharge water sample contained the following concentration of Total Suspended Solids.

Test Parameter	Sample Date	Result	Units
Total Suspended Solids	8/29/2005	830	mg/l

17. Asphalt Specialties' laboratory analysis of a representative portion of the Division's August 29, 2005 discharge water sample, performed by Severn Trent Laboratories, Inc., determined that the August 29, 2005 discharge water sample contained the following concentration of Total Suspended Solids.

Test Parameter	Sample Date	Result	Units
Total Suspended Solids	8/29/2005	800	mg/l

18. Pursuant to Part I.B.3. of the Permit, Asphalt Specialties is required to monitor defined effluent parameters at specified frequencies to provide an indication of compliance or non-compliance with the effluent limitations identified in the Permit.
19. Pursuant to Part I.D.3.a of the Permit, Asphalt Specialties is required to summarize and report the analytical results of its effluent monitoring to the Division via quarterly discharge monitoring reports. Each discharge monitoring report is to include a certification by Asphalt Specialties that the information provided therein is true, accurate and complete to the knowledge and belief of Asphalt Specialties.
20. Asphalt Specialties' discharge monitoring report for the calendar quarter of July 1, 2005 through September 30, 2005 include, among other information and data, the following effluent concentration data for Total Suspended Solids, which exceed the effluent limitations imposed by the Permit.

ASPHALT SPECIALTIES / EFFLUENT SELF-MONITORING DATA (Outfall 001)		
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
TOTAL SUSPENDED SOLIDS (IN MG/L)	30-DAY AVG. LIMIT = 30 mg/l	7-DAY AVG. LIMIT = 45 mg/l
July 1, 2005 - September 30, 2005	412.5 mg/l	800 mg/l

21. Total Suspended Solids are "pollutants," or indicators thereof, as defined by §25-8-103(15), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
22. Asphalt Specialties' discharge of suspended solids into the South Platte River in exceedance of the effluent limits authorized by the Permit constitutes a "discharge of pollutants," as defined by §25-8-103(3), C.R.S., in violation of Part I, Section B.2.a of the Permit.
23. The Division acknowledges that Asphalt Specialties timely and satisfactorily performed all of the obligations and actions required under the November 7, 2005, Notice of Violation / Cease and Desist Order.

ORDER AND AGREEMENT

24. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602 and 605 C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: CO-051107-2), the Division orders Asphalt Specialties to comply with all provisions of this Consent Order, including all requirements set forth below.
25. Asphalt Specialties agrees to the terms and conditions of this Consent Order. Asphalt Specialties agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602 and 605 C.R.S., and is an enforceable requirement of the Act. Asphalt Specialties also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Asphalt Specialties against the Division:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
26. Notwithstanding the above, Asphalt Specialties does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Asphalt Specialties pursuant to this Consent Order shall not constitute evidence of fault by Asphalt Specialties with respect to the conditions of the Facility.

CIVIL PENALTY

27. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Asphalt Specialties shall pay Forty Two Thousand Dollars (\$42,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Forty Two Thousand Dollar (\$42,000.00) civil penalty for the above violation(s) and Asphalt Specialties agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

28. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the November 11, 2005 Notice of Violation / Cease and Desist Order (Number: IO-051107-2).
29. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Asphalt Specialties each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
30. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Asphalt Specialties, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
31. Notwithstanding paragraph 26 above, the violations described in this Consent Order will constitute part of Asphalt Specialties' compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Asphalt Specialties. Asphalt Specialties agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

32. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the November 11, 2005 Notice of Violation / Cease and Desist Order (Number: IO-051107-2). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
33. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
34. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
35. Upon the effective date of this Consent Order, Asphalt Specialties releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein
36. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

37. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3634
E-mail: kelly.morgan@state.co.us

For Asphalt Specialties Company, Inc.:

V. Mark Johnson, General Manager
ASCI Read-Mix
10100 Dallas Street
Henderson, Colorado 80640
Telephone: 303. 289.8555
E-mail: markj@ascireadimix.com

MODIFICATIONS

38. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

39. Asphalt Specialties shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Asphalt Specialties' Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Asphalt Specialties' Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Asphalt Specialties shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute.
40. If Asphalt Specialties files any notice of dispute pursuant to paragraph 39 the notice shall specify the particular matters in the Division's determination that Asphalt Specialties seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Asphalt Specialties. The Division and Asphalt Specialties shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S.

NOTICE OF EFFECTIVE DATE

41. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

42. This Consent Order is binding upon Asphalt Specialties and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR ASPHALT SPECIALTIES CO., INC.:

V. Mark Johnson Date: *6/30/09*
V. Mark Johnson, General Manager

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
WATER QUALITY CONTROL DIVISION:**

Lori M. Gerzina Date: *7-15-09*
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION