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

October 7, 2009

Ima Turner, Esq
Marathon Oil Company
5555 San Felipe
Houston, TX 77056-2725

RE: Final Compliance Order on Consent, Number: SC-091007-3

Dear Ms. Turner,

Enclosed for Marathon Oil Company's records, you will find Marathon's 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, as further described in paragraph 32 of the document. 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 for the purpose of placing the assigned Order Number on the final document.

If you have any questions, please do not hesitate to contact me at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Michael Harris
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

ec: Aaron Urdiales, EPA Region VIII
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Nathan Moore, Permits Unit, CDPHE
Carolyn Schachterle, OPA, CDPHE
David Neslin, COGCC
Tom Roan, Colorado Attorney General's Office
Peter Gould, Patton Boggs LLP

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-091007-3**

IN THE MATTER OF: **MARATHON OIL COMPANY**
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03C052
GARFIELD 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 Marathon Oil Company ("Marathon"). The Division and Marathon 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, civil penalties for the alleged violations cited herein and in the Department's Complaint for Injunction and Penalties, Case Number: 2008-CV-100, which was filed with Garfield County District Court on April 15, 2008.

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 Marathon and Marathon's compliance with the Act and the stormwater permit for construction.

3. At all times relevant to the violations cited herein, Marathon was an Ohio corporation in good standing and registered to conduct business in the State of Colorado.

4. On or about July 1, 2007, Marathon initiated construction activities associated with oil and gas production and/or exploration at various locations within rural Garfield County, Colorado (the "Project").

5. In 2007, Marathon and Enterprise Gas Processing, LLC ("EGPLLC") entered into a contract, whereby EGPLLC agreed to receive from Marathon certain gas produced from its wells located in the Piceance Basin located in Garfield County, and to construct a natural gas pipeline to transport that gas (the "Pipeline") on the Roan Plateau at the Project.

6. Enterprise Products Operating LLC ("Enterprise") undertook the responsibility to construct the Pipeline on behalf of EGPLLC, and did construct the Pipeline.

7. Enterprise and Marathon are each "persons" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73)

8. The activities of Enterprise and Marathon, as described above, constitute "construction activity" that is subject to regulation under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit"), in accordance with 5 CCR 1002-61, §61.3

9. On May 29, 2007, the Division received an application from Marathon for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").

10. On June 20, 2007, the Division provided Marathon Certification Number COR-03C052 authorizing Marathon to discharge stormwater from the construction activities associated with the Project to Garden Gulch and Parachute Creek, under the terms and conditions of the Permit. Certification Number COR-03C052 became effective July 1, 2007 and remains in effect until June 30, 2012 or until Marathon inactivates permit coverage.

11. Garden Gulch and Parachute Creek are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

12. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.

13. On April 3, 2008, a representative from the Division (the "Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S. During the inspection, the Inspector spoke with Project representatives and performed a physical inspection of the Project.

14. On April 14, 2008, the "Inspector" conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed a physical inspection of the Project.

Stormwater Management Plan Violations

15. Pursuant to Part I. B. of the Permit, a permittee is required to prepare and maintain a Stormwater Management Plan ("SWMP") that identifies Best Management Practices ("BMPs") that, when implemented, will meet the terms and conditions of the Permit. The SWMP is required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation of BMPs, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.

16. Pursuant to Part I. C. of the Permit, the Project's SWMP shall include, at a minimum, the following items:

    a. Site Description – The SWMP shall clearly describe the construction activity, including:
        i. The nature of the construction activity.
        ii. The proposed sequence for major activities.
        iii. Estimates of the total area of the site and the area of the site that is expected to undergo clearing, excavation or grading.
        iv. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
        v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
        vi. The location and description of all potential pollution sources, including ground surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.
        vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering and concrete washout.
        viii. The name of the receiving water(s) and the size, type and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

    b. Site Map – The SWMP shall include a legible site map(s), showing the entire site, identifying:
        i. Construction site boundaries.
        ii. All areas of ground surface disturbance.
        iii. Areas of cut and fill.
        iv. Areas used for storage of building materials, equipment, soils or wastes.
        v. Locations of dedicated asphalt or concrete batch plants.
        vi. Locations of all structural BMPs
        vii. Locations of all non-structural BMPs.
        viii. Locations of springs, streams, wetlands and other surface waters.

    c. Stormwater Management Controls - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:

i. SWMP Administrator – The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining and revising the SWMP.

ii. Identification of Potential Pollutant Sources – The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.

iii. Best Management Practices (BMPs) for Stormwater Pollution Prevention – The SWMP shall identify and describe appropriate BMPs that will be implemented at the facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.

(1) Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

(2) Non-Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees, and preservation of mature vegetation.

(3) Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.

(4) Materials Handling and Spill Prevention – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.

(5) Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.

(6) Vehicle Tracking Control – The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.

(7) Waste Management and Disposal, Including Concrete Washout – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.

(8) Groundwater and Stormwater Dewatering – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.

d. Final Stabilization and Long-Term Stormwater Management – The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.

e. Inspection and Maintenance – The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.

17. During the April 14, 2008 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 17(a-d) below:

a. The site map did not indicate the areas of cut and fill at the Project.

b. The site map did not include the locations of structural BMPs at the Project.

c. The SWMP made reference to a SPCC plan to be utilized for spill response and cleanup. However, no SPCC plan was included with the SWMP or available during the inspection.

d. The SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs at the site.

18. The Division has determined that Marathon and Enterprise failed to prepare and maintain a complete and accurate SWMP for the Project.

19. Marathon's and Enterprise's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. and Part I. C. of the Permit.

Best Management Practice Violations Associated with Pipeline Construction

20. Pursuant to Part I. C. 3. c. of the Permit, permittees are required to implement BMPs to minimize erosion and sediment transport. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

21. Pursuant to Part I. D. 2. of the Permit, permittees are required to select, design, install, implement and maintain appropriate BMPs for all potential pollutant sources at a site, following good engineering, hydrologic and pollution control practices.

22. Pursuant to Part I. B. 3. of the Permit, permittees are required to implement the provisions of the SWMP, as written and updated, from the commencement of construction activity until final stabilization is complete.

23. The Division has determined that Marathon and Enterprise failed to implement and/or maintain functional BMPs for pipeline construction activities at the Project, as described in paragraphs 23(a–e) below:

    a. During the April 3, 2008 inspection, the Inspector observed disturbed soil from pipeline construction activities that had occurred near the second guard shack at the Pipeline construction location. The disturbed area was approximately fifty feet wide and several hundred yards long. No BMPs were observed in place to stabilize the disturbed soil or to prevent sediment from discharging from the area during storm events.

    b. During the April 3, 2008 inspection, the Inspector observed disturbed soil from Pipeline construction activities that had occurred, or were occurring, in and adjacent to Garden Gulch at the Project. The disturbed area was approximately fifty feet wide and several hundred feet long in both directions. A small straw bale and straw wattle sediment trap was observed at the base of the disturbed area, where the pipeline trench intersected Garden Gulch. However, no other BMPs were observed in place to stabilize the steep, disturbed slopes or to prevent sediment discharges from the vast disturbed area into Garden Gulch. Consequently, the small straw bale and wattle structure would be easily overwhelmed during storm events.

    c. During the April 14, 2008 inspection, the Inspector observed disturbed soil from Pipeline construction activities that had occurred, or were occurring, in and adjacent to Garden Gulch at the Project. Two sediment traps were observed in place to control sediment from the disturbed pipeline trenches in the area. However, the sediment traps were not installed and maintained in accordance with the installation details outlined in the Project's SWMP, as the straw bales were not entrenched nor properly staked. As a result, the straw bales were nearly falling into Garden Gulch and did not have the capacity or structural integrity to act as functional BMPs for sediment removal. No other BMPs were observed in place to stabilize the disturbed pipeline trenches or to prevent sediment discharges into Garden Gulch. Consequently, sediment discharge to Garden Gulch was observed.

    d. During the April 14, 2008 inspection, the Inspector observed steep, disturbed slopes that extended up both the north and south sides of Garden Gulch at the Project. No BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment discharges from the slopes into Garden Gulch. Consequently, sediment discharge to Garden Gulch was observed.

e. During the April 14, 2008 inspection, the Inspector observed a short section of culvert that had been placed in Garden Gulch to convey flow through the middle of the disturbed area created by the Ppipeline construction at the Project. However, the culvert was no long enough to convey flow through the entire disturbed area. Consequently, Garden Gulch was flowing directly across disturbed ground and fill material created by the construction activities, and sediment was eroding into Garden Gulch.

24. Marathon's and Enterprise's failure to implement and maintain functional BMPs for Pipeline construction activities at the Project constitutes violations of Part I. C. 3. c,. Part I. D. 2. and Part I B. 3. of the Permit.

Best Management Practices Violations Associated with Well Pad Construction

25. The Division has determined that Marathon failed to implement and/or maintain functional BMPs for well pad construction activities at the Project, as described in paragraphs 25(a–c) below:

    a. During the April 14, 2008 inspection, the Inspector observed steep, disturbed fill slopes from the construction of Marathon Well Pad 11X at the Project, which was located directly adjacent to a tributary of Corral Gulch. No BMPs were observed in place stabilize the slopes or to prevent sediment discharges to the tributary and ultimately into Corral Gulch.

    b. During the April 14, 2008 inspection, the Inspector observed a fuel tank located on Marathon Well Pad 11X at the Project. Spill containment fabric was in place below the fuel tank, however, the fabric was ripped and did not provide adequate secondary containment for the volume of pollutants contained in the tank.

    c. During the April 14, 2008 inspection, the Inspector observed disturbed fill slopes that extended along the entire length of the road leading up to Marathon Well Pad 11X at the Project. No BMPs were observed in place to stabilize the slopes or to prevent sediment from discharging from the slopes into a tributary of Corral Gulch, and ultimately into Corral Gulch.

26. Marathon's failure to implement and maintain functional BMPs for well pad construction activities at the Project constitutes violations of Part I. C. 3. c. and Part I. D. 2. of the Permit.

ORDER AND AGREEMENT

27. 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 Department's Complaint for Injunction and Penalties, Case Number: 2008-CV-100, the Division orders Marathon to comply with all provisions of this Consent Order, including all requirements set forth below.

28. Marathon agrees to the terms and conditions of this Consent Order. Marathon 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. Marathon also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Marathon 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.

29. Notwithstanding the above, Marathon does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Marathon pursuant to this Consent Order shall not constitute evidence of fault by Marathon with respect to the conditions of the Project. This Consent Order is entered for the purposes of settling this matter amicably. Marathon expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third-party proceeding relating to the information identified in this Consent Order.

CIVIL PENALTY

30. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Marathon and Enterprise shall pay Two Hundred Eighty Thousand Dollars ($280,000.00) in civil penalties. Marathon and Enterprise desire to resolve the total civil penalty through the payment of Ninety Eight Thousand Dollars ($98,000.00) by Marathon and One Hundred Eighty Two Thousand Dollars ($182,000.00) by Enterprise, as imposed by a separate Consent Order. The Division intends to petition the Executive Director, or his designee, to impose the Two Hundred Eighty Thousand Dollar ($280,000.00) civil penalty for the above violations and Marathon agrees to make the payment of Ninety Eight Thousand Dollars ($98,000.00) 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:

    Michael Harris
    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

31. 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 Department's Complaint for Injunction and Penalties, Case Number: 2008-CV-100.

32. 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 Marathon 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.

33. 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. Any violation of the provisions of this Consent Order by Marathon, 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.

34. Notwithstanding paragraph 29 above, the violations described in this Consent Order will constitute part of Marathon's 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 Marathon. Marathon agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

35. 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 Department's Complaint for Injunction and Penalties, Case Number: 2008-CV-100. 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.

36. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

37. 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.

38. Upon the effective date of this Consent Order, Marathon 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.

39. 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

40. 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: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3598
E-mail: michael.harris@state.co.us

For Marathon:

Ima Turner, Esq
Marathon Oil Company
5555 San Felipe
Houston, TX 77056-2725

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

42. 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

43. This Consent Order is binding upon Marathon 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 MARATHON OIL COMPANY:

_____ Date: 9/29/09

Matthew R. Vezza, Asset Team Manager

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 10/7/09

David A. Akers, Manager
Water Pollution Control Program
WATER QUALITY CONTROL DIVISION