

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
Martha E. Rudolph, 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

January 31, 2011

Randy Maher, President  
American Civil Constructors, Inc.  
4901 S. Windermere St.  
Littleton, CO 80120

**RE: Compliance Order on Consent, Number: SC-110128-1**

Dear Mr. Maher:

Enclosed for American Civil Constructors' 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 42). 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 Michael Harris at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

Russell Zigler, Legal Assistant  
Compliance Assurance Section  
Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Clear Creek County Environmental Health Department  
Jeffrey Rudolph, Registered Agent, American Civil Constructors, Inc., 1601 W. Belleview  
Ave., Littleton, CO 80120

ec: Aaron Urdiales, EPA Region VIII

Doug Camrud, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Michael Beck, OPA  
Michael Harris, Case Person  
Tania Watson, Compliance Assurance, CDPHE



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

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: SC-110128-1**

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**IN THE MATTER OF:      AMERICAN CIVIL CONSTRUCTORS, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-036202**  
**CLEAR CREEK COUNTY, COLORADO**

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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 American Civil Constructors, Inc. (“ACC”). The Division and ACC 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 / Clean-up Order (Number: SO-080314-1) that the Division issued to ACC on March 14, 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 ACC and ACC’s compliance with the Act and a stormwater permit certification for construction.
3. At all times relevant to the alleged violations identified herein, ACC was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
4. ACC is a “person” as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. On or about June 11, 2004, ACC initiated construction activities of the Colorado Forest Highway Project on and along Guanella Pass Road in Clear Creek County, Colorado (the "Project").
6. On March 19, 2004, the Division received an application from ACC for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activities (the "Permit"). During the times relevant to the alleged violations identified herein, two versions of the Permit were in effect: the Permit issued and signed on May 21, 2002 was effective from July 1, 2002 through June 30, 2007 (the "2002 Permit") and the current Permit issued and signed on May 31, 2007 became effective on July 1, 2007 and remains in effect until June 30, 2012 (the "2007 Permit").
7. On April 6, 2004, the Division provided ACC Certification Number COR-036202 authorizing ACC to discharge stormwater from the construction activities associated with the Project to Clear Creek under the terms and conditions of the Permit. Certification Number COR-036202 became effective March 23, 2004 and remained in effect until it was inactivated on June 30, 2008 at ACC's request.
8. Clear Creek 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 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.
10. On November 2, 2006, and September 5, 2007, a representative from PG Environmental, LLC (the "Inspector") conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine ACC's compliance with the Water Quality Control Act and the Permit. During the inspections, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed physical inspections of the Project.

#### **Deficient and/or Incomplete Stormwater Management Plan**

11. Pursuant to Part I. B. of the 2002 and 2007 Permits, ACC 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.
12. Pursuant to Part I. B. of the 2002 Permit and Part I. C. of the 2007 Permit, the Project's SWMP shall include, at a minimum, the following items:
  - a. Site Description - Each plan shall provide a description of the following:
    - i. A description 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. An estimate of the runoff coefficient of the site before and after construction activities are completed (2002 Permit) and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site.
  - 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 any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc.
  - vii. The location and description of any anticipated non-stormwater components of the discharge, such as springs and landscape irrigation return flow (2002 Permit) or allowable sources of non-stormwater discharge at the site, e.g., uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout (2007 Permit).
  - 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 - Each plan shall provide a generalized site map or maps which indicate:
- i. Construction site boundaries.
  - ii. All areas of soil disturbance.
  - iii. Areas of cut and fill.
  - iv. Areas used for storage of building materials, soils or wastes.
  - v. Location of any dedicated asphalt or concrete batch plants.
  - vi. Location of major erosion control facilities or structures. (2002 Permit)
  - vii. Locations of all structural BMPs. (2007 Permit)
  - viii. Locations of all non-structural BMPs. (2007 Permit)
  - ix. Springs, streams, wetlands and other surface waters.
  - x. Boundaries of 100-year flood plains, if determined. (2002 Permit)
- c. BMPs for Stormwater Pollution Prevention - The plan shall include a narrative description of appropriate controls and measures that will be implemented before and during construction activities at the facility, including:
- i. Erosion and Sediment Controls – A description of structural site management controls (Structural Practices) which will minimize erosion and sediment transport and a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.
  - ii. Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs.
  - iii. Materials Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.

- iv. **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.
  - v. **Vehicle Tracking Control (2007 Permit)** – The SWMP shall clearly describe and locate BMPs to control potential sediment discharges from vehicle tracking.
  - vi. **Waste Management and Disposal, Including Concrete Washout (2007 Permit)** – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from all construction site wastes, including concrete washout activities.
  - vii. **Groundwater and Stormwater Dewatering (2007 Permit)** – The SWMP shall clearly describe and locate BMPS to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.
- d. **Final Stabilization and Long-Term Stormwater Management** - Description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.
  - e. **Other Controls (2002 Permit)** - Description of other measures to control pollutants in stormwater discharges, including plans for waste disposal and limiting off-site soil tracking.
  - f. **Inspection and Maintenance** - Description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures identified in the SWMP.
13. The Division determined that ACC failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 13(a–f) below:
- a. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include the location of all pollution sources at the Project, including solvents, sealants, waste storage and the vehicle fueling and washing area at the Project.
  - b. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify all areas used for storage of building materials, including the staging area and its associated activities located at the Geneva Basin Ski Area.
  - c. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify the location of the asphalt batch plant located at the Geneva Basin staging area.
  - d. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify the locations of all structural BMPs at the Project, including the straw wattles observed at Station 28+100 of the Project during the inspection.

- e. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify the locations of all non-structural BMPs at the Project, including the hydromulch observed at Duck Lake Pit at the Project during the inspection.
  - f. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify all potential pollutant sources at the site, including the mobile fueling truck and paint products that were observed at the Geneva Basin Ski Area at the Project during the inspection.
14. ACC's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. of the 2002 Permit and Part I. B. and I. C. of the 2007 Permit.

**Failure to Implement and/or Maintain  
Best Management Practices to Protect Stormwater Runoff**

15. Pursuant to Part I. B. 3. a. (1) of the 2002 Permit and Part I. C. 3. c. (1) of the 2007 Permit, ACC is required to minimize erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
16. Pursuant to Part I. B. 3. a. (2) of the 2002 Permit and Part I. C. 3. c. (2) of the 2007 Permit, ACC is required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation.
17. Pursuant to Part I. D. 2. of the 2007 Permit, ACC is required to select, install, implement, and maintain appropriate BMPs at the Project following good engineering, hydrologic and pollution control practices. Additionally, all BMPs implemented at the site must be designed to provide control for all potential pollutant sources at the site to prevent pollution or degradation of state waters.
18. The Division has determined that ACC failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 18(a-s) below:
- a. During the November 2, 2006 inspection, the Inspector observed a road base stockpile located at a switchback on Guanella Pass Road, approximately one half mile north of mile marker 14 at the Project. No BMPs were observed in place to prevent the road base from discharging from the area during rain or snowmelt events.

- b. During the November 2, 2006 inspection, the Inspector observed a soil stockpile located along the east side of Guanella Pass Road near Duck Lake at the Project. A silt fence was observed down gradient from the stockpile, however, the silt fence did not extend across the stormwater flow line from this area and, thus, was not acting as a functional BMP to prevent pollutant discharges from the stockpile. No other BMPs were observed in place to prevent sediment and soil from discharging from the area during rain or snowmelt events.
- c. During the November 2, 2006 inspection, the Inspector observed silt fencing in place along the east side of Guanella Pass Road near Duck Lake at the Project. The silt fencing was not being maintained to act as a functional BMP however, as several sections of silt fencing had collapsed or were subjected to soil and sediment accumulation of at least half the exposed fabric height.
- d. During the November 2, 2006 inspection, the Inspector observed a soil stockpile located near the intersection of Guanella Pass Road and the entrance to Duck Lake Gravel Pit at the Project. No BMPs were observed in place to prevent pollutants from discharging from the area during rain or snowmelt events.
- e. During the November 2, 2006 inspection, the Inspector observed a portable toilet located near the intersection of Guanella Pass Road and the entrance to Duck Lake Gravel Pit at the Project. No BMPs had been implemented to secure the toilet and prevent it from being knocked or blown over.
- f. During the November 2, 2006 inspection, the Inspector observed disturbed slopes located at the west end of Duck Lake Gravel Pit at the Project. No BMPs were observed in place to stabilize the disturbed slopes and associated flow line or to prevent sediment from discharging from the area during rain or snowmelt events. Consequently, sediment discharge was observed down gradient of the disturbed area at the culvert outlet west of Guanella Pass Road.
- g. During the November 2, 2006 inspection, the Inspector observed a silt fence in place at the southern perimeter of the Geneva Basin staging area at the Project. The silt fence was not being maintained to act as a functional BMP however, as the silt fence had collapsed.
- h. During the November 2, 2006 inspection, the Inspector observed a silt fence in place at the western perimeter of the Geneva Basin staging area at the Project. The silt fence was not being maintained to act as a functional BMP however, as the silt fence had collapsed.
- i. During the September 5, 2007 inspection, the Inspector observed petroleum based roadway emulsion, washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 28+835 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, roadway emulsion, washed rock roadway material, sediment and debris discharge was observed in a drainage ditch and culvert pipe to the west of Guanella Pass Road and directly in South Clear Creek at this location of the Project.

- j. During the September 5, 2007 inspection, the Inspector observed a silt fence in place near Station 28+100 at the Project, near a bridge crossing over South Clear Creek. The silt fence was not being maintained to act as a functional BMP however, as several sections of the silt fence had collapsed.
- k. During the September 5, 2007 inspection, the Inspector observed washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 26+950 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, a significant accumulation of washed rock roadway material, sediment and debris discharge was observed in the culvert inlet and beyond the culvert outlet at this location of the Project.
- l. During the September 5, 2007 inspection, the Inspector observed petroleum based roadway emulsion, washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 24+530 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, roadway emulsion, washed rock roadway material, sediment and debris discharge was observed in the culvert inlet and beyond the culvert outlet at this location of the Project.
- m. During the September 5, 2007 inspection, the Inspector observed washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 20+050 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, a significant accumulation of washed rock roadway material, sediment and debris discharge was observed extending approximately 20 yards west of the roadway in this location of the Project.
- n. During the September 5, 2007 inspection, the Inspector observed sediment and debris from the Guanella Pass roadway and disturbed slopes near Station 18+800 at the Project, adjacent to the Duck Lake Pit, with no BMPs in place to stabilize the disturbed areas or to prevent sediment and debris from discharging from the area during rain or snowmelt events. Consequently, erosion of the disturbed slopes was observed. Additionally, sediment and debris discharge was observed within and beyond a nearby culvert outlet located west of Guanella Pass Road – the same culvert outlet described in paragraph 16f above.
- o. During the September 5, 2007 inspection, the Inspector observed concrete waste near Station 18+800 and at the Geneva Basin staging area at the Project with no BMPs in place to prevent discharges of the concrete waste material during rain or snowmelt events.

- p. During the September 5, 2007 inspection, the Inspector observed diesel fuel that had leaked onto the ground and was actively leaking from a mobile fueling and lubricants truck at the Geneva Basin staging area at the Project. No BMPs were in place or were being utilized to prevent or contain the leak, clean up to the spilled pollutants, or prevent the diesel fuel from discharging to Duck Creek, which was located approximately 60 yards west and down gradient from the spill.
  - q. During the September 5, 2007 inspection, the Inspector observed paint products and grout mix that were being stored outside, uncovered, with no BMPs in place to prevent stormwater from intermingling with the pollutants prior to discharging from the area.
  - r. During the September 5, 2007 inspection, the Inspector observed soil and material stockpiles located at the Geneva Basin staging area. A silt fence was in place around the perimeter of the stockpiles, however, the silt fence was being maintained to act as a functional BMP, as a section of the silt fence had collapsed. No other BMPs were in place to prevent pollutants from discharging to Duck Creek, which was located approximately 15 yards west and down gradient from the stockpiles.
  - s. During the September 5, 2007 inspection, the Inspector observed washed rock roadway material that had been placed along the entire length of Guanella Pass Road near Station 28+835 at the Project. No BMPs were observed in place to prevent the washed rock roadway material from discharging to South Clear Creek, which is located approximately 10 feet from Guanella Pass Road in this area of the Project. Consequently, the deposition of washed rock roadway material was observed immediately adjacent to South Clear Creek.
19. ACC's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. 3. a. of the 2002 Permit and Part I. C. 3. c. and Part I. D. 2. of the 2007 Permit.

#### **Failure to Conduct Inspections of Stormwater Management System**

- 20. Pursuant to Part I. C. 5. a. of the 2002 Permit, for active sites where construction has not been completed, ACC is required to make a thorough inspection of the Project's stormwater management system at least every 14 days and after any precipitation or snowmelt event that causes surface erosion.
- 21. During the September 5, 2007 inspection, the Inspector reviewed the Project's stormwater management system records and identified that ACC failed to inspect the Project from October 6, 2006 through June 7, 2007.
- 22. ACC's failure to conduct inspections of the Project's stormwater management system in accordance with the provisions of the Permit constitutes violations of Part I. C. 5. a. of the Permit

### **Discharge Without a Permit**

23. Pursuant to §25-8-501(1) C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
24. Pursuant to 5 CCR 1002-65, §65.2(1), no person shall discharge any pollutant, except for pollutants in naturally-occurring stormwater, from a point source that flows to a storm sewer without first having obtained a permit for such discharge from the Division.
25. During the September 5, 2007 inspection, the Inspector observed active pressure washing activities at Station 24+900 at the Project. A citrus based cleaner was being used to remove petroleum based roadway emulsion from the newly installed curb line. Wastewater from the pressure washing activities was observed flowing down the curb line and discharging to a storm drain inlet that is directly connected to South Clear Creek.
26. Citrus based cleaner and petroleum based roadway emulsion are “pollutants” as defined by §25-8-103(15) and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
27. South Clear Creek 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).
28. ACC’s pressuring washing operation, consisting of a truck mounted pressure washer, hose, and high pressure sprayer, is a “point source” as defined by §25-8-103(14) and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
29. ACCs discharge of pressure washing wastewater into South Clear Creek constitutes a “discharge of pollutants” as defined by §25-8-103(3) C.R.S.
30. Division records establish that ACC does not have any permits authorizing the discharge of pollutants described in paragraphs 23-27 above.
31. ACCs discharge of pollutants from the pressure washing activities at the Project to state waters without a permit constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a) and 5 CCR 1002-65, §65.2(1).

### **ACC’s Position on Alleged Violations**

32. ACC disagrees and/or adds the following comments with respect to the Division’s determinations in Paragraph 13 (b). ACC submits that the SWMP did in fact contain a map of the Geneva Basin Ski Area, the dedicated staging area for the project. The staging area boundaries as depicted on the plan was clear to ACC and all associated personnel, but not clear to the Division’s inspector. Immediately following the inspection, ACC better depicted the staging area boundaries.

33. ACC disagrees and/or adds the following comments with respect to the Division's determinations in Paragraphs 18 (a-s).
- a. Regarding paragraphs 18 (c, g, h, j, o, q, and r), ACC respectfully submits that it is committed to the correct implementation of the SWMP, minimizing discharge from the construction site; ultimately improving the environment that the project was in part funded for. The alleged violation(s) were isolated incidents over the course of a 4 year project. During the course of the normal inspection process, needed BMP repairs had been noted and were scheduled for upkeep within the allotted permit timeframe given for BMP maintenance. Following the Division inspection, ACC either immediately added, fixed, and/or removed the BMP's as necessary. ACC is unaware of any pollutant discharge to adjacent waterways and/or environmental damage as related to the alleged violation(s).
  - b. Regarding paragraph 18 (a), ACC submits that the road base stockpile noted was actually a windrow of material being placed on the roadway. Adequate BMPs in the form of silt fence were located beneath the MSE wall in this area.
  - c. Regarding paragraph 18 (b), ACC submits that the stockpile noted was actually material temporarily placed due to a truck being loaded with the wrong material. This material was removed from this location the same day and placed in the Duck Lake Pit fill operations.
  - d. Regarding paragraph 18 (d), ACC submits that the aggregate stockpile was contained by a sediment trap constructed on the down-gradient side of the Duck Lake Pit.
  - e. Regarding paragraph 18 (e), ACC submits that the portable restroom in question had just been recently moved from its designated staked location to provide access for pick up the same day.
  - f. Regarding paragraph 18 (f), ACC submits that the slopes were contained by a sediment trap constructed on the down-gradient side of the Duck Lake Pit.
  - g. Regarding paragraphs 18 (i, j, k, l, m, n, and s), ACC submits that the roadway in these areas was constructed as designed and permanently stabilized per the project specifications at the time of the inspection. ACC cannot be held liable for alleged violations at the Project that resulted from the road construction specifications mandated by the Federal Highway Administration ("FHWA") based on the doctrine of federal pre-emption. Specifically, the placement of washed rock roadway material along sections of the Guanella Pass Road was a construction requirement mandated by the FHWA. This project was subjected to extensive federal environmental requirements prior to initiation pursuant to the requirements of the National Environmental Policy Act ("NEPA"). The NEPA review process lead to the conclusion that placement of washed rock roadway material as a final condition on sections of Guanella Pass Road was not an environmentally harmful activity. To the contrary, placement of washed rock roadway material along portions of Guanella was

deemed to be less environmentally harmful than simply paving the entire length of Guanella Pass Road. ACC was not at liberty to construct the road in a fashion other than that dictated by the FHWA. The road was required to be constructed with a specific crown elevation so that it would drain properly. The road is located at an elevation in a part of the State in which severe erosive conditions occur naturally, and this erosion cannot be prevented or controlled by placement of "BMP's" that would interfere with animal movement, aesthetics, road safety, and drainage. In all circumstances, no pollutant was found to have been discharged from the project site. ACC is unaware of any pollutant discharge to adjacent waterways and/or environmental damage as related to the alleged violation(s).

- h. Regarding paragraph 18 (p), ACC had in place adequate BMP's for spill prevention and response plan at the time of the inspection. ACC immediately implemented appropriate spill response, which consequently was the same day of the inspection, upon discovery of the spill resulting in no discharge to any adjacent waterways or any environmental harm.
34. Regarding paragraphs 20-22, ACC submits that Guanella Pass road was seasonally closed due to winter conditions and inaccessible to conduct the required inspections. ACC has since revised its practices to include the proper documentation of such conditions within the SWMP as appropriate.
35. Regarding paragraphs 23-31, ACC ceased pressure washing activities upon notice by the Inspector, and no further pressure washing activities occurred at the site. ACC & Federal Highway Administration personnel cleaned/investigated the cited storm drain inlet finding no evidence of any discharge from the project site.
36. The Division finds that ACC's position statement is not consistent with the information gathered in the course of the Division's inspections and investigation of the incidents described herein and the inclusion of ACC's position statement in this order should not be construed to constitute any admission or agreement by the Division as to the content of the position statement

### **ORDER AND AGREEMENT**

37. 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 / Clean-up Order (Number: SO-080314-1), the Division orders ACC to comply with all provisions of this Consent Order, including all requirements set forth below.
38. ACC agrees to the terms and conditions of this Consent Order. ACC 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. ACC also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by ACC 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.

39. Notwithstanding the above, ACC does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by ACC pursuant to this Consent Order shall not constitute evidence of fault and liability by ACC with respect to the conditions of the Project.

**CIVIL PENALTY**

40. 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, ACC shall pay Seventy Five Thousand Dollars (\$75,000.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Seventy Five Thousand Dollar (\$75,000.00) civil penalty for the above violation(s) and ACC agrees to make the payment through six (6) installment payments as described in the table below:

<b>Payment</b>	<b>Amount</b>	<b>Due Date</b>
1	\$12,500.00	Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or her designee
2	\$12,500.00	September 1, 2011
3	\$12,500.00	March 1, 2012
4	\$12,500.00	September 1, 2012
5	\$12,500.00	March 1, 2013
6	\$12,500.00	September 1, 2013

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-CAS-B2  
 4300 Cherry Creek Drive South  
 Denver, Colorado 80246-1530

**SCOPE AND EFFECT OF CONSENT ORDER**

41. 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 March 14, 2008, Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-080314-1).

42. 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 ACC 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.
43. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by ACC, 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.
44. Notwithstanding paragraph 39 above, the violations described in this Consent Order will constitute part of ACC'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 ACC. ACC agrees not to challenge the use of the cited violations for any such purpose.

#### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

45. 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 March 14, 2008, Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-080314-1). 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.
46. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
47. 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.
48. Upon the effective date of this Consent Order, ACC 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.
49. 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

50. 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-CAS-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 ACC:

Randy Maher, President  
American Civil Constructors  
4901 S. Windermere St.  
Littleton, CO 80120  
Telephone: 303.795.2582  
Fax: 303.347.1844

## MODIFICATIONS

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

## NOTICE OF EFFECTIVE DATE

52. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or [his or her] designee imposes the civil penalty following closure of the public comment period referenced in paragraph 42. 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

53. This Consent Order is binding upon ACC and its corporate subsidiaries or parents, their officers, directors, 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 AMERICAN CIVIL CONSTRUCTORS, INC.:**

*Randy Maher* Date: 1-10-11  
Randy Maher, President

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:**

*Lori M. Gerzina* Date: 1/28/11  
Lori M. Gerzina, Manager  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION