

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

June 10, 2010

Mr. David Spiranac
FMI Security Commons, LLC
8610 Explorer Drive
Colorado Springs, Colorado 80920

RE: Compliance Order on Consent, Number: SC-100610-1

Dear Mr. Spiranac:

Enclosed for FMI Security Commons, LLC'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 Joe Campbell at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,

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

Enclosure(s)

cc: El Paso County Department of Health and Environment

ec: Aaron Urdiales, EPA Region VIII
Kelsey Baertschi, Engineering Section, CDPHE
Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Nathan Moore, Permits Section, CDPHE
Michael Beck, OPA



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

COMPLIANCE ORDER ON CONSENT

NUMBER: SC-100610-1

IN THE MATTER OF: FMI SECURITY COMMONS, LLC
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A812
EL PASO 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 FMI Security Commons, LLC (“FMI”). The Division and FMI 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 the alleged violations cited herein and in the April 14, 2009 Notice of Violation / Cease and Desist Order (Number: SO-090414-2).

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 FMI, the Facility and FMI’s compliance with the Act and its permit.
3. At all times relevant to the violations cited herein FMI was a Colorado Limited Liability Company in good standing and registered to conduct business in the state of Colorado.
4. FMI 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. On December 6, 2006, FMI initiated construction activities to build a multi-family residential development on 7.577 acres of property located at or near the cross streets of Cortez Drive and Hallam Avenue in or near the Town of Security, El Paso County, Colorado (the “Project”).

6. On September 22, 2006, the Division received an application from FMI for Project coverage under the Colorado Discharge Permit System (“CDPS”) General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the “Permit”). During the times relevant to the alleged violations identified herein, a version of the Permit was in place that was effective from July 1, 2002 through June 30, 2007 (the “2002 Permit”). The current version of the Permit, which was signed on May 31, 2007, became effective on July 1, 2007 and remains in effect until June 30, 2012 (the “2007 Permit”).
7. On September 26, 2006, the Division provided FMI Certification Number COR-03A812 authorizing FMI to discharge stormwater from the construction activities associated with the Project to Security Creek and Fountain Creek under the terms and conditions of the Permit. Certification Number COR-03A244 became effective September 26, 2006 and remains in effect until June 30, 2012 or until FMI inactivates Permit coverage.
8. Security Creek and Fountain 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).
9. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all 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 April 17, 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 FMI’s compliance with the Act and the Permit. During the inspection the Inspector interviewed Project representatives, conducted a review of the Project’s stormwater management system records, and performed a physical inspection of a portion of the project.
11. The Division acknowledges that FMI timely and satisfactorily performed all of the obligations and actions required under the April 14, 2009, Notice of Violation / Cease and Desist Order (Number: SO-090414-2).

Deficient and/or Incomplete Stormwater Management Plan

12. Pursuant to Part I. B. of the 2002 Permit, FMI was required to prepare and maintain a Stormwater Management Plan (“SWMP”) in accordance with good engineering, hydrologic, and pollution control practices. The SWMP is required to identify all 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 Best Management Practices (“BMPs”) at the Project, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
13. Pursuant to Part I. B. 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, soil, or waste.
 - 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.

14. During the April 17, 2007 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 14(a-f) below:

- a. The section in the SWMP on Site Description did not identify all locations and descriptions of other potential pollution sources identified for the Project as required by Part I.B.1.f of the 2002 Permit. For example, as provided by Randy Tate (Field Manager, Silver Ridge

Development), a mobile fueling truck had been used for equipment fueling but this practice was not described in the SWMP.

- b. The Site Map did not identify the construction site boundaries as required by Part I.B.2 of the 2002 Permit. For example, silt fence was identified encompassing the perimeter of the site, but was not representative of the construction site boundary.
 - c. The Site Map did not identify all areas of soil disturbance as required by Part I.B.2 of the 2002 Permit. Specifically, the site map did not depict the entire site would be exposed at the time of inspection.
 - d. The Site Map did not identify all areas used for storage of building materials, soils, or wastes as required by Part I.B.2 of the 2002 Permit. Specifically, the site map did not include the staging area/trailer associated with construction activities or the soil stockpile near the intersection of Red Pass Point and Silver Star Grove.
 - e. The Site Map did not identify all areas used for wastes as required by Part I.B.2 of the 2002 Permit. Specifically, the site map did not indicate the concrete washout located in the center of the construction site.
 - f. The section in the SWMP on BMPs for Stormwater Pollution Prevention did not identify procedures or significant materials that could contribute pollutants to runoff as required by Part I.B.2 of the 2002 Permit. For example, the mobile fueling source to fuel machinery used on site was not identified as a potential pollutant source.
15. The Division has determined that FMI failed to prepare and maintain a complete SWMP for the Project which constitutes a violation of Part I.B. of the 2002 Permit.

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

16. Pursuant to Part I. B. 3. a. (1) of the 2002 Permit, FMI 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, 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.
17. Pursuant to Part I. B. 3. a. (2) of the 2002 Permit, FMI is required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. 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.
18. The Division determined that FMI failed to implement and/or maintain functional BMPs at each of the projects as described in paragraphs 18(a – d) below.
- a. During the April 17, 2007 inspection, it was observed during the inspection that adequate BMPs were not implemented to prevent the discharge of sediment into a western flowing drainage canal along the western perimeter of the construction site. As provided by Larry Syslo (Inspection Supervisor, El Paso County), the drainage canal ultimately discharges to Fountain Creek (State Waters). As provided by Randy Tate (Field Manager, Silver Ridge Development), this water was being drained from a low-lying area near the center of the construction site via a submerged, four-inch diameter pipe. As a result a visible discharge of

sediment into the drainage canal was observed.

- b. During the April 17, 2007 inspection, it was observed during the inspection that adequate BMPs were not implemented to prevent the discharge of sediment into a western flowing drainage canal along the western perimeter of the construction site. As provided by Larry Syslo (Inspection Supervisor, El Paso County), the drainage canal ultimately discharges to Fountain Creek (State Waters). Specifically, BMPs were not installed to prevent the discharge of sediment from an expanse of disturbed land via a curb and gutter system leading to the drainage canal. As a result there was a potential for the discharge of sediment to the drainage canal.
 - c. During the April 17, 2007 inspection, it was observed during the inspection that adequate BMPs were not properly maintained at the vehicle tracking control pad, located at the construction trailer entrance off of Cortez Drive. Sediment was visible in the rock pad and the rock had become thin and sparse. As a result there was a potential for sediment to be transported to Cortez Drive.
 - d. During the April 17, 2007 inspection, it was observed during the inspection that adequate BMPs were not adequately maintained at the northeastern corner of the construction site. Specifically, sediment and debris had accumulated to half the exposed height of the silt fence. As a result there was a potential for sediment to be transported to Cortez Drive.
19. FMI's failures to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitute violations of Part I.B.3.a of the 2002 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, FMI is required to make thorough inspections of its stormwater management systems at least every 14 days and after any precipitation or snowmelt event that causes surface erosion.
21. Pursuant to Part I. C. 5. b. of the 2002 Permit, for sites where all construction activities are completed but final stabilization has not been achieved, FMI is required to make thorough inspections of its stormwater management systems at least once every month.
22. The Division determined that FMI failed to properly conduct inspections of its stormwater management systems at the projects described in paragraphs 22(a) below:
- a. During the April 17, 2007 inspection of the project, the Inspector reviewed the stormwater management system inspection records and found them to be inadequate as they were not conducted at the required frequency specified in Part I.C.5 of the Permit. Inspection records were not available from December 6, 2006 to March 5, 2007, or eighty-nine (89) days.
23. FMI'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.

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: SO-090414-2), the Division orders FMI to comply with all provisions of this Consent Order, including all requirements set forth below.

25. FMI agrees to the terms and conditions of this Consent Order. FMI 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. FMI also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by FMI 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, FMI does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by FMI pursuant to this Consent Order shall not constitute evidence of fault and liability by FMI with respect to the conditions of the Project.

CIVIL PENALTY

27. 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, FMI shall pay Eighteen Thousand Three Hundred and Fifteen Dollars and Sixty cents (\$18,315.60) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Eighteen Thousand Three Hundred and Fifteen Dollars and Sixty cents (\$18,315.60) civil penalty for the above violation(s) and FMI agrees to make the payment through three (3) installment payments as described in the table below:

Payment	Amount	Due Date
1	\$6,105.20	Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or her designee
2	\$6,105.20	Within sixty (60) calendar days of issuance of a Penalty Order by the Executive Director or her designee
3	\$6,105.20	Within ninety (90) calendar days of issuance of a Penalty Order by the Executive Director or her designee

Method of payment shall be by certified or cashier’s check, wire transfer, or business check drawn to the order of the “Colorado Department of Public Health and Environment,” and delivered to:

Joe Campbell
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-B2-CAS
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 April 14, 2009 Notice of Violation / Cease and Desist Order (Number: SO-090414-2).
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 FMI each reserve the right to withdraw consent to this Consent Order if comments received during the thirty (30) 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 her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by FMI, 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 FMI'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 FMI. FMI 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 April 14, 2009 Notice of Violation / Cease and Desist Order (Number: SO-090414-2). 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, FMI 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.

NOTICES

36. 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: Joe Campbell
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.2356
E-mail: joseph.campbell@state.co.us

For FMI:

FMI Security Commons, LLC
Attention: David Spiranac
8610 Explorer Drive
Colorado Springs, Colorado 80920
E-mail: DMSpiranac@rubiconalliance.com

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

38. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her 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

39. This Consent Order is binding upon FMI 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. FMI agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of 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.

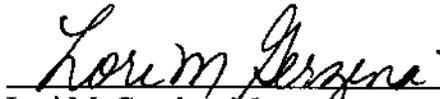
FOR FMI SECURITY COMMONS, LLC:



Date: 06-01-2010

David M. Spiranac
FMI Security Commons, LLC

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Date: 06/10/10

Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION