

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

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

August 29, 2012

Mr. Joe Ricci, Registered Agent
Rocky Mountain Materials and Asphalt, Inc.
1910 Rand Ave.
Colorado Springs, CO 80906

Certified Mail Number: 7012 1010 0002 1774 3200

RE: Order for Civil Penalty, Number: SP-120829-1

Dear Mr. Ricci:

Rocky Mountain Materials and Asphalt, Inc. is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Russell Zigler, Legal Assistant
Water Pollution Control Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Tom Gonzalez, El Paso County Public Health EC Division
Natasha Davis, EPA Region VIII
Joe Talbott, Engineering Section, CDPHE
Nathan Moore, Permits Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Michael Harris, Case Lead
Tania Watson, Compliance Assurance, CDPHE
John Chavez, MS4 Contact



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

ORDER FOR CIVIL PENALTY

NUMBER: SP-120829-1

IN THE MATTER OF: ROCKY MOUNTAIN MATERIALS AND ASPHALT, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A246
EL PASO COUNTY, COLORADO

This matter comes before the Executive Director of the Colorado Department of Public Health & Environment on petition by the Water Quality Control Division for a civil penalty against Rocky Mountain Materials and Asphalt, Inc. (“RMM”). The Executive Director, through his designee (hereinafter the “Executive Director”), having considered this petition, makes the following findings and issues the following Order for Civil Penalty in accordance with §25-8-608, C.R.S., and 5 CCR 1002-21, §21.12.

GENERAL FINDINGS

1. Pursuant to §25-8-608(1), C.R.S., any person who violates the Colorado Water Quality Control Act (the “Act”), or any permit issued under the Act, shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.
2. On November 10, 2008, the Division issued RMM a Notice of Violation / Cease and Desist Order (the “NOV/CDO”), which included findings that RMM violated a permit issued under the Act. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
3. On December 15, 2008, RMM appealed the NOV/CDO. That appeal is pending.
4. On March 1, 2011, and after several months of unsuccessful settlement discussions, the Division issued RMM Amendment Number One to the NOV/CDO. A copy of Amendment Number One to the NOV/CDO is attached hereto as Exhibit B and is incorporated herein by reference.
5. On March 24, 2011, RMM appealed Amendment Number One to the NOV/CDO. That appeal is pending.

ORDER FOR CIVIL PENALTY

6. Based upon the facts described in the NOV/CDO and Amendment Number One to the NOV/CDO, the Executive Director has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of One Hundred Thirteen Thousand Eight Hundred Ninety Five Dollars (\$113,895.00) against RMM for the violations cited in the NOV/CDO and Amendment Number One to the NOV/CDO. The civil penalty was determined in accordance with the procedures outlined in the Division's *Stormwater Civil Penalty Policy* (January 25, 2007). A copy of the civil penalty calculation is attached hereto as Exhibit C and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty. 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

REQUEST FOR APPEAL

7. Pursuant to 5 CCR 1002, §21.12(B) and 5CCR 1002, §21.4(A)(3)(b), an appeal of the determination of the civil penalty by the Executive Director shall be made in writing to the Division. Requests for such an appeal should be made in accordance with 5 CCR 1002, §21.12(B), shall be filed no later than thirty (30) calendar days after issuance of this action, and shall include the information specified in 5 CCR 1002, §21.4(B)(2).
8. Any appeal of this Order for Civil Penalty will be consolidated with the appeals regarding the NOV/CDO and Amendment Number One to the NOV/CDO.

Issued at Denver, Colorado, this 29th day of August 2012.



Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-081110-1

IN THE MATTER OF: ROCKY MOUNTAIN MATERIALS AND ASPHALT, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A246
EL PASO COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Rocky Mountain Materials and Asphalt, Inc. ("RMM") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. RMM 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).
3. In or about June 2006, RMM initiated construction of a road development project on sixty five (65) acres of property located at or near Baptist Road and Interstate 25, in on near the Town of Monument, El Paso County, Colorado (the "Project").
4. On June 7, 2006, the Division received an application from RMM for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
5. On June 13, 2006, the Division provided RMM Certification Number COR-03A246 authorizing RMM to discharge stormwater from the construction activities associated with the Project to Jackson Creek and Monument Creek under the terms and conditions of the Permit. Certification Number COR-03A246 became effective June 13, 2006 and remained in effect until it was inactivated on November 4, 2008 at the request of RMM.

Exhibit A

6. Jackson Creek and Monument 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).
7. 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.
8. On April 16, 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 RMM's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed a physical inspection of the Project.

Deficient and/or Incomplete Stormwater Management Plan

9. Pursuant to Part I. B. of the Permit, RMM was required to prepare and maintain a Stormwater Management Plan ("SWMP") that identified Best Management Practices ("BMPs") that, when implemented, would meet the terms and conditions of the Permit. The SWMP was 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 was required to describe and ensure the implementation of BMPs, which would be used to reduce the pollutants in stormwater discharges associated with construction activity.
10. Pursuant to Part I. B. of the 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 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 or allowable sources of non-stormwater discharge at the site.
 - 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).

Exhibit A

- 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.
 - vii. Springs, streams, wetlands and other surface waters.
 - viii. Boundaries of 100-year flood plains, if determined.
 - 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.
 - 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** - 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.
11. The Division has determined that RMM failed to prepare and maintain a complete and accurate SWMP for the Project, as described in paragraphs 11(a-f) below:
- a. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas used for the storage of building materials, soils or wastes.
 - b. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the construction site boundaries, areas of soil disturbance or areas of cut and fill.

Exhibit A

- c. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the location of major erosion control facilities or structures.
 - d. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include dedicated asphalt or concrete batch plants.
 - e. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the locations of springs, streams, wetlands and other surface waters, or the boundaries of the 100-yr flood plain.
 - f. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.
12. RMM's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. of the Permit.

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

13. Pursuant to Part I. B. 3. a. (1) of the Permit, RMM was 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.
14. Pursuant to Part I. B. 3. a. (2) of the Permit, RMM was 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.
15. The Division has determined that RMM failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 15(a-i) below:
- a. During the April 16, 2007 inspection, the Inspector observed a disturbed area located at the intersection of Baptist Road and Jackson Creek Parkway at the Project, directly adjacent to Jackson Creek. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging to Jackson Creek during storm events.
 - b. During the April 16, 2007 inspection, the Inspector observed a disturbed area located along the southern portion of New Strauthers Road at the Project. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging to the storm sewer drop inlet located within the disturbed area. Consequently, sediment and debris was observed in the storm sewer drop inlet.

Exhibit A

- c. During the April 16, 2007 inspection, the Inspector observed a disturbed slope located along the southern portion of New Strauthers Road, north of Spanish Bit Road at the Project. No BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging from the area. Consequently, significant erosion and gulley formation was observed along the unstabilized slope and in the adjacent drainage ditch. Additionally, sediment discharge was observed at the toe of the slope and in a down gradient culvert pipe.
 - d. During the April 16, 2007 inspection, the Inspector observed a disturbed slope located along the northern portion of New Strauthers Road at the Project. No BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging from the area.
 - e. During the April 16, 2007 inspection, the Inspector observed disturbed slopes located on the north side of Baptist Road, between Jackson Creek Parkway and Leather Chaps Drive at the Project. No BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging from the area. Consequently, significant erosion and rill formation was observed on the disturbed slopes.
 - f. During the April 16, 2007 inspection, the Inspector observed a disturbed slope located on the north side of Baptist Road, west of Kingswood Drive at the Project. No BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging from the area. Consequently, significant erosion and gully formation was observed, along with sediment discharge to the down gradient drop structure drainage channel, which functions as an erosion control device for the channel, not as a sediment trap for up gradient disturbed soils.
 - g. During the April 16, 2007 inspection, the Inspector observed disturbed slopes adjacent a drainage ditch running parallel to the south side of Baptist Road at the Project. No BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging to the drainage ditch. Soil check dams were in place in the channel, however, the check dams were not stabilized to prevent erosion, and the check dams were not sized or spaced in accordance with good engineering practices.
 - h. During the April 16, 2007 inspection, the Inspector observed a culvert outlet located at the corner of Baptist Road and Gleaneagle Drive at the Project. No BMPs were observed in place to stabilize the area surrounding the culvert outlet or to prevent sediment from discharging from the area. Consequently, significant erosion and scouring of the disturbed area below the outlet was observed.
 - i. During the April 16, 2007 inspection, the Inspector observed a disturbed area surrounding a spring fed drainage ditch located at the intersection of Baptist Road and Gleneagle Drive at the Project. No BMPs were observed in place to stabilize the disturbed area and slopes surrounding the drainage ditch. Consequently, erosion of the disturbed area was observed.
16. RMM'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 Permit.

Exhibit A

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined RMM has violated the following sections of the Permit:

Part I. B. of the Permit, which states in part, “The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. The main objective of the plan shall be to identify Best Management Practices (BMPs) which when implemented will meet the terms and conditions of this permit. The plan shall identify potential sources of pollution (including sediment) which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the facility. In addition, the plan shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharges associated with construction activity. Construction operations must implement the provisions of the SWMP required under this part as a condition of this permit.”

Part I. B. 3. a. of the Permit, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment controls, including “structural site management practices which will minimize erosion and sediment transport,” and “interim and permanent stabilization practices, including site specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where possible and that disturbed areas are stabilized.”

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §§25-8-602 and 25-8-605, C.R.S., RMM is hereby ordered to:

17. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders RMM to comply with the following specific terms and conditions of this Order:

18. Within thirty (30) calendar days of receipt of this Order, RMM shall submit to the Division a detailed written statement outlining the standard procedures RMM will undertake to ensure that functional stormwater management systems, including erosion and sediment controls for all disturbed areas, are fully implemented at its Colorado construction sites.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation / Cease and Desist Order, RMM shall submit an original and an electronic copy to the Division at the following address:

Exhibit A

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance and Data Management Section
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
michael.harris@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Exhibit A

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

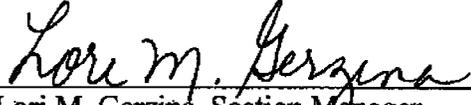
EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 10th day of November, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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



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

AMENDMENT NUMBER ONE

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-081110-1

IN THE MATTER OF: ROCKY MOUNTAIN MATERIALS AND ASPHALT, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A246
EL PASO COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602, 25-8-605 and 25-8-606, C.R.S., the Division hereby issues the following Amendment Number One to its original Notice of Violation / Cease and Desist Order, Number: SO-081110-1 ("NOV/CDO").

GENERAL FINDINGS

1. On November 10, 2008, the Division issued the NOV/CDO to Rocky Mountain Materials and Asphalt, Inc. ("RMM") citing violations of the Colorado Discharge Permit System General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit"), including a failure to prepare and maintain a complete and accurate Stormwater Management Plan ("SWMP") for RMM's construction project. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
2. On December 10, 2008, and in response to the NOV/CDO, Quality submitted a response to the NOV/CDO and copies of its SWMP, including copies of various site maps that had not been presented to the Division's inspector at the time of the April 16, 2007 inspection.
3. After reviewing the submitted SWMP and site maps, the Division has determined the following revisions to the NOV/CDO are appropriate:

Exhibit B

AMENDMENT NUMBER ONE

4. Paragraph 9.a. is added, which reads as follows, “9.a. Pursuant to Part I. C. 4. b. of the Permit, RMM was required to amend the SWMP whenever there was a significant change in design, construction, operation, or maintenance at the Project, or if the SWMP proved to be ineffective in controlling pollutants.”
5. Paragraph 11, is superseded and replaced with the following, “11. The Division has determined that RMM failed to prepare and maintain a complete and accurate SWMP for the Project, as described in paragraphs 11(a-g) below:”
6. Paragraphs 11.a. – 11.f. are superseded and replaced with the following, which includes new paragraph 11.g.:
 - a. “11.a. The SWMP included two site map documents that were dated 1/23/06 – sheet numbers EC01 and EC03. Sheet numbers EC01 and EC03 represented conditions that would be present at final build out and grade, but did not include any amendments or edits to account for changes as the Project progressed through the various phases of construction, operation, and maintenance.”
 - b. “11.b. The SWMP included eight site map documents that had a ‘last modification date’ of 12/1/05 – sheet numbers 77, 78, 79, 80, 81, 82, 83, and 84. Sheet numbers 77-84 represented conditions that would be present at final build out and grade. Sheet number 78 included a notation dated 7/1/06, indicating ‘New Wetlands Area.’ Sheet number 79 included a notation dated 10/1/06, indicating ‘Staging and Storage Area.’ Aside from these two notations, sheet numbers 77-84 did not include any other amendments or edits to account for changes as the Project progressed through the various phases of construction, operation, and maintenance.”
 - c. “11.c. The site maps did not indicate construction site boundaries.”
 - d. “11.d. The site maps did not indicate all areas of soil disturbance.”
 - e. “11.e. The site maps did not indicate areas of cut and fill.”
 - f. “11.f. The SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.”
 - g. “11.g. Section 3.8 of the SWMP, titled ‘Receiving Waters,’ identifies three wetlands on the Project. However, the site maps only include one wetland on sheet number 79.”
7. The NOTICE OF VIOLATION section is revised to reflect the addition of Paragraph 9.a. A new paragraph is added to the end of the section, which reads as follows, “Part I. C. 4. b. of the Permit, which states, ‘The permittee shall amend the plan whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State, or if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity.’”

Exhibit B

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are required to submit to the Division an answer affirming or denying the findings in paragraphs 4, 5, and 6(a-g) of this Amendment Number One to the NOV/CDO. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

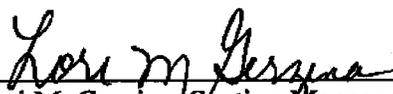
Section 25-8-603, C.R.S. and 5 CCR 1002, § 21.11 also state that you may request the Division to conduct a public hearing to determine the validity of this Amendment Number One to the NOV/CDO. The Division is aware that you previously submitted a request for a hearing to contest certain findings and violations cited in the original NOV/CDO. In order to contest any of the findings or violations cited in this Amendment Number One, you must file a separate request for a hearing. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002-21, § 21.4(B)(2). The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. In such event, the Division would schedule a hearing to deal with the issues you contest from both the original NOV/CDO and this Amendment Number One. If you do not file a separate request for hearing regarding this Amendment, the validity of the factual allegations and the violations cited herein shall be deemed established in any subsequent Department proceeding. In such case, the adjudicatory hearing which you previously requested would be limited to the findings of fact and violations that you denied from the original NOV/CDO. The filing of an answer does not constitute a request for hearing.

SCOPE OF AMENDMENT NUMBER ONE

The scope of this Amendment Number One to the NOV/CDO is limited to the revisions outlined above. All other terms and conditions of the NOV/CDO shall remain unchanged and in effect.

Issued at Denver, Colorado, this 29th day of February, 2011.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

Exhibit C

STORMWATER PENALTY COMPUTATION WORKSHEET

System Name: Rocky Mountain Materials and Asphalt, Inc.	Permit Number: COR-03A246
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Beneficial Use Classification: Fountain Creek Segment 4 – <i>Aq Life Warm 2</i> , Recreation E, Agriculture	Date of NOV/CDO: November 10, 2008 Number: SO-081110-1
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Type of Facility: Construction	Disturbed Acres: 65 Number of Employees: N/A
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Part I – Base Penalty Calculation

A. Potential Damage Component

	Violation Type	Adjustment	Amount in Dollars
Line 1	Conducting Covered Activity Without A Stormwater Permit <i>Adjustment Justification:</i>		\$0.00
Line 2	Failure to Prepare Stormwater Management Plan (SWMP) <i>Adjustment Justification:</i>		\$0.00
Line 3	Deficient Stormwater Management Plan (SWMP) <i>Adjustment Justification:</i> The Division reviewed the SWMP and identified deficiencies in the development of the plan, including a failure to identify the relationship between the phases of construction and the implementation of control measures and a failure to have complete and accurate site maps. The Division believes the lack of planning and phasing directly contributed to the BMP violations observed onsite. The site is located directly in and adjacent to state waters. The main pollutant of concern on the site (sediment) is one of the leading causes of water quality impairment in the U.S. (according to EPA's 2002 Water Quality Inventory Report) and is a primary carrier of adsorbed chemicals, heavy metals, phosphorus and nitrogen. Therefore, the Division conservatively assigns a moderate/major potential harm to health/environment.	Moderate/Major = \$400 + 50%	\$600.00
Line 4	Failure to Install, Maintain or Properly Select Best Management Practices <i>Adjustment Justification:</i> The Division conducted an inspection of the project and identified a failure to implement and maintain BMPs at the site. The number of counts of violation was relatively many. Some of the violations were located directly in and adjacent to state waters and drainage conveyances that lead to state waters. Significant erosion and sediment movement was documented. The main pollutant of concern on the site (sediment) is one of the leading causes of water quality impairment in the U.S. (according to EPA's 2002 Water Quality Inventory Report) and is a primary carrier of adsorbed chemicals, heavy metals, phosphorus and nitrogen. Therefore, the Division conservatively assigns a moderate/major potential harm to health/environment.	Moderate/Major = \$2000 + 50%	\$3,000.00

Exhibit C

	Violation Type	Adjustment	Amount in Dollars
Line 5	Failure to Perform Inspections of Stormwater Management System		\$0.00
	<i>Adjustment Justification:</i>		
Line 6	Failure to Submit Required/ Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.)		\$0.00
	<i>Adjustment Justification:</i>		
Line 7	Failure to Maintain Required Records		\$0.00
	<i>Adjustment Justification:</i>		
Line 8	Pollution, Contamination or Degradation of State Waters		\$0.00
	<i>Adjustment Justification:</i>		
Line 9	Other Administrative Violations		\$0.00
	<i>Adjustment Justification:</i>		
Line 10	Potential Damage Total (Sum of Lines 1 through 9)	(Not to exceed \$6000/day)	\$3,600.00

B. Fault Component

		Amount in Dollars
Line 11	Fault: Category 2	\$1,400.00
	<i>(Not to exceed \$3000/day)</i>	
	<i>Justification:</i> Rocky Mtn Materials is a well-established construction company that applied for and obtained a stormwater permit and, at the very least, should have been aware of its obligations under the permit and the circumstances that lead to the violations. Therefore, the Division conservatively assigns a category-2 fault. The Division has chosen the midpoint of the category two range, as the Division has no additional information to support adjustments from this value.	

C. History Component

		Amount in Dollars
Line 12	History: None	\$0.00
	<i>(Not to exceed \$1000/day)</i>	
	<i>Justification:</i> Rocky Mtn Materials has no violation history with the Division.	

Exhibit C

Part II – Determination of Days of Violation

		Days of Violation
Line 13	Total Days of Violation	308
	<p><i>Justification:</i></p> <p>Deficient Stormwater Management Plan (SWMP): Rocky Mtn Materials obtained permit coverage on June 13, 2006, at which time it certified that a complete SWMP had been developed. The Division reviewed the SWMP on April 16, 2007 and identified it was deficient. The Division believes the SWMP was deficient from June 13, 2006 through at least April 16, 2007. Therefore, the Division is conservatively utilizing 308 days of violation.</p> <p>Failure to Install, Maintain or Properly Select Best Management Practices: The Division inspected the project on April 16, 2007 and identified a failure to implement and maintain BMPs. Due to the state of the project and scope of the deficiencies, the Division believes the BMP violations had persisted for quite some time, likely the life of the project. However, the Division is conservatively utilizing 1 day of violation for this settlement.</p> <p><i>(Note: The BMP violations coincided with the time frame of the SWMP violations. Therefore, a total of 308 days of violation were utilized for this settlement calculation.)</i></p>	

Part III – Determination of Multi-Day Penalty Amount

		Amount in Dollars																																
Line 14	Multi-Day Penalty Amount	\$138,860.00																																
	<p><i>Calculations:</i></p> <p><i>(Note: Days 1-307 account for penalties associated with SWMP violations only. Day 308 accounts for the final day of SWMP violation and one day of BMP violation. The percentage multiplier for each duration interval below is derived from the Multi-Day Violation Matrix outlined on Page 6 of the Stormwater Civil Penalty Policy, and applies only to the SWMP violations in this case.)</i></p> <p>(Potential Damage + Fault + History) x days of violation</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Day 1</td> <td style="width: 45%;">(\$600.00 + \$1400.00 + \$0.00) × 1 day</td> <td style="width: 15%;">=</td> <td style="width: 25%; text-align: right;">\$ 2,000.00</td> </tr> <tr> <td>+ Days 2-10</td> <td>\$2000.00 × 9 days × 50%</td> <td>=</td> <td style="text-align: right;">\$ 9,000.00</td> </tr> <tr> <td>+ Days 11-50</td> <td>\$2000.00 × 40 days × 40%</td> <td>=</td> <td style="text-align: right;">\$ 32,000.00</td> </tr> <tr> <td>+ Days 51-100</td> <td>\$2000.00 × 50 days × 30%</td> <td>=</td> <td style="text-align: right;">\$ 30,000.00</td> </tr> <tr> <td>+ Days 101-200</td> <td>\$2000.00 × 100 days × 20%</td> <td>=</td> <td style="text-align: right;">\$ 40,000.00</td> </tr> <tr> <td>+ Days 201-307</td> <td>\$2000.00 × 107 days × 10%</td> <td>=</td> <td style="text-align: right;">\$ 21,400.00</td> </tr> <tr> <td>+ Day 308</td> <td>(\$600.00 × 10%) + \$4400.00</td> <td>=</td> <td style="text-align: right;">\$ 4,460.00</td> </tr> <tr> <td></td> <td>Multi-Day Base Gravity Penalty</td> <td>=</td> <td style="text-align: right;">\$138,360.00</td> </tr> </table>		Day 1	(\$600.00 + \$1400.00 + \$0.00) × 1 day	=	\$ 2,000.00	+ Days 2-10	\$2000.00 × 9 days × 50%	=	\$ 9,000.00	+ Days 11-50	\$2000.00 × 40 days × 40%	=	\$ 32,000.00	+ Days 51-100	\$2000.00 × 50 days × 30%	=	\$ 30,000.00	+ Days 101-200	\$2000.00 × 100 days × 20%	=	\$ 40,000.00	+ Days 201-307	\$2000.00 × 107 days × 10%	=	\$ 21,400.00	+ Day 308	(\$600.00 × 10%) + \$4400.00	=	\$ 4,460.00		Multi-Day Base Gravity Penalty	=	\$138,360.00
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+ Day 308	(\$600.00 × 10%) + \$4400.00	=	\$ 4,460.00																															
	Multi-Day Base Gravity Penalty	=	\$138,360.00																															

Exhibit C

Part IV – Base Penalty Total

		Amount in Dollars
Line 15	Base Penalty = Potential Damage + Fault + History (Sum of Line 10 + Line 11 + Line 12, OR Line 14)	\$138,860.00

Part V – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 16	Factor A: Voluntary and Complete Disclosure of Violations <i>Justification:</i> The Division identified the violations through the regulatory inspection process. Rocky Mtn Materials did not disclose the violations. Therefore, no penalty mitigation was applied.	0%	\$0.00
Line 17	Factor B: Full and Prompt Cooperation <i>Justification:</i> Rocky Mtn Materials undertook efforts to address the deficiencies outlined in the NOV/CDO and Rocky Mtn Materials met all of the Division’s compliance requirements within the designated time periods. Therefore, the Division reduces the base penalty by 25% for Rocky Mountain Materials’ full and prompt cooperation.	- 25%	- \$34,715.00
Line 18	Factor C: Environmental Compliance Program <i>Justification:</i> The Division did not receive or identify any information suggesting that Rocky Mtn Materials implemented a regularized and comprehensive environmental compliance/audit program. Therefore, no penalty mitigation was applied.	0%	\$0.00
Line 19	Factor D: Intentional, Reckless or Negligent Violations <i>Justification:</i> Rocky Mtn Materials is a well-established construction company that obtained a permit and should have been aware of the requirements. At the very least, the Division believes Rocky Mtn Materials’ violations involved negligence. However, the Division conservatively choses not to apply a penalty aggravation in this case.	0%	\$0.00
Line 20	Factor E: Other Aggravating or Mitigating Circumstances <i>Justification:</i> The Division did not identify any other aggravating or mitigating circumstances.	0%	\$0.00
Line 21	Sum of Line 16 through Line 20	- 25%	- \$34,715.00
Line 22	Adjusted Base Penalty (Sum of Line 15 + Line 21)		\$104,145.00

Exhibit C

Part VI – Economic Benefit Consideration

		Amount in Dollars
Line 23	Economic Benefit	\$9,750.00
<p><i>Justification:</i></p> <p>Rocky Mtn Materials delayed the cost of developing a complete SWMP and avoided the cost of revising and updating its SWMP for at least 308 days. The Division conservatively estimates the cost of periodically revising and updating a SWMP for a project of this size, including consulting and reprinting fees, to be \$1250. Due to the often changing conditions at construction sites, frequent evaluation of a project's SWMP is necessary. As a result, the Division estimates that a SWMP for construction will need significant revisions and updates at least every 6 months. Considering to the nature of the deficiencies identified in the SWMP, the Division believes Rocky Mtn Materials' evaluations, if conducted, should have resulted in at least one significant update/revision. Therefore, the Division has conservatively determined that Rocky Mtn Materials realized an economic benefit of \$1,250.00 from the avoided costs of not revising and updating the project's SWMP.</p> <p>Rocky Mtn Materials avoided the cost of implementing and/or maintaining BMPs at the project. The Division conservatively estimates the cost of implementing a typical BMP to be \$1000 and the cost of maintaining a BMP throughout its use to be \$500. As documented in the NOV/CDO, Rocky Mtn Materials failed to implement at least 8 BMPs and failed to maintain at least 1 other. Therefore, the Division has conservatively determined that Rocky Mtn Materials realized an economic benefit of \$8,500.00 from the avoided costs of not implementing and maintaining BMPs at the site.</p> <p><i>(Note: Time value of money for time periods in question was predicted to be insignificant and thus BEN runs were not performed)</i></p>		

Part VII – Violation Penalty Total

		Amount in Dollars
Line 24	Civil Penalty: (Sum Line 22 + Line 23)	\$113,895.00

Part VIII – Ability to Pay Adjustment

		Amount in Dollars
Line 25	Ability to Pay Reduction:	\$0.00
<p><i>Justification:</i> Rocky Mtn Materials has not made any claims or submitted any information documenting an ability to pay issue. Therefore, an ability to pay assessment could not be performed and was not included in this penalty calculation.</p>		

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Part IX – Final Adjusted Penalty

			Amount in Dollars
Line 26	Total Civil Penalty: (Sum Line 24 + Line 25)		\$113,895.00