

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

February 21, 2013

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

RE: Compliance Order on Consent, Number: SC-130220-1

Dear Mr. Ricci:

Enclosed for Rocky Mountain Materials and Asphalt, Inc.'s, ("RMM") records you will find RMM's copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 24). Upon initiation, if the Division receives any comments during this period we will contact RMM's office to discuss. Also, please be advised that the first page of the Order was changed to place the assigned Order Number on the final document.

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

Sincerely,

Michael Harris
Enforcement Specialist
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

cc: El Paso County Department of Health and Environment
Natasha Davis, EPA Region VIII
Nathan Moore, Permits Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Tania Watson, Compliance & Enforcement Unit, CDPHE



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

COMPLIANCE ORDER ON CONSENT

NUMBER: SC-130220-1

IN THE MATTER OF: ROCKY MOUNTAIN MATERIALS AND ASPHALT, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A246
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 803, C.R.S., and its implementing regulations, with the express consent of Rocky Mountain Materials and Asphalt, Inc. ("RMM"). The Division and RMM may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: SO-081110-1, that the Division issued to RMM on November 10, 2008, including its Amendment Number One that the Division issued to RMM on February 28, 2011 (collectively, the "NOV/CDO"), and the Order for Civil Penalty, Number: SP-120829-1 (the "Penalty Order"), that the Division issued to RMM on August 29, 2012.

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 RMM and RMM's compliance with the Act and a permit issued pursuant to the Act.
3. At all times relevant to the alleged violations identified herein, RMM was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.

4. 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).
5. 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”).
6. 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”).
7. 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.
8. 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).
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 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

11. 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.
 - 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.

12. 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).
 - 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.
13. The Division has determined that RMM failed to prepare and maintain a complete and accurate SWMP for the Project, as described in paragraphs 13(a-g) below:
- 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. 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. The site maps did not indicate construction site boundaries.
 - d. The site maps did not indicate all areas of soil disturbance.
 - e. The site maps did not indicate areas of cut and fill.
 - f. The SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.
 - 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
14. 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

15. 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.
16. 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.
17. The Division has determined that RMM failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 17(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.
 - 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 gully 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 Gleaneagle 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.
18. 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.

ORDER AND AGREEMENT

19. 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 NOV/CDO and Penalty Order, the Division orders RMM to comply with all provisions of this Consent Order, including all requirements set forth below.
20. RMM agrees to the terms and conditions of this Consent Order. RMM agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and, C.R.S., and is an enforceable requirement of the Act. RMM also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by RMM 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.

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

CIVIL PENALTY

22. 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, RMM shall pay Sixty Five Thousand Dollars (\$65,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Sixty Five Thousand Dollar (\$65,000.00) civil penalty for the above violation(s) and RMM agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

SCOPE AND EFFECT OF CONSENT ORDER

23. 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 NOV/CDO and Penalty Order.
24. 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 RMM 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.
25. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by RMM, 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.
26. Notwithstanding paragraph 21 above, the violations described in this Consent Order will constitute part of RMM'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 RMM. RMM agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

27. 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 NOV/CDO and Penalty Order. 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.
28. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
29. 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.
30. Upon the effective date of this Consent Order, RMM 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.
31. 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

32. 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-CWE-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 RMM:

Rob Mangone
Rocky Mountain Materials & Asphalt
1910 Rand Avenue
Colorado Springs, CO 80905
Telephone: 719.473.3100
E-mail: robrmma@hotmail.com

Received
FEB 19 2013
Water Quality Control

MODIFICATIONS

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

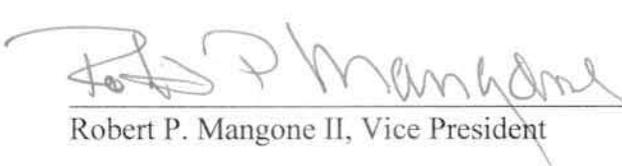
NOTICE OF EFFECTIVE DATE

34. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 24. 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.

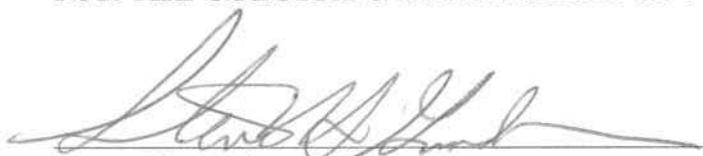
BINDING EFFECT AND AUTHORIZATION TO SIGN

35. This Consent Order is binding upon RMM 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 ROCKY MOUNTAIN MATERIALS AND ASPHALT, INC.:

 _____ Date: 2/13/2013
Robert P. Mangone II, Vice President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

 _____ Date: 2/20/13
Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION