

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

March 9, 2012

Hillier Asphalt, LLC
MO-G490834, Vernon County

Background: Mr. Darrel Hillier owns an asphalt company known as Hillier Asphalt, LLC located in Vernon County, Missouri. Stormwater from Hillier Asphalt discharges to an unnamed tributary to West Fork Clear Creek pursuant to Missouri State Operating Permit (MSOP) number MO-G490834. MSOP MO-G490834 requires Hillier Asphalt to submit quarterly Discharge Monitoring Reports (DMR) for all non-stormwater discharges and submit an annual report for all stormwater discharges. From February 28, 2003, to September 25, 2007, the Missouri Department of Natural Resources (Department) sent four (4) letters to Hillier Asphalt requesting Mr. Hillier submit the reports. According to the Department's MoCWIS database, Hillier Asphalt has not submitted quarterly DMRs or annual reports since 1st quarter 2003.

On July 25, 2008, the Department received a complete Request for Termination of MSOP number MO-G490834 from Mr. Hillier stating that Hillier Asphalt has gone out of business, activities on-site have ceased, and no significant materials remain on-site exposed to stormwater. On September 10, 2008, the Department conducted an inspection of Hillier Asphalt and concluded that the permit cannot be terminated since significant materials remain on-site exposed to stormwater. Department staff observed several pallets of five-gallon buckets without lids filled with what appeared to be used oil and other unidentified liquids and a large above ground storage tank that was leaking oil onto the ground. On August 11, 2011, the Department conducted an inspection of Hillier Asphalt and observed stained soil, 55 gallon drums of hardened asphalt, and mechanical equipment exposed to stormwater. At the time of inspection Department staff confirmed that Mr. Hillier is running a construction business on half of the property belonging to Hillier Asphalt.

Issue: Since April 29, 2009, the Department has sent Mr. Hillier six (6) letters offering to resolve past violations of the Law and its implementing regulations through an out-of-court Settlement Agreement, one of which was delivered by Department staff in person on August 21, 2009. Since September 9, 2011, the Department has sent Mr. Hillier two (2) letters offering to resolve past violations of the Law and its implementing regulations through an Abatement Order on Consent. To date, the Department has been unable to reach an agreement with Mr. Hillier.

Recommended Action: The Water Protection Program recommends that the Commission refer this matter to the Attorney General's Office for appropriate legal action in order to pursue a civil penalty and/or seek any other appropriate form of relief.

Suggested Motion Language: "I move that the Commission refer this matter to the Attorney General's Office for appropriate legal action in order to compel compliance, pursue a civil penalty, and/or seek any other appropriate form of relief."

Attachment:

- Case Summary Information

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Case Summary Information

Case Name: Hillier Ashpalt, LLC

Facility name(s) – Hillier Ashpalt, LLC

Facility address, including county and contact information:

Hillier Ashpalt, LLC
Highway K South
Nevada, MO 64772
Lincoln County
(636) 458-2000

Program(s): Water Protection Program (WPP)

Program Contact(s)/Regional Contact(s), with phone numbers:

1. Bobbie Pennington, Environmental Specialist, Water Protection Program, bobbie.pennington@dnr.mo.gov (573)522-1120
2. Chris Ray, Environmental Specialist, Southwest Regional Office, chris.ray@dnr.mo.gov, (417)891-4344
3. Cindy Davies, Director, Southwest Regional Office, cindy.davies@dnr.mo.gov, (417)891-4382

Description of Facility and Situation:

- Hillier Asphalt, LLC (Hillier Asphalt) is an asphalt company located in the SE ¼, NE ¼, Section 11, T35N, R31W, Vernon County, Missouri. Stormwater from Hillier Asphalt discharges to an unnamed tributary to West Fork Clear Creek pursuant to Missouri State Operating Permit (permit) number MO-G490834.
- On July 25, 2008, the Missouri Department of Natural Resources (Department) received a complete Request for Termination of permit number MO-G490834 from Mr. Hillier stating that Hillier Asphalt has gone out of business, activities on-site have ceased, and no significant materials remain on-site exposed to stormwater. On September 10, 2008, the Department conducted an inspection of Hillier Asphalt and concluded that the permit cannot be terminated since significant materials remain on-site exposed to stormwater. Department staff observed several pallets of five-gallon buckets without lids filled with what appeared to be used oil and other unidentified liquids and a large above ground storage tank that was leaking oil onto the ground. On August 11, 2011, the Department conducted an inspection of Hillier Asphalt and observed stained soil, 55 gallon drums of

hardened asphalt, and mechanical equipment exposed to stormwater. At the time of inspection Department staff confirmed that Mr. Hillier was running a construction business on half of the property belonging to Hillier Asphalt.

Responsible Party(s) (specify owner, operator, other [etc.]) and contact information if different from above:

Darrell Hillier, Owner
620 N. Washington
Nevada, MO 64772
(417) 667-7575

Mr. Kendall R. Vickers, Esq., Represents Mr. Hillier
201 East Cherry, Suite 201
Nevada, MO 64772-0429
(417) 667-5500 Office
(417) 667-5525 Fax
kendall@vickerslawfirm.com

Law(s), Regulation(s) and Permit Conditions Violated: For each violation note starting some time before { } date and ending sometime before { }, or note "continuing."

1. Since 2006, failing to submit DMRs as required in Part "A" of permit number MO-G490834 is in violation of Sections 644.0761.1 RSMo and 10 CSR 20-7.015(9)(A)1;
2. Since September 10, 2008, failing to prevent spillage or loss of fluids, oil and grease, fuel, etc. from maintenance and warehouse activities or storage tanks thereby preventing the contamination of stormwater from these substances, nor provide collection facilities and arrange proper disposal of waste products including but not limited to waste petroleum products and solvents as required by the special conditions of permit number MO-G490834 in violation of Section 644.076.1, RSMo; and
3. Since September 10, 2008, placing or causing or permitting to be placed a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

Relief Requested:

- Civil action for compliance and penalties (if injunction requested, please provide proposed compliance schedule)**
- Temporary Restraining Order**
- Coordination with federal government on criminal action**
- Other, specify:**

Proposed Compliance Schedule:

- A. Hillier Asphalt shall operate and maintain the asphalt plant to comply with the Law and

its implementing regulations and all requirements of permit number MO-G490834 at all times in the future:

- B. Hillier Asphalt shall complete improvements to Hillier Asphalt that will enable it to comply with the Law and its implementing regulations and permit number MO-G490834. Hillier Asphalt shall complete the following:
1. Immediately upon signing the AOC, Hillier Asphalt shall submit a check to the Department for payment of past annual fees and late penalties in the amount of \$61.20 as of January 6, 2012, for permit number MO-G490834. Late penalties shall continue to accrue at a monthly rate of 2% the annual fee until the balance is paid in full;
 2. Within fifteen (15) days of the effective date of the agreement, Hillier Asphalt shall submit to the Department for review and approval, a comprehensive closure plan detailing how all significant materials located at the asphalt plant will be properly stored, removed, and disposed;
 3. Within fifteen (15) days of receipt of comments from the Department on the closure plan, Hillier Asphalt shall respond and adequately address to the Department's satisfaction all Department comments on the closure plan;
 4. Within sixty (60) days of Departmental approval of the closure plan, Hillier Asphalt shall complete clean-up of all significant materials. Hillier Asphalt shall maintain hauling receipts and make these receipts available to the Department upon request. The records shall include the date the material was hauled, type of materials hauled, tonnage of materials hauled, and the name of the permitted facility accepting the materials; and
 5. Within fifteen (15) days of completing the Department approved closure plan, Hillier Asphalt shall submit to the Department for review and approval a Request for Termination of permit number MO-G490834.

Permit(s) Involved, including type and permit number:

Missouri State Operating Permit number MO-G490834 was issued to Hillier Asphalt LLC on October 20, 2006 and expired by its own terms on October 5, 2011. The permit was issued for stormwater and other specified discharges from limestone and other rock quarries, concrete, glass, and asphalt industries.

Other Program Involvement (if applicable):

Other Agency Involvement (if applicable):

Most Recent Significant Action by Department or Responsible Party:

Since April 29, 2009, the Department has sent Mr. Hillier six (6) letters offering to resolve past violations of the Law and its implementing regulations through an out-of-court Settlement Agreement and two (2) letters offering to resolve past violations of the Law and its implementing regulations through an Abatement Order on Consent. The last offer was mailed on November 10, 2011. This offer included a suspended \$4,000 dollar civil penalty provided that the site be cleaned and properly closed. To date, the Department has been unable to reach an agreement with Mr. Hillier.

Penalty Estimate:

\$6,000 civil penalty

Other Significant Aspects of the Case:

CONTACT INFORMATION:

- **Department Staff – inspectors, other field staff, case managers and others involved in developing the referral. Name, position, e-mail address and phone number:**

1. Bobbie Pennington, Environmental Specialist, Water Protection Program, bobbie.pennington@dnr.mo.gov (573)522-1120
2. Chris Ray, Environmental Specialist, Southwest Regional Office, chris.ray@dnr.mo.gov, (417)891-4344
3. Cindy Davies, Director, Southwest Regional Office, cindy.davies@dnr.mo.gov, (417)891-4382

- **Facility Owner(s) – for all defendants, include name, title, physical and mailing addresses and telephone numbers:**

Darrell Hillier, Owner
620 N. Washington
Nevada, MO 64772
(417) 667-7575

- **Others (e.g., employees, neighbors, first responders or staff of other state, local or federal agencies):**

Represents Mr. Hillier

Mr. Kendall R. Vickers, Esq.
201 East Cherry, Suite 201
Nevada, MO 64772-0429
(417) 667-5500 Office
(417) 667-5525 Fax
kendall@vickerslawfirm.com

Attachments:

- ✓ **-NOVs and LOWs**
- ✓ **-Documentation of any site visits, including Environmental Assistance Visits**
- ✓ **-Reports of inspections within last five years**
- ✓ **-Penalty and penalty calculation**
- ✓ **-All correspondence between Department and defendant**
- ✓ **-All emails and phone logs**
- ✓ **-Photographs (electronic or color)**
- ✓ **-Map of the Site**

