

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

IN THE MATTER OF:

Hillier Asphalt, LLC

SERVE:

Hillier Asphalt, LLC,
Darrell Hillier,
Manager

No. 2011-WPCB-1144

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) number 2011-WPCB-1144 by the Missouri Department of Natural Resources, (Department) is a formal administrative action by the State of Missouri and is being issued because the Department believes that the asphalt company known as Hillier Asphalt, LLC is in violation of the Missouri Clean Water Law (Law) and its implementing regulations. This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the Law. Litigation may occur without further notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements of the Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Hillier Asphalt, LLC of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any, including future, violations of the Law and the violations cited in this AOC, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

- A. Hillier Asphalt, LLC (Hillier Asphalt) is an asphalt company located in the SE ¼, NE 1/4, 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.
- B. Hillier Asphalt is a company in good standing registered with the Missouri Secretary of State.
- C. The unnamed tributary and West Fork Clear Creek are waters of the state as defined by Section 644.016(26) RSMo.
- D. Hillier Asphalt is required to submit quarterly Discharge Monitoring Reports (DMR) for all non-stormwater discharges which include wastewater generated from process related activities such as truck washing, and all dry-weather discharges from processing plants and mine pit dewatering and submit an annual report of all stormwater discharges. Hillier Asphalt has failed to submit quarterly and annual DMRs since 4th quarter 2004.
- E. From February 28, 2003, to September 25, 2007, the Department sent Hillier Asphalt four (4) letters requesting that he submit DMRs as required by permit number MO-G490834. The Department did not receive a response.
- F. On January 9, 2008, the Department sent an invoice balance sheet and Request for Termination of General Permit form to Mr. Kendall Vickers, the registered agent for Hillier Asphalt following a telephone conversation.
- G. On March 31, 2008, and July 11, 2008, the Department sent Mr. Vickers letters requesting that Hillier Asphalt submit payment of annual fees and late penalties for permit number MO-G490834 within 10 days.
- H. On July 25, 2008, the Department received payment of annual fees and late penalties and a complete request for termination of permit number MO-G490834, signed by Mr. Hillier stating that Hillier Asphalt has gone out of business, activities at the site have ceased, and no significant materials are exposed to stormwater.
- I. On September 10, 2008, the Department conducted an inspection of Hillier Asphalt and found that permit number MO-G490834 cannot be terminated since a significant amount of material remains exposed to stormwater. During the inspection, staff observed several pallets of five-gallon buckets without lids filled with used oil and other unidentified liquids and a large above ground storage tank that was leaking oil onto the ground.
- J. On September 19, 2008, the Department issued a Letter of Warning (LOW) to Hillier Asphalt as a result of the September 10, 2008, inspection. The LOW informed Hillier Asphalt that permit number MO-G490834 could not be

terminated at this time since a significant amount of material remains exposed to stormwater. The LOW requested that Hillier Asphalt submit to the Department for review and approval a plan of corrective action by October 13, 2008, detailing how materials found on-site will be disposed and how the site will be properly closed.

- K. On January 9, 2009, the Department issued Notice of Violation (NOV) No. 12837SW to Hillier Asphalt for failure to bring Hillier Asphalt into compliance with the Missouri Clean Water Law and its implementing regulations and permit number MO-G490834. The NOV informed Mr. Hillier that this matter has been referred to the Water Pollution Control Branch/Compliance and Enforcement for review and further action.

III. CONCLUSIONS OF LAW

Violations of the Law and its implementing regulations alleged herein and found to have been committed by Hillier Asphalt are as follows:

1. Failing to submit complete and timely 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. 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. 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.

IV. AGREEMENT

- A. The Department and Hillier Asphalt desire to amicably resolve all claims that might be brought against Hillier Asphalt for the violations alleged above in Section III, Conclusions of Law, without Hillier Asphalt admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal

property, shall not affect the responsibilities of Hillier Asphalt under this AOC. If Hillier Asphalt sells or otherwise transfers the asphalt plant, then Hillier Asphalt shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of Hillier Asphalt under this AOC in writing. In such event, Hillier Asphalt shall provide thirty (30) days prior written notice of such assumption to the Department.

- C. Hillier Asphalt, in compromise and satisfaction of the Department claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in amount of four thousand dollars and zero cents (\$4,000.00). The Department and Hillier Asphalt further agree that four thousand dollars and zero cents (\$4,000.00) of the civil penalty shall be suspended on the condition that Hillier Asphalt complies with the requirements of this AOC and does not violate the Law and its implementing regulations for two (2) years. Upon determination that Hillier has failed to comply with the requirements of this AOC, Hillier Asphalt shall pay the civil penalty in the amount of four thousand dollars and zero cents (\$4,000.00) within ten (10) days' demand by the Department. The payment shall be in the form of a certified check or cashiers check made payable to the "Vernon County Treasurer, as custodian of the Vernon County School Fund." The check and signed copies of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- D. 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:
- E. 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 \$60.00 as of September 8, 2011, 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 this AOC, 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 Department comments on the closure plan, Hillier Asphalt shall submit a written response to the Department addressing all Department comments on the closure plan;
 4. Within sixty (60) days of Departmental approval of the closure plan, 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, submit to the Department for review and approval a Request for Termination of permit number MO-G490834.
- F. Should Hillier Asphalt fail to meet the terms of this AOC, including the deadlines for completion of construction set out in paragraphs D through E of this AOC, Hillier Asphalt shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Vernon County Treasurer, as custodian of the Vernon County School Fund." Any such stipulated penalty shall be paid within ten (10) days of demand by the Missouri Department of Natural Resources and shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- G. The stipulated penalty provided for in this AOC shall be in addition to any other rights, remedies or sanction available to the Department for Hillier Asphalt's violation of this AOC or applicable law.
- H. No portion of the civil penalty or stipulated penalties paid pursuant to this AOC may be used to reduce Hillier Asphalt's federal or state tax obligation.

- I. Nothing in this AOC forgives Hillier Asphalt from future non-compliance with the laws of the state of Missouri, nor requires the Department or state of Missouri to forego pursuing by any legal means any noncompliance with the laws of the State of Missouri.
- J. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those within are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- K. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.
- L. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to the Hillier Asphalt for its records.
- M. Hillier Asphalt shall comply with the Law, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC No. 2011-WPCB-1144, Hillier Asphalt waives any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC No. 2011-WPCB-1144 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

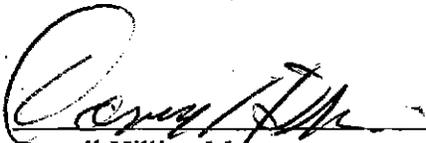
Missouri Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 5th day of March, 2011^{2 PM}



John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this _____ day of _____, 2011



Darrell Hillier, Manager
Hillier Asphalt, LLC

Copies of the foregoing served by certified mail to:

Darrell Hillier, Manager
Hillier Asphalt, LLC
620 North Washington
Nevada, MO 64772

CERTIFIED MAIL

on this 13th day of March, 2011

c: Ms. Diane Huffman
Chief, Water Enforcement Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, KS 66101

Ms. Cindy Davies, Regional Director
Southwest Regional Office
Department of Natural Resources
2040 West Woodland
Springfield, MO 65807-5912

Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
1288 State Highway HH

Sikeston, MO 63801

Mr. Ben A. "Todd" Parnell, III, Vice-Chair
Missouri Clean Water Commission
Drury University
900 N. Benton
Springfield, MO 65802

Ms. Wallis Warren, Commissioner
Missouri Clean Water Commission
2671 Jefferiesburg Road
Beaufort, Missouri 63013

Mr. William A. Easley, Jr., Commissioner
Missouri Clean Water Commission
P.O. Box 126
Cassville, MO 65625

Mr. Dennis Wood, Commissioner
Missouri Clean Water Commission
P.O. Box 112
Kimberling City, Missouri 65686

Mr. Jan C. Tupper, Commissioner
Missouri Clean Water Commission
2827 South Michigan
Joplin, MO 64804

Mr. Samuel D. Leake, Commissioner
Missouri Clean Water Commission
41690 Harrison Trail
Perry, MO 63462