

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT



NEW MEXICO ENVIRONMENT DEPARTMENT,

Complainant,

v.

No. AQCA 2011 - 04 (CO)

ROCKCON,

Respondent.

**FIRST AMENDED ADMINISTRATIVE COMPLIANCE ORDER**

The New Mexico Environment Department (“Department”) issues this First Amended Administrative compliance Order (“Order”) to RockCon. This Order is issued pursuant to the Air Quality Control Act, NMSA 1978, §§ 74-2-1 to 17 (1992) (“Act”) and the Air Quality Control Regulations (“Regulations”) found at 20.2.100 NMAC. The Secretary of the Department has delegated the authority to issue this Order to the Director of the Department’s Environmental Protection Division.

This Order is substantially similar to the original Administrative Compliance Order except that it corrects typographical errors in paragraphs 14 and 38 with respect to the year in which a violation occurred.

**FINDINGS OF FACT**

1. The Department is an executive agency of the State of New Mexico and is authorized to enforce the provisions of the Act and the Regulations.
2. RockCon was the owner and operator of both the S&G Crusher #1 (“S&G Facility”), operated under Permit GCP2-3617R1 (“S&G Permit”), and of the 600 TPH Crusher

No. 260 (“Crusher 260 Facility”), operated under Permit NSR 260M1R2 (“Crusher 260 Permit”) at all times relevant to this Order.

### **S&G FACILITY**

3. On November 20, 2009, personnel from the Department’s Air Quality Bureau (“Bureau”) conducted a Full Compliance Evaluation (“S&G Inspection”) at the S&G Facility, which was located at the time on the western edge of Truth or Consequences in Sierra County, New Mexico.

4. Violations discovered during and subsequent to the S&G Inspection led to the Bureau’s issuance of Notice of Violation ROC-26649-0901 on June 21, 2010, listing seven separate violations of the S&G Permit, as follows:

Violation 1. Failure to notify the Department 15 days prior to changes in equipment at the facility.

Violation 2. Failure to perform monthly opacity readings via Method 9 of equipment located at the facility.

Violation 3. Failure to notify the Department in writing prior to beginning or ceasing operations of the facility.

Violation 4. Relocation of the facility prior to the date specified in the relocation approval letter.

Violation 5. Failure to limit operation of the facility to the dates specified in the relocation approval letter.

Violation 6. Failure to conduct required initial compliance testing of two generator engines.

Violation 7. Failure to conduct required initial compliance testing of feeders, crushers, screens, stackers and conveyors.

**VIOLATION #1**

5. Section III.A.1 of the S&G Permit states in part, “The owner or operator shall operate the Facility using only the equipment described in the registration form or other equipment that has been reported to the department in accordance with Subsection IV.C – department Notification, paragraphs 1.c and 1.d.”

6. Examination of the equipment inventory during the S&G Inspection revealed that a TEREX 1300 Cone Crusher with serial number 130246FE, a Power Screen 2100, and two (2) Superior Stackers (collectively, the “Additional Equipment”) were on site, but were not listed in the S&G Facility’s August 16, 2007 permit application, or on any of the subsequent relocation applications.

7. S&G Facility personnel informed the inspector that the Additional Equipment was operating at the time of the S&G Inspection.

8. Review of the Bureau’s records confirmed that RockCon did not submit either a Substitution and Equipment Exchange form nor a Reporting Additional Equipment form that included the Additional Equipment.

9. On December 11, 2009, the Bureau received an application for the S&G Facility to relocate to the “Luchini Pit” north of Truth or Consequences. This application also did not include the Additional Equipment and was approved on December 22, 2009.

10. On March 2, 2010, the Bureau conducted a follow-up inspection of the S&G Facility at the new location; the Additional Equipment was on site, and the inspector observed active stockpiles at stacker and conveyor drop points associated with the Additional Equipment.

## **VIOLATION #2**

11. Section IV.A.1 of the S&G Permit states, “The owner or operator of any Facility registered under this permit shall perform [a] six (6) minute opacity reading on each crusher, screen, conveyor drop point and hopper at least once per month using Method 9 to determine compliance with the requirements in Subsection III.F – Emissions Restrictions and Conditions. Records of opacity readings shall be retained in accordance with Subsection IV.B – Recordkeeping of this Permit.”

12. Section IV.B.3 of the S&G Permit states in part, “The owner or operator shall collect and retain the following records . . . b. Monitoring required under Subsection IV.A – Monitoring.”

13. At the time of the S&G Inspection, the S&G Facility foreman was asked for operation and production records, including the monthly opacity readings. The foreman stated that he had no records at the site, and referred the inspector to the Operations Manager.

14. On December 3, 2009, the Operations Manager provided all known opacity observation records for the S&G Facility to the Bureau. No opacity observation records for November or December of 2007 were included with the provided records.

## **VIOLATION #3**

15. Section IV.C.1 of the S&G Permit states in part, “The owner or operator shall notify the Department in writing . . . a. Within 30 days after the actual date that operations ceased . . . g. Within fifteen (15) days after the actual date of initial startup of the Facility . . . .”

16. Review of operating records during the S&G Inspection revealed that the S&G Facility initiated operations four times at separate locations (November 1, 2007, July 1, 2008, August 8, 2009 and prior to March 2, 2010) without providing the required notices to the Bureau.

17. Review of operating records during the S&G Inspection revealed that the S&G Facility ceased operations three times at separate locations (December 22, 2007, September 18, 2008 and October 31, 2009) without providing the required notifications to the Bureau.

**VIOLATION #4**

18. At the Bureau's discretion, and after further review, violation 4 has been withdrawn for purposes of this Order.

**VIOLATION #5**

19. The Approval Letter for the S&G Permit dated April 28, 2008 states in part, "the following conditions apply at this approved location . . . Condition 2: The latest date that operation of equipment can continue at this location is 7/28/2008 (90 days after relocation)."

20. On November 20 and 24, 2009 the Operations Manager transmitted monthly production summaries for the S&G Facility to the Bureau.

21. Review of the production and operational records indicate that the S&G Facility operated from July 1, 2008 through September 18, 2008 at the La Bajada Hill site. The S&G Facility operated at the site a total of 37 days past the July 28, 2008 date specified in the Approval Letter.

**VIOLATION #6**

22. Section IV.D.1 of the S&G Permit states in part, "The owner or operator shall perform initial compliance tests on each combustion engine that has a site rating equal to or greater than 180 hp. The tests shall be conducted in accordance with EPA Reference Methods 1 through 4: Method 7E for NO<sub>x</sub>, Method 9 for opacity . . . Method 10 for CO, contained in 40 CFR § 60, Appendix A and with the requirements of Subpart A, General Provisions . . ."

23. Section IV.D.3 of the S&G Permit states in part, "If any equipment required by

this subsection to undergo initial compliance test(s) is added, changed out, or replaced at the permitted Facility, the owner or operator shall perform a compliance test on the new unit within 60 days of notification (IV.C.1.d), consistent with the requirements of this subsection . . .”

24. At the time of the S&G Inspection, initial compliance test protocols and reports were requested from the foreman for two (2) 536 horsepower Caterpillar generators, but the inspector was told that the records were not on site.

25. On November 20, 2009 the Bureau formally requested the relevant records, but to date no records have been received showing that the required initial compliance tests were performed on the two (2) 536 horsepower Caterpillar generators.

#### **VIOLATION #7**

26. Section IV.D.9 of the S&G Permit states, “The owner or operator shall perform initial compliance tests on each crusher, screen, hopper, and conveyor transfer point to determine compliance with the requirements in Subsection III.F, paragraphs 1, 2 and 3. Tests shall be conducted in accordance with 40 CFR § 60.675, EPA Reference Method 5 for stack particulates, and Method 9 for opacity [20.2.61 NMAC], contained in 40 CFR § 60, Appendix A, and with the requirements of Subpart A, General Provisions, 60.8(f).”

27. Section IV.D.4 of the S&G Permit states, “The owner or operator shall conduct these tests within sixty (60) days of initial startup of the Facility.”

28. During the S&G Inspection, the Bureau requested initial compliance test protocols and reports pertaining to the material processing and transfer units listed in the original GCP2 permit application, as well as for the material processing and transfer units not listed which were found on site.

29. No copies of the requested test reports have ever been submitted to the Bureau.

## CRUSHER 260 FACILITY

30. On September 11, 2009, a Full Compliance Evaluation of the Crusher 260 Facility ("Crusher 260 Inspection") was performed by Bureau personnel.

31. Violations discovered during and subsequent to the Crusher 260 Inspection led to the Bureau's issuance of Notice of Violation ROC-1677-0901 on June 21, 2010, listing two separate violations, as follows:

Violation 1. Failure to meet fugitive emissions limit of 10 percent opacity.

Violation 2. Failure to report hours of operation.

### VIOLATION #1

32. Fugitive emissions from the Crusher 260 Facility are subject to 40 CFR 60 § 60.672(b), which sets fugitive emission limits for the Crusher 260 Facility of 10 percent opacity.

33. During the Crusher 260 Inspection, a visible emissions test was performed by Bureau personnel at the sand conveyor to stockpile transfer point.

34. The visible emissions test was performed for a period of six (6) minutes using EPA Method 9, resulting in an average opacity reading of 22.08 percent, more than double the maximum allowed value.

### VIOLATION #2

35. At the Bureau's discretion, and after further review, Violation 2 has been withdrawn for purposes of this Order.

## CONCLUSIONS OF LAW

36. The Department has jurisdiction over Respondent pursuant to the Act and the Regulations.

37. Respondent is in violation of Section III.A.1 of the S&G Permit for failure to

submit the required notification forms to the Department prior to relocating and operating the Additional Equipment at the S&G Facility.

38. Respondent is in violation of Section IV.A.1 of the S&G Permit for failure to conduct opacity tests at the S&G Facility and for failure to maintain any records of those tests for the months of November and December 2007.

39. Respondent is in violation of Section IV.C.1 of the S&G Permit for failure to provide timely notifications to the Department prior to start up or shutdown of the S&G Facility on at least seven (7) separate occasions.

40. Respondent is in violation of Condition 2 of the Approval Letter for the S&G Permit dated April 28, 2008 for continuing operations for a total of 37 days past the July 28, 2008 date specified in the Approval letter.

41. Respondent is in violation of Section IV.D.1 of the S&G Permit for failure to conduct initial compliance tests for two (2) 536 horsepower Caterpillar generators.

42. Respondent is in violation of Section IV.D.4 of the S&G Permit for failure to conduct initial compliance tests of the material processing and transfer units listed in the original GCP2 permit application for the S&G Facility, as well as for the material processing and transfer units not listed which were found on site during the S&G Inspection.

43. Respondent is in violation of 40 CFR 60 § 60.672(b) for exceeding the maximum level of opacity for visible emissions at the sand conveyor to stockpile transfer point of the Crusher 260 Facility.

#### **CIVIL PENALTY**

44. The Act, NMSA 1978, § 74-2-12(A) authorizes the Secretary to issue a compliance order assessing a civil penalty for a violation of the Regulations or a permit issued



pursuant to the Regulations.

45. The Act, NMSA 1978, Section 74-2-12(B) authorizes the Secretary to assess a civil penalty of up to fifteen thousand dollars (\$15,000.00) per day of non-compliance for each violation of the Regulations or an air quality permit issued pursuant to the Regulations.

46. Consistent with the Bureau's Penalty Policy, the Department assesses a total civil penalty in this matter of **ninety-four thousand, nine hundred and ninety-nine dollars (\$94,999.00)** against RockCon for the above violations.

**NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING**

47. You may request a hearing by filing a written request for a public hearing with the hearing clerk no later than thirty (30) days after receipt of this Order. The request for hearing shall include an Answer:

a. Admitting or denying each alleged finding of fact. Any alleged finding of fact which is not specifically denied shall be deemed to be admitted. You may assert that you have insufficient knowledge of any alleged finding of fact, and such finding shall be deemed to be denied;

b. Asserting any affirmative defense upon which you intend to rely. Any affirmative defense not asserted in the Answer, except an affirmative defense asserting lack of subject matter jurisdiction, shall be deemed to be waived;

c. Signed under oath or affirmation that the information contained therein is true and correct to the best of the signatory's knowledge; and

d. Attaching a copy of this Order.

48. This Order shall become final upon your receipt of the Order unless you file a Request for Hearing and Answer as set forth above. You may file a Request for Hearing

and Answer at the following address:

Hearing Clerk  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502-5469

49. The public hearing shall be governed by the Department's Adjudicatory Procedures, 20.1.5 NMAC (copy attached as Exhibit A).

### SETTLEMENT CONFERENCE

50. You may confer with the Secretary regarding settlement at any time, but a settlement conference or request for a settlement conference shall not extend or waive the deadline for filing a Request for Hearing or Answer. You may appear at a settlement conference either *pro se* or through legal counsel. The Secretary shall execute any settlement as a Stipulated Final Order. A Stipulated Final Order shall resolve all issues raised in this Order, shall bind all parties to this Order, and shall not be appealable. To confer regarding settlement, contact:

Andrew P. Knight, Esq.  
Office of General Counsel  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502-5469  
Telephone: (505) 222-9540

### TERMINATION

51. This Order shall terminate upon the approval of the Secretary of the Department of a Stipulated Final Order.

BY: Mary E. Rose  
MARY ROSE, Acting Division Director

DATE: 4/18/12