

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

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

July 8, 2009

Joan F. Lowe, Registered Agent
Darter, LLC
786 Valley Court
Grand Junction, CO 81505

Certified Mail Number: 7007 0220 0001 0160 6204

**RE: Expedited Settlement Agreement, Number: ES-090702-4
CDPS Permit No: COR 03B024**

Dear Joan F. Lowe:

Enclosed for your records you will find Darter, LLC's copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was changed in order to place the correct ESA Number on the final document. The ESA is now fully enforceable and constitutes a final agency action.

As specified in the enclosed ESA, Darter, LLC must, within fifteen (15) calendar days, submit a certified or cashier's check for the amount specified in the ESA to the Water Quality Control Division in order for this matter to be resolved.

If you have any questions, please don't hesitate to contact me at (303) 692-3176 or by electronic mail at danelle.morgan@state.co.us.

Sincerely,

Danelle Morgan, EPS
Water Quality Protection Section
WATER QUALITY CONTROL DIVISION

cc: Montrose County Public Health
ec: Aaron Urdiales, EPA Region VIII
Gary Beers, Permits Unit, CDPHE
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, OPA
Enclosure(s)



Colorado Department of Public Health & Environment
Water Quality Control Division

EXPEDITED SETTLEMENT AGREEMENT

Number: ES-090702-4

The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Expedited Settlement Agreement (“ESA”), pursuant to the Division’s authority under §§25-8-602, 25-8-605 and 25-8-608, C.R.S. of the Colorado Water Quality Control Act (the “Act”) §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Darter, LLC (“Darter”). The Division and Darter may be referred to collectively as “the Parties.”

1. Darter 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).
2. Darter is conducting construction activities to build a single family residential development, located at Spring Creek Road and 6400 Road, in or near the Town of Montrose, Montrose County, Colorado (the “Project”).
3. Darter failed to comply with the provisions of its Colorado Discharge Permit System General Permit for Stormwater Discharges Associated with Construction Activity (the “Permit”), Certification Number COR-03B024, as described in the attached inspection report.
4. The parties enter into this ESA in order to resolve the matter of civil penalties associated with the violation(s) alleged herein and in the attached inspection report for a penalty of \$13,500.00.
5. By accepting this ESA, Darter neither admits nor denies the violations or deficiencies specified herein and in the attached inspection report.
6. Darter certifies that all deficiencies identified in the attached inspection report have been corrected and that the Project is currently in full compliance with the terms and provisions of the Permit. Additionally, Darter has attached to this ESA: (1) a written description detailing how the deficiencies were corrected; and (2) representative photographs documenting the current conditions and the associated BMPs implemented at the Project.
7. Darter agrees to the terms and conditions of this ESA. Darter agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 25-8-605 and 25-8-608, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, Darter waives: (1) the right to contest the finding(s) specified herein and in the attached inspection report; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.
8. This ESA is subject to the Division’s “Public Notification of Administrative Enforcement Actions Policy,” which includes a thirty-day public comment period. The Division and Darter each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.

9. This ESA constitutes a final agency order or action upon the date when the Executive Director or his designee signs the ESA and effectively imposes the civil penalty.
10. Darter agrees that within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Darter shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the amount specified in paragraph 4 above, to:

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

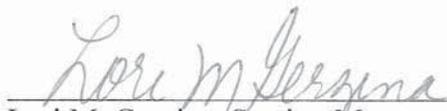
11. Notwithstanding paragraph 5 above, the violations described in this ESA will constitute part of Darter's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Darter. Darter agrees not to challenge the use of the cited violations for any such purpose.
12. This ESA, when final, is binding upon Darter and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

ACCEPTED BY DARTER, LLC:


Signature _____ Date 3/20/09

TERRY LAWRENCE
Name (printed) _____ Title MANAGER

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:


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

Date: July 2, 2009