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

July 22, 2011

Mr. Joe O'Dea, Registered Agent
Concrete Express, Inc.
2027 W. Colfax Ave.
Denver, Colorado 80204

RE: Compliance Order on Consent, Number: SC-110721-2

Dear Mr. O'Dea:

Enclosed for Concrete Express, Inc.'s records you will find your 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 41). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

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

Sincerely,

Russell Zigler

Russell Zigler, Legal Assistant
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Denver Environmental Health

ec: Natasha Davis, EPA Region VIII
Kelly Jacques, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE

Gary Beers, Permits Unit, CDPHE
Nathan Moore, Permits Section, CDPHE
Michael Beck, OPA
Michael Harris, Case Person
Tania Watson, Compliance Assurance, CDPHE
Darren Mollendor, MS4 Program Contact

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-110721-2**

IN THE MATTER OF: **CONCRETE EXPRESS, INC.**
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03F285
DENVER 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 703, C.R.S., and its implementing regulations, with the express consent of Concrete Express, Inc. ("CEI"). The Division and CEI 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-100329-1 (the "NOV/CDO"), that the Division issued to CEI on March 29, 2010.

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 CEI and CEI's compliance with the Act and a stormwater permit.

3. At all times relevant to the alleged violations identified herein, CEI was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.

4. CEI 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. On July 20, 2009, CEI initiated construction activities that resulted in the disturbance of 132 acres of land located at or near East 84th Avenue and Allium Street in the City and County of Denver, Colorado (the "Project").

6. On July 2, 2009, the Division received an application from CEI 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 July 7, 2009, the Division provided CEI Certification Number COR-03F285 authorizing CEI to discharge stormwater from the construction activities associated with the Project to the South Platte River under the terms and conditions of the Permit. Certification Number COR-03F285 became effective July 7, 2009 and remained in effect until CEI transferred its permit coverage to Denver International Airport on September 24, 2010.

8. The South Platte River is "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 September 1, 2009, a representative from the Division (the "Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine CEI's compliance with the 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.

<u>Deficient and/or Incomplete Stormwater Management Plan</u>

11. Pursuant to Part I. B. of the Permit, CEI is required to prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic, and pollution control practices. The SWMP is required to identify all 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 is required to describe and ensure the implementation of Best Management Practices ("BMPs") at the Project, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.

12. Pursuant to Part I. C. of the Permit, the Project's SWMP shall include, at a minimum, the following items:

    a. Site Description – The SWMP shall clearly describe the construction activity, including:

        i. The nature 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. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
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 all potential pollution sources, including ground surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.
vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering, and concrete washout.
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 – The SWMP shall include a legible site map(s), showing the entire site, identifying:

i. Construction site boundaries.
ii. All areas of ground surface disturbance.
iii. Areas of cut and fill.
iv. Areas used for storage of building materials, equipment, soil, or waste.
v. Locations of dedicated asphalt or concrete batch plants.
vi. Locations of all structural BMPs
vii. Locations of all non-structural BMPs.
viii. Locations of springs, streams, wetlands and other surface waters.

c. Stormwater Management Controls - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:

i. SWMP Administrator – The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining, and revising the SWMP.
ii. Identification of Potential Pollutant Sources – The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
iii. Best Management Practices (BMPs) for Stormwater Pollution Prevention – The SWMP shall identify and describe appropriate BMPs that will be implemented at the facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.

(1) Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

(2) Non-Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees, and preservation of mature vegetation.

(3) Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.

(4) Materials Handling and Spill Prevention – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.

(5) 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.

(6) Vehicle Tracking Control – The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.

(7) Waste Management and Disposal, Including Concrete Washout – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.

(8) Groundwater and Stormwater Dewatering – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.

d. Final Stabilization and Long-Term Stormwater Management – The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.

e. Inspection and Maintenance – The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.

13. Pursuant to Part I. D. 5. of the Permit, CEI is required to update the SWMP and amend the plan when there is a change in design, construction, operation, or maintenance of the site; when the SWMP proves to be ineffective in controlling pollutants in stormwater discharges; or when BMPs are no longer necessary and are removed.

14. During the September 1, 2009 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 14(a-e) below:

a. The site description section of the SWMP did not include an estimate of the total area of the site.

b. The SWMP did not include the location of all potential pollution sources (i.e., equipment fueling) nor the location of all anticipated allowable sources of non-stormwater discharge (i.e., concrete washout).

c. The SWMP had not been prepared and/or updated to reflect current site conditions. Several of the BMPs located on the site map were prescribed for noncurrent construction phases and, as such, were not implemented onsite.

d. The SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of structural and non-structural practices. The SWMP included two conflicting descriptions of phased BMP implementation. The main SWMP document described three distinct construction phases (i.e., site preparation/grading, infrastructure/paving operations, and site stabilization/landscaping) with specific BMPs dictated for each of those phases. The supplemental documentation to the SWMP stated that all BMPs identified would be implemented at the beginning of the Project due to time constraints. No clarification was provided to indicate which of these phased BMP implementation plans was in effect.

e. The SWMP did not describe adequate procedures to maintain all erosion and sediment control practices in good and effective operating condition. The Permit requires that BMP maintenance be completed as soon as possible, immediately in most cases. However, the SWMP directed Project personnel to complete necessary maintenance of BMPs within seven days of discovery.

15. The Division has determined that CEI failed to prepare and maintain a complete and accurate SWMP for the Project.

16. CEI's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B., Part I. C., and Part I. D. 5. of the Permit.

Failure to Conduct and/or Document Inspections of Stormwater Management System

17. Pursuant to Part I. D. 6. (a) of the Permit, for active sites where construction has not been completed, CEI is required to make a thorough inspection of the Project's stormwater management system at least every 14 calendar days and within 24 hours of any precipitation or snowmelt event that causes surface erosion.

18. Pursuant to Part I. D. 6. (b) (2) of the Permit, CEI is required to keep a record of inspections that describes any corrective actions taken, the dates the corrective actions were taken, and any measures taken to prevent future violations. After corrective action has been taken, or where a report does not identify any incidents requiring corrective action, the inspection report shall contain a signed statement indicating the site is in compliance with the Permit.

19. During the September 1, 2009 inspection, the Inspector identified that CEI's inspection reports from 7/20/09, 7/27/09, 7/30/09, 8/7/09, 8/10/09, 8/14/09, 8/17/09, 8/19/09, 8/24/09, and 8/31/09 all failed to include a signed statement indicating the site was in compliance with the Permit.

20. CEI's failure to properly document its inspections constitutes violations of Part I. D. 6. (b) (2) of the Permit.

Failure to Install, Maintain, or Properly Select Best Management Practices

21. Pursuant to Part I. C. 3. (c) of the Permit, CEI is required to implement BMPs to reduce the potential of pollution sources from contributing pollutants to stormwater discharges, including minimizing erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

22. Pursuant to Part I. D. 2. of the Permit, CEI is required to select, design, install, implement and maintain appropriate BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.

23. Pursuant to Part I. B. 3. of the Permit, CEI is required to implement the provisions of the SWMP, as written and updated, from commencement of construction activity until final stabilization is complete.

24. During the September 1, 2009 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 24(a-q) below:

    a. The Inspector observed a disturbed drainage swale located at the south portion of the Project, west of Taxiway P. No BMPs were implemented to control concentrated flow along the bottom of the swale. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.

    b. The Inspector observed a disturbed drainage swale located at the south portion of the Project, west of Taxiway P at the intersection with P4. No BMPs were implemented to control concentrated flow along the bottom of the swale. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.

    c. The Inspector observed a disturbed drainage swale located at the north central portion of the Project, south of Taxiway EC. No BMPs were implemented to control concentrated flow along the bottom of the swale. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.

d. The Inspector observed a disturbed drainage swale located at the north central portion of the Project, south of Taxiway ED. A concrete trickle channel was present in the base of the swale; however, the constructed trickle channel was elevated above the low point of the swale bottom and no BMPs were implemented to control erosion and concentrated flow along these disturbed areas. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.

e. The Inspector observed a disturbed area located east of Taxiway P at the Project, near the intersection with 84th Avenue. No BMPs were implemented to stabilize the disturbed area or to prevent sediment from discharging to the preexisting stormwater conveyance system, which leads to state waters.

f. The Inspector observed a disturbed area located west of Taxiway P7 and north of Taxiway EC at the Project. No BMPs were implemented to stabilize the disturbed area or to prevent sediment from discharging to the preexisting stormwater conveyance system, which leads to state waters.

g. The Inspector observed a disturbed area located between Taxiway P and Taxiway P7 at the Project. No BMPs were implemented to stabilize the disturbed area or to prevent sediment from discharging to the preexisting stormwater conveyance system, which leads to state waters.

h. The Inspector observed disturbed areas at the Project located 1) in the south portion of the site, east of Taxiway P at the intersection with P4 and 2) in the central portion of the site, west of Taxiway P and south of Taxiway EC. A Vehicle Tracking Control ("VTC") was observed at both locations; however, the VTCs were not installed in accordance with implementation specifications described in the SWMP, as the VTCs were not 50 feet in length and 6 inches in depth. Consequently, sediment tracking was visible on the adjacent, paved Taxiway.

i. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the south portion of the site, west of Taxiway P. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.

j. The Inspector observed a disturbed area surrounding a culvert at the Project, located east of Taxiway P, near the intersection with 84th Avenue. Rock wattles were observed in place inside each culvert opening; however, the SWMP did not prescribe or include specifications for that type of culvert inlet protection. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*

k. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the southwest corner of Taxiway P, south of Taxiway EC. A rock wattle was observed at the base of the culvert opening; however, the rock wattle was not installed in accordance with the implementation specifications described in the SWMP, as the wattle did not extend from wingwall to wingwall leaving no gap. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*

l. The Inspector observed a disturbed area surrounding a culvert at the Project, located adjacent to Taxiway P7, north of Taxiway EC. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.

m. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the southwest corner of Taxiway ED and Taxiway P7. A rock wattle were observed at the base of the culvert opening; however, the rock wattle was not installed in accordance with the implementation specifications described in the SWMP, as the wattle did not extend from wingwall to wingwall leaving no gap. No BMPs were implemented to stabilize the entire disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining drainage system. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*

n. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the at the north portion of the site, between Taxiway P and Taxiway P7. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.

o. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the southwest corner of Taxiway P and Taxiway ED. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.

p. The Inspector observed a disturbed drainage swale located at the northeast portion of the Project. A rock check dam was observed in place; however, the rock check dam was not installed in accordance with implementation specifications described in the SWMP, as the rock check dam did not have a median stone size of twelve inches, was not trenched into the ground one foot to eight inches, and did not extend across the swale with the ends of the check dam a minimum of one foot to six inches higher than the center of the check dam. No other BMPs were implemented to stabilize the disturbed soils in and around the drainage swale or to prevent down gradient sediment transport.

q. The Inspector observed a disturbed detention area located in the northeast corner of the site. Stormwater from the entire construction site is channeled to this location where it is conveyed offsite and ultimately into the Hayesmount Tributary. A reinforced culvert protection was observed in place; however, the culvert protection was not installed in accordance with the implementation specifications described in the SWMP, as the culvert protection was placed on top of the concrete apron rather than being trenched into the ground, and erosion blanket was not utilized. A rock wattle was observed at the base of the culvert opening; however, the rock wattle was not installed in accordance with the implementation specifications described in the SWMP, as the wattle did not extend from wingwall to wingwall leaving no gap. No other BMPs were implemented to stabilize the disturbed soils in and around the detention area or to prevent sediment transport offsite. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*

25. The Division has determined that CEI failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.

26. CEI's failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations Part I. C. 3. (c), Part I. D. 2. and Part I. B. 3. of the Permit.

ORDER AND AGREEMENT

27. 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, the Division orders CEI to comply with all provisions of this Consent Order, including all requirements set forth below.

28. CEI agrees to the terms and conditions of this Consent Order. CEI agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. CEI also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by CEI 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.

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

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

30. In addition to all other funds necessary to comply with the requirements of this Consent Order, CEI shall pay Forty Five Thousand Dollars ($45,000.00) in the form of civil penalties and expenditures on a Supplemental Environmental Project ("SEP") in order to achieve settlement of this matter.

31. 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, CEI shall pay Ten Thousand Dollars ($10,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Ten Thousand Dollar ($10,000.00) civil penalty for the above violation(s) and CEI agrees to make the payment within thirty (30) calendar days of the issuance of an Order for 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-CAS-B2
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

32. CEI shall also perform the SEP identified below. CEI's total expenditure for the SEP shall be not less than Thirty Five Thousand Dollars ($35,000.00).

33. CEI shall undertake the following SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements:

34. CEI shall donate Thirty Five Thousand Dollars ($35,000.00) to the Continental Divide Trail Alliance. The funds will be used for a trail construction, reconstruction, and rehabilitation project in Chafee County, as further described in Attachment A. CEI shall make the payment of Thirty Five Thousand Dollars ($35,000.00) and shall include with the donation a cover letter identifying the monies for the above-described project within thirty (30) calendar days of the effective date of this Consent Order. CEI shall provide the Division with a copy of the cover letter and check within thirty (30) calendar days of the effective date of this Consent Order. CEI shall not deduct the payment of the SEP donation provided for in this paragraph for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

35. CEI hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. CEI further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that CEI has, or will receive credit under any other legal obligation for the SEP, CEI shall pay Thirty Five Thousand Dollars ($35,000.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be as specified in paragraph 31 above.

36. All SEPs must be completed to the satisfaction of the Division by August 30, 2012. In the event that CEI fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, CEI shall be liable for penalties as follows:

    a. Payment of a penalty in the amount of Thirty Five Thousand Dollars ($35,000.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.

    b. CEI shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 31 above.

37. CEI shall submit a SEP Completion Report to the Division by September 30, 2012. The SEP Completion Report shall contain the following information:

    a. A detailed description of the SEP as implemented;
    b. A description of any operating problems encountered and the solutions thereto;
    c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
    d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
    e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

38. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

39. CEI shall include the following language in any public statement, oral or written, making reference to the SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."

SCOPE AND EFFECT OF CONSENT ORDER

40. 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.

41. 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 CEI 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.

42. 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 CEI, 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.

43. Notwithstanding paragraph 29 above, the violations described in this Consent Order will constitute part of CEI'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 CEI. CEI agrees not to challenge the use of the cited violations for any such purpose.

44. This Consent Order does not relieve CEI from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

45. 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. 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.

46. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

47. 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.

48. Upon the effective date of this Consent Order, CEI 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.

49. CEI shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of CEI, or those acting for or on behalf of CEI, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. CEI shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by CEI in carrying out activities pursuant to this Consent Order. 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

50. 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-CAS-B2
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
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For CEI:

Concrete Express, Inc.
Attn: Joseph M. O'Dea
2027 W. Colfax Avenue
Denver, CO 80204
Telephone: 303.562.2000
E-mail: jodea@ceiconstructors.com

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

52. 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 41. 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

53. This Consent Order is binding upon CEI 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 CONCRETE EXPRESS, INC.:

_____ Date: 7/20/11
Joseph M. O'Dea, Vice President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 7/21/11
Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

Attachment A

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP) PROPOSAL/AGREEMENT

The regulated entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the department) for SEP consideration.

Enforcement Action Information	Concrete Express, Inc. Case No. SO-100329-1
Regulated Entity Contact Information	Joseph M. O'Dea Vice President Off 303-562-2000 x316 Fax 303-893-1949 Cell 303-472-4974 Email jodea@ceiconstructors.com
3rd Party SEP Recipient Contact	Steve Dudley, Executive Director Continental Divide Trail Alliance P.O. Box 986 Golden, CO 80402 303-278-3177 steve@cdtrail.org
CDPHE Contact Person	Mike Harris, WQCD Rachel Wilson-Roussel, DEHS
Geographical Area to Benefit Most Directly From Project	Arkansas River Watershed, Chafee County, Central Colorado Rockies, as well as Denver Metropolitan Area
Project Title	Youth Corps and Volunteers on the CDNST at Tunnel Gulch
Project Type	Third Party SEP Donation
SEP Category	Other- Trail Construction, Reconstruction and Rehabilitation
Project Summary	In collaboration with the Salida Ranger District, CDTA will sponsor one volunteer project and 4 weeks of Youth Corps work along the CDNST in the Tunnel Gulch area of the District. CDTA is applying for funding to ensure completion of the Trail project. Volunteer trail work will include new trail construction of .25 mile of Trail and Youth Corps will complete .75 miles of new trail construction and reconstruction. This entire project helps to complete the entire new non-motorized route for the CDNST between Monarch Pass and Mt Elbert, and adding over 50 miles of new non motorized trail to the Salida Ranger District available for non motorized recreation opportunities.

	Project Description: **Objectives:** 1. Complete 1 mile of new Trail Construction 2. Reclaim .5 miles of severely eroded existing Trail that will be decommissioned upon new trail completion 3. Recruit 25 volunteers for 4 days and contribute 100 volunteer days of Service to the United States Forest Service towards the completion of the CDNST 4. Support 4 weeks of CDTA Youth Corps and engage the next generation of CDNST Stewards *Narrative Description:* In 2011 CDTA will collaborate with the USFS Salida Ranger District to work on trail construction and reconstruction along the Tunnel Gulch Area of the district. The work will take the CDNST off of a steep fall line direct ascent trail location, open to motorized use, and replace it with a more sustainable well graded and drained non motorized route. This work began in 2008 and over the past 2 years CDTA Youth Corps and volunteers have constructed almost 2.5 miles of new trail, this project will add an additional mile to the 6.5 mile project. This Trail project was identified and a decision was issued via the 2005 EA document for the CDNST covering the Mt Elbert to Monarch Pass Trail Section.
Project Description	For completion of the Tunnel Gulch project, we are utilizing both CDTA Youth Corps and volunteers. The Youth Corps will be working on the project for a total of <u>four weeks</u> to ensure completion of <u>the 2011 goals</u>. In addition CDTA will dovetail in a four day volunteer project that will allow CDTA volunteers and Youth Corps to work together and share this experience. Beginning in 2008 and continuing through 2010, CDTA piloted this type of work effort and volunteers and youth corps alike, along with our agency partners, found this experience to be very rewarding. In fact, this project is one of the first projects of our season to fill up with volunteers with many alumni returning specifically to work with the Salida Ranger District, Youth Corps and CDTA staff. By bringing two of our most successful programs together, Youth Corps members are able to fully engage in CDTA volunteerism efforts, sharing their skills and knowledge with volunteers, while volunteers were able to share in the joy of long term stewardship commitments to the CDNST. We also found that by employing both volunteers and youth corps, we are able to maximize the amount of work and capitalize on the effort to get into this project site. Youth Corps will be utilized in this section because of their proven ability to handle technical work in remote areas for long stretches of time, safely as well as an ability to complete the work. In this case, they will be focused on the technical switchbacks and cribbing necessary to build this trail section. Volunteers will focus on the sidehill trail construction areas. In this project area, work will help to finalize the overall trail plan for both the CDNST. At Tunnel Gulch, the existing CDNST follows a direct ascent trail

section from Tin Cup Pass up to the Alpine Tunnel, and is open to motorized use. This project will remove the direct ascent sections, realign the Trail to a more sustainable grade and be closed to motorized use. Furthermore, this trail section will connect to work on the North side of Tin Cup pass and in effect provide a key new link of CDNST between Mineral basin to the North and Alpine Tunnel to the south. In 2012, additional work will continue south toward Hancock Lake and finalize trail reconstruction and construction efforts in the area.

Implementation Tasks:

1. Plan, operate and implement one 4 day volunteer project and construct .25 miles of CDNST
2. Plan, operate and implement 4 weeks of 10 person CDTA Youth Corps to complete .75 miles of CDNST

Need for Project:

Federal land managers are continually confronted with two troubling trends: an expanding backlog of work on our public lands and a shrinking budget. Funding for routine maintenance, currently a $200 million backlog, has not kept pace with needs. The result is a declining quality of experience for recreationists. CDTA programs assist in caring for the land with millions of dollars worth of volunteer service.

The CDTA recognizes and embraces the benefits and challenges of building the Continental Divide National Scenic Trail, including providing access to recreate, enjoy and learn from the outdoors and to experience and understand the diverse and unique lifestyles and traditions along the Trail. Due to its location, the Trail is a magnet for many public-lands issues and CDTA works to unite diverse communities in an effort to create a national treasure that will benefit all of America.

Currently, in this project area, the community continues to explore and utilize the CDNST in spite of its incomplete state. Individuals utilize this trail and often end up on roads as part of the current CDNST route which provides unsafe passage for hiker and stock user alike. We plan to address these issues and to ensure the projects, once completed, better meet the intent of the National Trails System Act. Finally, for the past 4 years we have held our annual Trailfest celebration in Buena Vista. In 2009, we had one of our most successful events with tremendous support from the Town itself. We feel the Town desires this resource and would like to be able to fully market the CDNST as an asset to their community- especially as a non-motorized Trail route.

Urgency. The Continental Divide Trail Alliance greatly depends on private funds support for the project outlined in this grant. Without these funds, this project is in jeopardy of not having the ability to move forward. Once secured, we match these funds with other sources, as we rely on a diversity of

	funding streams to balance out the total cost of each and every project. With out private funds, the longer it takes to get these projects done, and therefore, the longer it is before we have met the intent of Congress for a non-motorized CDNST. This particular trail project is a part of a larger project area that stretches from Mt. Elbert to Monarch Pas. We are employing a multi-faceted approach to the completion of the Trail route. Every year, we continue to inch closer to completing this 45 mile trail segment. This project will enable us to continue to ensure the highest quality recreational experience may be obtained along the CDNST in the Salida Ranger District and continues to demonstrate a strong private public partnership that has become a model relationship for our other Trail partners. The CDTA has the full support of the Salida Ranger District and the Towns of Buena Vista and Salida. We have carefully cultivated these relationships and supported the NEPA work in order to have these areas ready for trail construction. Additionally, CDTA has received full support from the forest service for our volunteer efforts and the entire partnership views this venture for the CDTA as a final component to our ability to help complete the Trail. Additionally, as always, our volunteer and youth corps programs help provide a sustainable work force to support long term stewardship of the CDNST. Construction began in the entire project area in May of 2006, and on this particular trail segment (approximately 4 miles long) in May 2008 and accomplishes about 1 mile per year. We are prepared to begin this phase of construction in August 2011, if funded. We will complete the final two miles of the project in 2012 by doubling our project scope and hosting 2 volunteer projects and 8 weeks of CDTA Youth Corps.
Expected Environmental and/or Public Health Benefits	The Continental Divide National Scenic Trail (CDNST) is a 3,100-mile primitive and challenging non-motorized trail along the Continental Divide, traversing the entire state of Colorado and passing only 50 miles west of Denver where it crosses I-70 near Loveland Pass and further south at Kenosha Pass on Hwy. 285. Created by an Act of Congress in 1978, the vision for the Trail is to provide people a high quality scenic, recreational, and natural experience along the Continental Divide. Research shows that the number one preference for recreation on public lands is hiking, and nowhere is there a better outdoor hiking experience than along the Continental Divide. The Trail serves to draw thousands of people from the Denver area each year out into their high country backyard. The CDNST is more than a trail, it is a protected corridor. The Trail is designed, built, and managed to reduce erosion and sediment run off. Motorized travel is prohibited in the proposed section. The section being proposed will route foot, horse, and mechanized travel around environmentally sensitive areas, easily damaged in the high country, and will help contain travel within a thin tread line. Use and management standards serve to minimize the invasion of exotic species. The corridor is managed for

a healthy forest, helping to preserve the quality of this important watershed.

Many organizations participate in the building and maintaining of the CDNST i Colorado, including the Roundup Riders of the Rockies, local chapters of the Backcountry Horsemen of America, local Rotary Clubs, local Boy Scouts troop Colorado Fourteeners Initiative, Colorado Trail Foundation, Volunteers for Outdoor Colorado and others. Our work with the Rocky Mountain Youth Corp also reflects a long standing and consistent successful partnership.

Colorado's 2008 Statewide Comprehensive Outdoor Recreation Plan (SCORP) lists the following critical needs for the state vis a vis outdoor recreation: community trail systems, acquisition of trail corridors and rights-of-way, trails connecting people to public lands, trails connecting to adjacent communities. In addition, SCORP describes what it calls "the Nexus of Tourism and Outdoor Recreation" and how local communities, public land managers and tourism business are all linked together. CDTA's vision to connect people to the land, our mission to complete the CDNST, and the project outlined in the grant, specifically, are inextricably linked to SCORP's priorities.

Youth

To increase young people's connection and support of our natural lands, CDTA coordinates the CDTA Youth Corps. We are utilizing Youth Corps at the Tunnel Gulch project site proposed in this grant. Started in 2002, the program recruits young men and women (ages 17-25) to live in the backcountry building the Trail for eight to nine weeks. They then spend one week preparing and giving formal presentations to schools, community groups and businesses. These presentations are very heartfelt and moving, as one member of an audience noted, "You can see a part of their soul when articulating their experience." Each crew has a designated Crew Leader and two Educational Mentors trained to provide daily educational programs about environment, trail construction and habitats. They are often sent to build some of the most challenging and remote sections of the Trail. In 2009 and 2010, CDTA Youth Corps did outstanding work at the Tunnel Gulch site, and received high accolades from our USFS partners and continue to be asked to return to the project. It is our hope that through engaging these young members of the community into our service program, that they will become future volunteers and/or CDTA Youth Corps members.

Local Benefits

It is estimated that hundreds of thousands visit the CDT each year in Colorado. While there is no way to accurately track all of the visitation data, at three significant assets along the Trail in Colorado, Grays Peak, Berthoud Pass and Monarch Pass, combined annual visitors total more than 500,000. With access to the CDNST so close to Denver off I-70 and Hwy. 285 it is estimated that over 80% of the visitors to the CDNST in Colorado each year come from the greater Denver area. This estimate is consistent with a similar high percentage of Denver residents volunteering each year for volunteer trail construction and maintenance projects on the CDNST in Colorado. The

benefits of outdoor recreation for Denver residents are significantly enhanced by the construction and maintenance of the national scenic trail so close to their homes. The Denver residents further benefit from the standards of management for the CDNST which serve to promote a healthy forest and protect the sensitive watershed just west of Denver.

Project Budget

Budget Category	Description	Cost
Personnel (Salaries, Wages)	CO Field Coordinator and Crew Leader	$ 1500.00
	Grant Management and Administration	$ 2000.00
	Executive Director –oversight	$ 1000.00
	Director of Trail Management	$ 500.00
	Volunteer Program manager	$ 500.00
Materials and Supplies	Volunteer Food	$ 600.00
	Safety equipment for volunteers	$ 100.00
	Office supplies for mailings etc	$ 350.00
	Volunteer Thank Yous	$ 350.00
Contractors/ Subcontractors	Southwest Conservation Corps- Salida Office	$ 26,000.00
Other Direct Costs	Travel	$ 1000.00
	Volunteer and Youth Corps Uniforms	$ 1100.00
	Total:	**$35,000.00**

Budget Discussion

In 2008- 2010, and in 2012, CDTA has received funds to support the work efforts in this project area. However, in each of these cases, these funds supported discreet portions of the entire 6.5 miles of Trail construction.

Payment of $35,000 will be made to CDTA by September 15, 2011 (approximately).

Project Schedule

Proposed Start Date:	September 15, 2011
Projected Completion Date:	August 30, 2012
SEP Completion Report Due:	September 30, 2012

Reporting

Final SEP Completion Report

The SEP Completion report will be submitted within 30 days of project completion and contain at a minimum:

- A detailed description of the project as implemented;
- A summary table identifying project deliverables and tasks along with the associated completion date;
- A description of any operating problems encountered and the solutions thereto;
- A full expense accounting including itemized costs, documented by copies of purchase orders, contracts, receipts or canceled checks;
- Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Settlement Agreement and this SEP Agreement;
- A description of the environmental and public health benefits resulting from

	implementation of the SEP along with **quantification** of the outcomes and benefits; Additional information should include: • Examples of brochures, educational or outreach materials developed or produced as part of the SEP; and • Photographs documenting the project.
Other Relevant Information	
Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.	No.