STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
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Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

Colorado Department
of Public Health
and Environment

September 10, 2010

Ms. Muriel Agnelli, Registered Agent
Hamon Contractors, Inc.
5670 Franklin Street
Denver, Colorado 80216

Certified Mail Number: 7009 1680 0000 2094 4923

RE: Order for Civil Penalty, Number: SP-100910-1

Dear Ms. Agnelli:

Hamon Contractors, Inc. is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Compliance Order on Consent, Number: SC-100712-1.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office 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: Tri-County Health Department

ec: Aaron Urdiales, EPA Region VIII
Kelsey Baertschi, Engineering Section, CDPHE
Paul Kim, Engineering Section, CDPHE
Nathan Moore, Permits Section. CDPHE
Dick Parachini, Watershed Program, CDPHE
Michael Beck, FSU, CDPHE
Michael Harris, Case Person

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY **NUMBER: SP-100910-1**

IN THE MATTER OF: **HAMON CONTRACTORS, INC.**
CDPS PERMIT NOS. COR-030000 & COG-070000
CERTIFICATION NOS. COR-038697 & COG-072024
DOUGLAS & ADAMS COUNTIES, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, upon petition for the imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance Section, and pursuant to §25-8-608, C.R.S., I hereby impose a civil penalty in the amount of Eleven Thousand Five Hundred Ninety Two Dollars ($11,592.00) against Hamon Contractors, Inc. for the violations cited in the July 12, 2010 Compliance Order on Consent (Number: SC-100712-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty and as set forth in the Compliance Order on Consent:

> *"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-CADM-B2*
> *4300 Cherry Creek Drive South*
> *Denver, Colorado 80246-1530"*

Dated this 10th day of September, 2010.

Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

EXHIBIT A

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-100712-1**

IN THE MATTER OF: **HAMON CONTRACTORS, INC.**
CDPS PERMIT NOS. COR-030000 & COG-070000
CERTIFICATION NOS. COR-038697 & COG-072024
DOUGLAS & ADAMS COUNTIES, 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 Hamon Contractors, Inc. ("Hamon"). The Division and Hamon 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 the violations cited herein and in the Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-060206-1) the Division issued to Hamon on February 6, 2006.

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 Hamon and Hamon's compliance with the Act, its implementing permit regulations, and the permit certifications that were issued to Hamon.

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

4. Hamon is a "person" as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

EXHIBIT A

Stormwater Violations

5. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.

6. Pursuant to 5 CCR 1002-61, §61.3(2), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.

7. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(J), construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area is considered to be "industrial activity."

8. Pursuant to 5 CCR 1002-61, §61.4(3)(a)(i) and Part I. A. 4. a. of the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Stormwater Permit"), facilities involved in construction activities are required to submit a permit application at least ten days prior to the commencement of construction.

9. On July 18, 2005, Hamon initiated construction activities to expand and improve a section of East Main Street along twelve acres of disturbed land located in or near the Town of Parker, Douglas County, Colorado (the "Parker Project").

10. On July 27, 2005, Hamon applied for Parker Project coverage under the Stormwater Permit.

11. On August 2, 2005, the Division issued Hamon Certification Number COR-038697 authorizing Hamon to discharge stormwater from the construction activities associated with the Parker Project to Quail Creek, a tributary of the South Platte River, under the terms and conditions of the Stormwater Permit. Certification Number COR-038697 became effective August 2, 2005 and remained in effect until Hamon certified that final stabilization was achieved and inactivated its Stormwater Permit coverage on February 27, 2007.

12. Quail Creek and the South Platte River are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).

13. The Division records establish that Hamon did not have any permits authorizing discharges of stormwater from the Parker Project for the period of July 18, 2005 through August 2, 2005.

14. Hamon's failure to obtain CDPS permit coverage for the Parker Project, from the Division, for the period of July 18, 2005 through August 2, 2005, constitutes violation(s) of §25-8-501(1) C.R.S., 5CCR 1002-61, §61.3(1)(a), 5 CCR 1002-61, §61.3(2), and 5 CCR 1002-61, §61.4(3)(a)(i).

15. 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 sections 25-8-601 through 612, C.R.S.

16. Pursuant to Part I. B. 3. a. (1) of the Stormwater Permit, Hamon was required to minimize erosion and sediment transport from the Project. The Stormwater Permit specified that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

17. Pursuant to Part I. B. 3. a. (2) of the Stormwater Permit, Hamon was required to implement interim and permanent stabilization practices at the Parker Project, including site-specific scheduling of the implementation of the practices. The Stormwater Permit specified that site plans should ensure that existing vegetation is preserved where possible and that disturbed areas are stabilized. The Stormwater Permit specified that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, and preservation of mature vegetation.

18. On August 4, 2005, during or immediately after a precipitation event, a representative from the Town of Parker conducted an onsite evaluation of the Parker Project and issued a Stop Work Order to Hamon as a result of Hamon's failure to adequately protect a storm sewer inlet at the Parker Project. The Town of Parker representative observed hay bales in place adjacent to the inlet, however, the bales were not positioned to protect the inlet as gaps were observed between them. No other Best Management Practices ("BMPs") were in place to prevent sediment from entering the storm inlet and no BMPs were in place to stabilize the disturbed areas of the Parker Project located up gradient of the inlet. Consequently, a significant amount of sediment-laden stormwater from the surrounding disturbed areas was observed discharging into the inadequately protected storm inlet and then into Sulphur Gulch.

19. On September 29, 2005, representatives from the Division performed a visual evaluation of the Parker Project from the public right-of-way. The Division representatives observed disturbed slopes throughout the Parker Project and piles of soil surrounding several active storm sewer inlets. No BMPs were observed in place to stabilize the disturbed areas or prevent sediment from entering to the storm sewer and discharging to state waters.

20. On October 5, 2005, a representative from the Division (the "Inspector") conducted an on-site inspection of the Parker Project, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Hamon's compliance with the Act and the Stormwater Permit. During the inspection, the Inspector spoke with Parker Project representatives, conducted a review of the Project's stormwater management records and performed a physical inspection of the site.

21. The Division has determined that Hamon failed to implement and/or maintain adequate BMPs at the Parker Project, as described below in paragraphs 21(a–g):

    a. During the October 5, 2005 inspection, the Inspector observed disturbed slopes along East Main Street near Quail Creek Drive. Rock socks were observed in place to protect the nearby storm sewer inlets. However, no BMPs were in place to provide interim or permanent stabilization of the disturbed slopes, as required by the Stormwater Permit, and no BMPs were in place to prevent sediment from discharging toward the storm sewer. Consequently, the inlet protections in place would easily be overwhelmed during a storm event.

b. During the October 5, 2005 inspection, the Inspector observed soil piles at the Parker Project, between the newly constructed (westbound) lanes and the publicly active (eastbound) lanes of East Main Street. No BMPs were observed in place to prevent the soil from discharging from the area and traveling to the storm sewer during a storm event.

c. During the October 5, 2005 inspection, the Inspector observed a detention basin located near the intersection of East Main Street and Quail Creek Drive, which was being utilized to collect stormwater from the Parker Project and the adjacent housing development. The detention basin was not acting as an adequate construction BMP, as the basin was not stabilized and did not have adequate stormwater holding capacity to allow suspended sediment to settle out prior to discharging. Large piles of disturbed soil were observed both in and surrounding the detention basin. Hay bales were in place to protect the detention basin outlet, however, because the detention basin was designed to function as a flood control structure, the outlet of the detention basin was located near the low-point of the basin's storage capacity. Consequently, sediment-laden stormwater would quickly fill the basin, overtop the hay bales, and discharge from the area during a significant storm event.

d. During the October 5, 2005 inspection, the Inspector observed that stormwater discharging from the detention basin located near East Main Street and Quail Creek Drive would flow through a culvert pipe under East Main Street, onto a disturbed slope on the south side of East Main Street, and into an unnamed drainage channel leading to Sulphur Gulch. The disturbed slope did not have interim or permanent stabilization practices in place, as required by the Stormwater Permit. Silt fence was observed in place along the toe of the disturbed slope, however, a large gap in the fencing was observed at the point of discharge to the drainage channel. Thus, the silt fence was not acting as an adequate BMP to control sediment.

e. During the October 5, 2005 inspection, the Inspector observed disturbed slopes located along East Main Street from Quail Creek Drive to Canterberry Parkway. Rock socks were observed in place to protect the nearby storm sewer inlets. However, no BMPs were in place to provide interim or permanent stabilization of the disturbed slopes, as required by the Stormwater Permit, and no BMPs were in place to prevent sediment from discharging toward the storm sewer. Consequently, the inlet protections in place would easily be overwhelmed during a storm event.

f. During the October 5, 2005 inspection, the Inspector observed a two-drum compactor located near Canterberry Parkway. A pool of antifreeze, or other vehicle fluid, was observed in the gutter line under the compactor and no BMPs were being utilized to clean up the spill or prevent the vehicle fluid from traveling to the storm sewer.

g. During the October 5, 2005 inspection, the Inspector observed disturbed slopes located along East Main Street between Canterberry Parkway and Miller Road. A rock sock was in place to protect a nearby storm sewer inlet. However, no BMPs were in place to provide interim or permanent stabilization of the disturbed slopes, as required by the Stormwater Permit, and no BMPs were in place to prevent sediment from discharging toward the storm sewer. Consequently, the rock sock in place would easily be overwhelmed during a storm event.

22. Hamon's failure to implement and maintain BMPs at the Parker Project to protect stormwater quality during construction activities constitutes violation(s) of Part I. B. 3. a. of the Stormwater Permit.

23. Pursuant to Part I. B. of the Stormwater Permit, Hamon was required to prepare a Stormwater Management Plan ("SWMP") that identifies BMPs that, when implemented, would meet the terms and conditions of the Stormwater Permit. The SWMP was required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Parker Project. In addition, the plan was required to describe and ensure the implementation of BMPs, which would be used to reduce the pollutants in stormwater discharges associated with construction activity.

24. Pursuant to Part I. B. of the Stormwater Permit, the SWMP shall include, at a minimum, the following items:

    a. Site Description - Each plan shall provide a description of the following:
        i. A description 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. An estimate of the runoff coefficient of the site before and after construction activities are completed and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site.
        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 any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc.
        vii. The location and description of any anticipated non-stormwater components of the discharge, such as springs and landscape irrigation return flow.
        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 - Each plan shall provide a generalized site map or maps which indicate:
        i. Construction site boundaries.
        ii. All areas of soil disturbance.
        iii. Areas of cut and fill.
        iv. Areas used for storage of building materials, soils or wastes.
        v. Location of any dedicated asphalt or concrete batch plants.
        vi. Location of major erosion control facilities or structures.
        vii. Springs, streams, wetlands and other surface waters.
        viii. Boundaries of 100-year flood plains, if determined.

    c. BMPs for Stormwater Pollution Prevention - The plan shall include a narrative description of appropriate controls and measures that will be implemented before and during construction activities at the facility.

        i. Erosion and Sediment Controls - A description of structural site management controls (Structural Practices) which will minimize erosion and sediment transport <u>and</u> a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.

ii. Material Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.

d. Final Stabilization and Long-Term Stormwater Management - Description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.

e. Other Controls - Description of other measures to control pollutants in stormwater discharges, including plans for waste disposal and limiting off-site soil tracking.

f. Inspection and Maintenance - Description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures identified in the SWMP.

25. Pursuant to Part I. E. 2. b. of the Stormwater Permit, Hamon was required to retain a copy of the Parker Project's SWMP at the construction site from the date of project initiation to the date of final stabilization.

26. During the October 5, 2005 inspection, the Inspector reviewed the Parker Project's onsite SWMP and determined that the SWMP did not contain a site description, narrative description of BMPs, procedures for achieving final stabilization, a description of other controls, nor procedures to inspect and maintain the stormwater management system. Parker Project representatives informed the Inspector that a complete SWMP had been developed for the Parker Project but was not available onsite. The Inspector requested that a copy of the complete SWMP be submitted to the Division for in-office review.

27. On October 7, 2005, the Division received a copy of the Parker Project's SWMP from Hamon and, upon review, the Division determined that Hamon failed to prepare and maintain a complete and accurate SWMP for the Project, as described below in paragraphs 27(a–f):

a. The site map included in the Parker Project's SWMP did not include the locations used for storage of building materials, soils or wastes, as required by the Stormwater Permit.

b. The site map included in the Parker Project's SWMP did not include all areas of soil disturbance, as required by the Stormwater Permit.

c. The site map included in the Parker Project's SWMP did not reflect the conditions observed onsite during the October 5, 2005 inspection. Specifically, some of the BMPs implemented in the field (detention basins and rip-rapped areas) were not located on the site map.

d. The site map included in the Parker Project's SWMP did not include the locations of all springs, streams, and wetlands, which are required to be protected from stormwater runoff.

e. The Parker Project's SWMP did not include a clear, complete and detailed description of the relationship between the phases of construction and the implementation and maintenance of control measures, as required by the Stormwater Permit.

f. The Parker Project's SWMP did not provide a clear, consistent description of the measures that would be used to achieve final stabilization and control pollutants in stormwater discharges after construction is completed. During the October 5, 2005 inspection, the Parker Project's Erosion Control Supervisor stated that all disturbed slopes would be seeded and stabilized with erosion control blankets. However, the "Erosion Control Notes" section of the SWMP stated that all seeded areas would be "mulched, crimped and tackified." Conversely again, Contract Drawing 15, included as part of the Parker Project's SWMP, stated that 3,060 square yards of soil retention blanket would be used at the Parker Project, however, the SWMP did not include any written procedures for the use and implementation of the blanket.

28. Hamon's failure to prepare and maintain a complete and accurate SWMP for the Parker Project constitutes violation(s) of Part I. B. of the Stormwater Permit. Hamon's failure to retain a complete SWMP at the Parker Project from the date of initiation to the date of final stabilization constitutes violation(s) of Part I. E. 2. b. of the Stormwater Permit.

29. Pursuant to Part I. C. 5. a. of the Stormwater Permit, for active sites where construction has not been completed, Hamon was required to make a thorough inspection of the Parker Project's stormwater management system at least every 14 days and after any precipitation or snowmelt event that caused surface erosion.

30. During the October 5, 2005 inspection, Parker Project representatives informed the Inspector that copies of all stormwater management system inspection reports for the Parker Project were submitted to the Town of Parker for review. Review of the Parker Project's stormwater inspection reports, conducted by a representative from the Town of Parker, determined that the time period between inspections at the Parker Project exceeded the 14 day maximum on the following occasions:

Date of Inspection	Date of Next Inspection	Duration Between Inspections
7/22/2005	8/17/2005	26 days
8/22/2005	9/6/2005	15 days
9/19/2005	10/17/2005	28 days

31. Hamon's failure to properly conduct inspections of the Parker Project's stormwater management system constitutes violations of Part I. C. 5. a. of the Stormwater Permit.

Construction Dewatering Violations

32. Hamon was involved in construction activities associated with the Huron Street Improvements in Adams County, Colorado (the "Huron Street Project").

33. The Huron Street Project was the subject of a CDPS general permit, Permit No. COG-070000 for Construction Dewatering Operations (the "Construction Dewatering Permit"). Hamon was authorized to discharge under the Construction Dewatering Permit via a permit certification (Number COG-072024) which became effective September 15, 2005 and remained in effect until it expired on June 19, 2006.

34. The Construction Dewatering Permit authorized Hamon to discharge produced water associated with construction dewatering activities from the Huron Street Project through Outfalls 001A and 002A to Big Dry Creek and Quail Creek, respectively, which flow to the South Platte River, under the terms and conditions of the Construction Dewatering Permit.

35. The South Platte River is a "state water" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).

36. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of the permit.

Failure to Comply with Permit Effluent Limits

37. Pursuant to Part I.B.1. of the Construction Dewatering Permit, Hamon was required to monitor a minimum and maximum pH, 7- day average and 30-day average Total Suspended Solids ("TSS"), visual oil and grease, daily maximum oil and grease (if necessary), and daily maximum flow.

38. Pursuant to Part I.B.1. of the Construction Dewatering Permit, permitted discharges from the Huron Street Project were not to exceed the following effluent limitations:

Effluent Parameter	Discharge Limitations		
	30-Day Average	7-Day Average	Daily Maximum
Total Suspended Solids, mg/l	30	45	N/A
pH, s.u. (minimum-maximum)	N/A	N/A	6.5-9.0
Oil and Grease, mg/l	N/A	N/A	10, No Visual Sheen
Flow, MGD	N/A	N/A	Report

39. Pursuant to Part I.F.2 of the Permit, Hamon is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each discharge monitoring report is to include a certification by Hamon that the information provided therein is true, accurate and complete to the knowledge and belief of Hamon.

40. Hamon's DMRs submitted to the Division include, among other information and data, the following effluent concentration summary data for Total Suspended Solids which exceed the effluent limitations imposed by the Permit.

Hamon's EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	**OUTFALL NUMBER**	**SAMPLE MEASUREMENT**	**SAMPLE MEASUREMENT**
TOTAL SUSPENDED SOLIDS		**7-DAY AVG. LIMIT = 45 mg/l**	**30-DAY AVG. LIMIT = 30 mg/l**
December 1-31, 2005	**001A**	**114 mg/l**	**114 mg/l**
January 1-31, 2006	**001A**	**56.5 mg/l**	**37.2 mg/l**
March 1-31, 2006	**002A**	**117 mg/l**	**117 mg/l**

41. Total suspended solids are "pollutants" as defined by §25-8-103(15), C.R.S.

42. Hamon's failure to comply with the Construction Dewatering Permit effluent limitations, as identified above in paragraph 40, constitutes violations of Part I.B.1. of the Construction Dewatering Permit.

Failure to Submit Discharge Monitoring Reports by Required Deadline

43. Pursuant to Part I.F.2. of the Construction Dewatering Permit, Hamon is required to report monthly monitoring results on Discharge Monitoring Reports (DMRs) to the Division no later than the 28th day of the month following the specified reporting period. If no discharge occurs during the reporting period, "No Discharge" shall be reported.

44. Division records, as provided by Hamon and supplemented by the DMRs, establish that Hamon failed to submit DMRs, reporting "No Discharge," on time for the following monitoring periods:

Hamon's EFFLUENT SELF-MONITORING DATA		
DISCHARGE MONITORING REPORTING PERIOD	**OUTFALL NUMBER**	**DISCHARGE MONITORING REPORT RECEIVED**
September 1-30, 2005	002A	May 3, 2010
October 1-31, 2005	002A	May 3, 2010
November 1-30, 2005	002A	May 3, 2010
December 1-31, 2005	002A	May 3, 2010
January 1-31, 2006	002A	May 3, 2010
February 1-28, 2006	002A	May 3, 2010
April 1-30, 2006	001A, 002A	May 3, 2010
May 1-31, 2006	001A, 002A	May 3, 2010
June 1-30, 2006	001A, 002A	May 3, 2010

45. Hamon's failure to submit DMRs by the required due date, as identified above in paragraph 44, constitutes violations of Part I.F.2. of the Construction Dewatering Permit.

ORDER AND AGREEMENT

46. 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 Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-060206-1), the Division orders Hamon to comply with all provisions of this Consent Order, including all requirements set forth below.

47. Hamon agrees to the terms and conditions of this Consent Order. Hamon 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. Hamon also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Hamon 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.

48. Notwithstanding the above, Hamon does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Hamon pursuant to this Consent Order shall not constitute evidence of fault by Hamon with respect to the conditions of the Parker Project or Huron Street Improvements Project. Hamon expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

49. In addition to all other funds necessary to comply with the requirements of this Consent Order, Hamon shall pay Seventy Two Thousand Dollars ($72,000.00) in the form of civil penalties and expenditures on a Supplemental Environmental Project ("SEP") in order to achieve settlement of this matter.

50. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993) and Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Hamon shall pay Eleven Thousand Five Hundred Ninety Two Dollars ($11,592.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Eleven Thousand Five Hundred Ninety Two Dollar ($11,592.00) civil penalty for the above violation(s) and Hamon agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or her 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-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

51. Hamon shall also perform the SEP identified below. Hamon's total expenditure for the SEP shall be Sixty Thousand Four Hundred Eight Dollars ($60,408.00).

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

53. Hamon shall donate Sixty Thousand Four Hundred Eight Dollars ($60,408.00) to the City of Denver, Parks and Recreation. The funds will be used for the Duck Lake Restoration Project in Denver County, as further described in Attachment A. Hamon shall make the payment of Sixty Thousand Four Hundred Eight Dollars ($60,408.00), and shall include with the donation a cover letter

identifying the monies for the above-described project within thirty (30) days of the effective date of this Consent Order. Hamon 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. Hamon 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.

54. Hamon 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. Hamon further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Hamon has, or will receive credit under any other legal obligation for the SEP, Hamon shall pay Sixty Thousand Four Hundred Eight Dollars ($60,408.00) 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 50 above.

55. All SEPs must be completed to the satisfaction of the Division June 30, 2011 and must be operated for the useful life of the SEP. In the event that Hamon fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, Hamon shall be liable for penalties as follows:

    a. Payment of a penalty in the amount of Sixty Thousand Four Hundred Eight Dollars ($60,408.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.

    b. Hamon 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 50 above.

56. Hamon shall submit a SEP Completion Report to the Division by June 30, 2011. 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).

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

58. Hamon 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

59. 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 February 6, 2006 Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-060206-1).

60. 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 Hamon 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.

61. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Hamon, 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.

62. Notwithstanding paragraph 48 above, the violations described in this Consent Order will constitute part of Hamon'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 Hamon. Hamon agrees not to challenge the use of the cited violations for any such purpose.

63. This Consent Order does not relieve Hamon 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

64. 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 February 6, 2006 Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-060206-1). 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.

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

66. 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.

67. Upon the effective date of this Consent Order, Hamon 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.

68. 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

69. 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-CADM-B2
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3598
E-mail: michael.harris@state.co.us

For Hamon:

Muriel Agnelli
Hamon Contractors, Inc.
5670 Franklin Street
Denver, CO 80216
Telephone: (303)881-6462
E-mail: magnelli@hamoncontractors.com

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

71. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 60. 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

72. This Consent Order is binding upon Hamon 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 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 HAMON CONTRACTORS, INC.:

Muriel Agnelli, Vice President Date: 4/22/10

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Lori M. Gerzina, Manager Date: July 12, 2010
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

EXHIBIT A

Attachment A

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP) PROPOSAL

Enforcement Action Information	Hamon Contractors, Inc. Case No.: SO-060206-1
Regulated Entity Contact Information	Muriel Agnelli Hamon Contractors, Inc. 5670 Franklin Street Denver, CO 80216 303.296.7867 magnelli@hamoncontractors.com
3rd Party SEP Recipient Contact	Britta Herwig, City Park Planner City of Denver, Parks and Recreation 201 West Colfax, Dept. 613 Denver, CO 80202 720.913.0614. britta.herwig@denvergov.org
CDPHE Contact Person	Rachel Wilson-Roussel SEP Coordinator Office of Environmental Integration & Sustainability Colorado Department of Public Health & Environment (303) 692-2976
Geographical Area to Benefit Most Directly From Project	City Park neighborhoods, Denver Parks, Denver Zoo, Montclair Drainage Basin
Project Title	Duck Lake Restoration
Project Type	Third Party SEP Donation
SEP Category	Pollution Reduction, Environmental Education
Project Summary	Duck Lake is located in the middle of Denver's most prominent public park, City Park. It draws many visitors who seek quiet contemplation and enjoy bird watching. In addition to its aesthetic value the lake is considered an important bird and wildlife habitat housing one of the state's largest rookeries for herons and cormorants. Due to its water source of recycled and storm water the water quality in the lake is very low. The restoration project will reduce the water pollution and improve water quality of Duck Lake by dredging the bottom and creating new wetland edges along the shoreline and around the island to filter out nutrients and other pollution. The SEP funds will ensure a wide range of appropriate wetland species are used. Additionally, the restoration project will fulfill a strong educational component by demonstrating water quality improvement measures to the public at large.

EXHIBIT A

Attachment A

Project Description	Duck Lake is an important feature in City Park. The lake has a long history in the park and its location near the playground, the zoo and the park's most visited area makes it a rather prominent park amenity. Several issues seriously detract from the visitor experience: excessive algae growth, bad smell, an unattractive concrete lake edge, a failing habitat on the rookery island and an over population of geese on the lake. This project seeks to correct the issues with its three main objectives, to improve the water quality in the lake, to restore and improve the rookery bird habitat, and to improve the visitor experience. Lake dredging and the creation of a planted wetland band around the lake edges will drastically improve the water quality. The wetland edge will also decrease the number of geese using the lake as shelter. A new boardwalk, the restoration of the island as well as educational signage will greatly improve the visitor experience. The key components of the overall restoration project are: • Remove and haul concrete steps at shoreline, • Sawcut, remove, and haul concrete curb and asphalt from north edge of park road at shoreline, • Clear, grub, and haul existing landscape at lake edge, • Excavate and remove on site materials to designed sub-grade elevations in anticipation of the construction of the lake edge wetlands/ buffer zones and wildlife viewing areas • Selectively grub and haul existing plant material on island • Drain lake and dredge lake bottom • Install fill along new lake edge and plants with successive wetland vegetation • Selectively replant vegetation on island • Install boardwalk/viewing platforms along south lake edge All of the above will serve to enhance urban bird habitat, improve the pedestrian environment and contribute to the improvement of water quality locally, at Duck Lake and regionally, in the Montclair Basin. **SEP Component:** The SEP will help create the planted wetland band around the lake edges that will act to improve the water quality. The wetland edge will also decrease the number of geese using the lake as shelter. This funding will ensure a wide range of appropriate wetland species.
Expected Environmental and/or Public Health Benefits	Improved water quality and wildlife habitat.

Project Budget

Category	Description	Cost
Wetland Edge	Enhanced wetland edge planting	$ 60,408
	Total:	**$ 60,408**

Budget Discussion	Additional funding has been secured from a variety of sources including: Denver Better Bond 2007, grant funding from GOCO & others, as well as the Denver Zoo partnership.	
Project Schedule	Proposed SEP Start Date:	January 1, 2010 (or upon receipt of SEP funds)
	Design (Enhanced Wetland Planting)	Winter/Spring 2010
	Construction Start:	Summer 2010
	SEP Project Completion Date:	May 31, 2011
	SEP Completion Report Due:	June 30, 2011
Reporting	Project reports will provide sufficient information for the department to monitor the project implementation status, to verify and document the proper expenditure of SEP funds, and to evaluate the effectiveness and benefits of the SEP. A full expense accounting, including proof of all payments, will be provided in the SEP Completion Report. The SEP Completion report will contain: • A detailed description of the project as implemented; • A description of any operating problems encountered and the solutions thereto; • Itemized costs, documented by copies of purchase orders and receipts or canceled checks; • Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Consent Order; and • A description of the environmental and public health benefits resulting from implementation of the SEP along with **quantification** of the outcomes and benefits.	
Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.	No.	