

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

September 28, 2011

Mr. David Heyl, Registered Agent
Heyl Construction, Inc.
6560 County Rd. 335
New Castle, Colorado 81647

RE: Compliance Order on Consent, Number: SC-110927-2

Dear Mr. Heyl:

Enclosed for Heyl Construction, 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 36). 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 Joe Campbell at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,

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

Enclosure(s)

cc: Garfield County Public Health Service

ec: Natasha Davis, EPA Region VIII
Andrew Rice, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE

Gary Beers, Permits Unit, CDPHE
Nathan Moore, Permits Section, CDPHE
Michael Beck, OPA
Joe Campbell, Case Person
Tania Watson, Compliance Assurance, CDPHE
Rachel Wilson-Roussel, SEP Coordinator, CDPHE



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION**

COMPLIANCE ORDER ON CONSENT

NUMBER: SC-110927-2

**IN THE MATTER OF: HEYL CONSTRUCTION, INC (f/k/a HEYL, LLC)
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03B428
GARFIELD 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 Heyl Construction, Inc. ("Heyl"). The Division and Heyl 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 alleged violations cited herein and in the Notice of Violation (Number: SN-090414-4) that the Division issued to Heyl on April 14, 2009.

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 Heyl's compliance with the Act and its stormwater permit coverage.
3. At all times relevant to the violations cited herein, Heyl was a Colorado corporation in good standing and registered to conduct business in the State of Colorado. Heyl formerly operated as Heyl, LLC and converted to the current domestic profit corporation on or about January 5, 2009.
4. Heyl is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. On or about February 20, 2007, Heyl initiated construction of a single family residential development on 29.881 acres of property located at or near 1st Street and Harness Lane, in or near

the Town of Silt, Garfield County, Colorado (the "Project").

6. On February 13, 2007, the Division received an application from Heyl for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity. During the times relevant to the alleged violations identified herein, a version of the Permit was in place that was effective from July 1, 2002 through June 30, 2007 (the "2002 Permit").
7. On February 20, 2007, the Division provided Heyl Certification Number COR-03B428 authorizing Heyl to discharge stormwater from the construction activities associated with the Project to the Colorado River under the terms and conditions of the Permit. Certification Number COR-03B428 was reissued under the new CDPS General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "2007 Permit"), on June 30, 2007 and remained in effect until it was inactivated at the request of Heyl on January 8, 2009.
8. The Colorado 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 May 24, 2007, a representative from PG Environmental, LLC (the "Inspector") conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Heyl's compliance with the Water Quality Control Act and the 2002 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.
11. The Division acknowledges that Heyl timely and satisfactorily performed all of the obligations and actions required under the April 14, 2009, Notice of Violation (Number: SN-090414-4).

Deficient and/or Incomplete Stormwater Management Plan

12. Pursuant to Part I. B. of the 2002 Permit, Heyl is required to prepare and maintain a Stormwater Management Plan ("SWMP") that identifies Best Management Practices ("BMPs") that, when implemented, will meet the terms and conditions of the 2002 Permit. The SWMP is 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 Project. In addition, the plan is required to describe and ensure the implementation of BMPs, which would be used to reduce the pollutants in stormwater discharges associated with construction activity.
13. Pursuant to Part I. B. of the 2002 Permit, each project's 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 and a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.
 - ii. Phased BMP Implementation-The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMP's.
 - iii. Material Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.
 - iv. 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.
- 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.
14. The Division has determined that Heyl failed to prepare and maintain a complete and accurate SWMP for the Project, as described in paragraphs 11(a-n) below:
- a. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Site Description did not provide an adequate description of the proposed sequence of major activities at the site as required by Part I.B.1.b of the 2002 Permit.
 - b. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Site Description did not provide an estimate of the total area of the site and the area of the site that was expected to undergo clearing, excavation or grading, as required by Part I.B.1.c of the 2002 Permit.
 - c. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Site Description did not provide 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, as required by Part I.B.1.d of the 2002 Permit.
 - d. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Site Description did not provide an adequate description of the existing vegetation at the site and an estimate of the percent vegetative ground cover as required by Part I.B.1.e of the 2002 permit.
 - e. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Site Description did not provide 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) as required by Part I.B.1.h of the 2002 permit.
 - f. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not clearly identify the construction site boundaries as required by Part I.B.2 of the 2002 Permit. Specifically, the Site Map did not identify the construction site boundaries in a legend or callout.
 - g. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not clearly identify all areas of soil disturbance as required by Part I.B.2 of the 2002 Permit. Specifically, the Site Map did not depict that the entire site would be exposed at the time of inspection.
 - h. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not clearly identify all areas of cut and fill as required by Part I.B.2 of the 2002 Permit. Specifically, the Site Map did not clearly identify the existing and proposed contours of the site.

- i. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not identify all areas used for storage of building materials, soils or wastes as required by Part I.B.2 of the 2002 Permit. Specifically, the Site Map did not include the fuel storage located at the northeast corner of the site, the soil stockpile located at the south side of the site, and the portable toilets located at the northeast corner of the site.
- j. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not identify the location of nearby springs, streams, wetlands, or other surface waters as required by Part I.B.2 of the 2002 Permit. Specifically, the wetland area located at the southeast corner of the site near the intersection of First Street and Harness Lane was not identified on the Site Map.
- k. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on BMPs for Stormwater Pollution Prevention did not include a description of all structural site management practices of BMPs implemented at the Project that will minimize erosion and sediment transport as required by Part I.B.3.a.1 of the 2002 Permit. For example, straw bales were implemented in the drainage swale adjacent to First Street on the east side of the Project and were not identified in the SWMP.
- l. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on BMPs for Stormwater Pollution Prevention did not clearly identify procedures or significant materials that could contribute pollutants to runoff. Specifically, vehicle fueling was referred to in the SWMP but spill prevention and response procedures associated with the vehicle fueling were not described.
- m. During the May 24, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Final Stabilization and Long-Term Stormwater Management did not include a 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, as required by Part I.B.4 of the 2002 Permit.

**Failure to Implement and/or Maintain
Best Management Practices to Protect Stormwater Runoff**

15. Pursuant to Part I. B. 3. a. (1) of the 2002 Permit, Heyl was required to minimize erosion and sediment transport from the Project. The Permit specifies 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.
16. Pursuant to Part I. B. 3. a. (2) of the 2002 Permit, Heyl was required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies 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.

17. The Division has determined that Heyl failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 14(a-i) below:
- a. During the May 24, 2007 inspection, the Inspector observed disturbed areas and unstabilized sediment beyond the southern project boundary silt fence. Therefore, as provided by Rob Bercher (Estimator/Project Manager, Heyl), offsite areas beyond the project boundary had been disturbed and were unstabilized.
 - b. During the May 24, 2007 inspection, the Inspector observed that BMPs were not adequately implemented and maintained at the vehicle tracking control pad, located at the eastern construction entrance off of First Street, a public street. Sediment was visible in the rock pad, and the rock had become thin and sparse in areas. Additionally, adequate BMPs were not implemented to control entry and exit onto the project from First Street. As a result, there was a potential for the transport and discharge of sediment to First Street, a public street.
 - c. During the May 24, 2007 inspection, the Inspector observed that BMPs were not adequately implemented and maintained on the eastern portion of the site. Specifically, the Site Map in the SWMP identified silt fence BMPs were to be installed along the eastern perimeter of the site; however, this silt fence had not been implemented on the site.
 - d. During the May 24, 2007 inspection, the Inspector observed that BMPs were not adequately maintained along the western portion of the site. Specifically, a length of silt fence at the detention basin's western toe of slope had sediment and debris accumulated to half the exposed silt fence height. Furthermore, no run-on and slope controls had been implemented on the west side of the detention basin. As a result, there was a potential for the discharge of sediment from this location to the adjacent natural drainage swale.
 - e. During the May 24, 2007 inspection, the Inspector observed that BMPs were not adequately maintained at the southern perimeter of the construction site. Specifically, the silt fence was not properly entrenched in the ground to retain sediment. In addition, the silt fence had gaps and was torn.
 - f. During the May 24, 2007 inspection, the Inspector observed that BMPs were not implemented to prevent the discharge of sediment from a disturbed slope located adjacent to the southern perimeter of the site. Drainage from this area was directed along a silt fence installed at the southern perimeter and the disturbed slope was not stabilized.
 - g. During the May 24, 2007 inspection, the Inspector observed that BMPs were not implemented to prevent the discharge of sediment from the large soil stockpile located just west of the east construction entrance off of First Street. BMPs were not implemented to prevent erosion from water run-on to the stockpile slopes, and no temporary stabilization BMPs had been implemented although the stockpile had been in place for 2 months, as provided by Rob Bercher (Estimator/Project Manager, Heyl, LLC.) Furthermore, little to no ponding volume was available at the toe of the soil stockpile and the silt fence. As a result, there was a potential for the discharge of sediment to First Street and the subsequent adjacent roadway drainage swale.
 - h. During the May 24, 2007 inspection, the Inspector observed that BMPs were not implemented

to prevent the discharge of sediment from the disturbed slope area up-gradient from the east construction entrance off of First Street. As a result, there was a potential for the discharge of sediment to First Street and subsequently to the adjacent roadway drainage swale.

- i. During the May 24, 2007 inspection, the Inspector observed that BMPs were not implemented to prevent the discharge of sediment from the disturbed up slope areas north of the eastern construction entrance into the adjacent roadway drainage swale. The straw bales utilized along the west side of First Street, in the adjacent roadway drainage swale, were not installed in accordance with specifications and design criteria meeting best engineering practices. Specifically, the straw bales were not properly entrenched into the ground to retain sediment and prevent failure. As a result, there was a potential for discharge of sediment from the disturbed up slope areas north of the eastern construction entrance to the adjacent roadway drainage swale.
 - j. During the May 24, 2007 inspection, the Inspector observed that an above ground fuel storage tank located just west of the northeast construction entrance was stored without adequate protection to prevent and contain potential spills from contributing pollutants to stormwater runoff. Secondary containment was not observed for the above ground fuel storage tank. Additionally, adequate perimeter controls had not been implemented to prevent the above ground fuel storage tank from being run into of damaged.
18. Heyl's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. 3. a. of the 2002 Permit.

Failure to Conduct Inspections of Stormwater Management System

19. Pursuant to Part I. C. 5. a. of the 2002 Permit, for active sites where construction has not been completed, Heyl was required to make thorough inspections of its stormwater management systems at least every 14 days, or as indicated in the stormwater management plan, and after any precipitation or snowmelt event that causes surface erosion.
20. Pursuant to Part I. C. 5. b. of the Permit, for sites where all construction activities are completed but final stabilization has not been achieved, Heyl was required to make thorough inspections of its stormwater management systems at least once every month, or as indicated in the stormwater management plan.
21. The Division has determined that Heyl failed to properly conduct inspections of its stormwater management systems at the Project as described in paragraph 21(a) below:
- a. Review of the stormwater management system inspection records during the May 24, 2007 inspection of the Project established that Heyl was not performing stormwater management system inspections every 7 days as specified in the Project's SWMP.
22. Heyl's failure to conduct inspections in accordance with its SWMP constitutes violations of Part I. C. 5. of the 2002 Permit.

ORDER AND AGREEMENT

23. 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 Notice of Violation, Number: SN-090414-4, the Division orders Heyl to comply with all provisions of this Consent Order, including all requirements set forth below.
24. Heyl agrees to the terms and conditions of this Consent Order. Heyl 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. Heyl also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Heyl 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.
25. Notwithstanding the above, Heyl does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Heyl pursuant to this Consent Order shall not constitute evidence of fault and liability by Heyl with respect to the conditions of the Project.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

26. In addition to all other funds necessary to comply with the requirements of this Consent Order, Heyl shall pay Thirty-five Thousand Thirty-nine Dollars (\$35,039.00) in the form of "in-kind" expenditures on a Supplemental Environmental Project ("SEP") in order to achieve settlement of this matter.
27. Heyl shall perform the SEP identified below. Heyl's total expenditure for the SEP shall be not less than Thirty-five Thousand Thirty-nine Dollars (\$35,039.00).
28. Heyl shall undertake the following SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements:
 - a. Heyl shall donate no less than Thirty-five Thousand Thirty-nine Dollars (\$35,039.00) to the Town of Silt, Colorado in the form of in-kind services. The services will be used towards the planning, surveying and construction of low impact stormwater drainage projects in the Town of Silt, as described further in Attachment A.
 - b. Heyl shall perform in-kind services, to the satisfaction of the Town of Silt, totaling no less than Thirty-five Thousand Thirty-nine Dollars (\$35,039.00) of "actual cost" to Heyl.
 - c. Within thirty (30) calendar days of completion of each Town of Silt project, Heyl shall submit to the Division for approval and agreement a detailed accounting and justification of Heyl's "actual costs" of the in-kind services provided to the Town of Silt.

- d. The Division will consult with the Town of Silt and shall inform Heyl in writing of its acceptance of the accounting and justification of Heyl's "actual costs" for the in-kind services provided to the Town of Silt.
29. Heyl shall not deduct the expenses associated with the implementation of the above-described SEP for any tax purpose or otherwise obtain any favorable tax treatment of such expenditures, payment or project performance.
 30. Heyl 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. Heyl further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Heyl has, or will receive credit under any other legal obligation for the SEP, Heyl shall pay Thirty-five Thousand Thirty-nine Dollars (\$35,039.00) 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 by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Joe Campbell
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
 31. The SEP must be completed to the satisfaction of the Division, within one calendar year of the effective date of this Consent Order. In the event that Heyl fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, Heyl shall be liable for penalties as follows:
 - a. Payment of a penalty in the amount of Thirty-five Thousand Thirty-nine Dollars (\$35,039.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.
 - b. Heyl 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 30 above.
 32. Heyl shall submit a SEP Completion Report to the Division within one calendar year of the effective date of this Consent Order. 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. A summary of 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 to the satisfaction of the Town of Silt and 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).

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

35. 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 April 14, 2009 Notice of Violation (Number: SN-090414-4).
36. 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 Heyl 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.
37. This Consent Order constitutes a final agency order or action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by Heyl, 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.
38. Notwithstanding paragraph 25 above, the violations described in this Consent Order will constitute part of Heyl'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 Heyl. Heyl agrees not to challenge the use of the cited violations for any such purpose.
39. This Consent Order does not relieve Heyl from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and Heyl 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

40. 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 April 14, 2009 Notice of Violation (Number: SN-090414-4). 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.
41. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

42. 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.
43. Upon the effective date of this Consent Order, Heyl 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.
44. Heyl 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 Heyl, or those acting for or on behalf of Heyl, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Heyl shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Heyl 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

45. 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-CA-B2
Attention: Joe Campbell
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.2356
E-mail: joseph.campbell@state.co.us

For Heyl:

Heyl Construction, Inc
Attention: David Heyl
6560 County RD 335
New Castle, CO 81647
Telephone: 970.984.3404
E-mail: dheyl@heylcivil.com

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

47. Heyl shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Heyl's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Heyl's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Heyl shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:
 - a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute.
48. If Heyl fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.
49. If Heyl files any notice of dispute pursuant to paragraph 47, the notice shall specify the particular matters in the Division's determination that Heyl seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Heyl. The Division and Heyl shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S.

NOTICE OF EFFECTIVE DATE

50. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in paragraph 36.

BINDING EFFECT AND AUTHORIZATION TO SIGN

51. This Consent Order is binding upon Heyl 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. Heyl agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of 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 HEYL CONSTRUCTION, INC:

 _____ Date: 9-14-11
David Heyl, President
HEYL CONSTRUCTION, INC.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

 _____ Date: 9-27-11
Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

Attachment A

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)
PROPOSAL/AGREEMENT FORM**

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

Enforcement Action Information	Heyl Construction, Inc Case No.: SC-110927-2
Project Manager	David Heyl, President Heyl Construction, Inc 6560 County RD 335 New Castle, CO 81647 970.984.3404. dhey1@heylcivil.com
CDPHE Contact Person	Joe Campbell, Enforcement Unit, 303.692.2356
Geographical Area to Benefit Most Directly From Project	Town of Silt, Colorado
Project Name	Stormwater Quality Improvements for the Town of Silt
Project Type	First Party to Benefit a Third Party
SEP Category	Environmental Improvement and Restoration
Project Summary	<p>This project will take place in two phases:</p> <p>Phase I: Planning Heyl will assist the Town of Silt with the planning and survey work necessary to develop a clear project scope for Phase II.</p> <p>Phase II: Implementation Heyl will construct vegetated swales to replace the following:</p> <ul style="list-style-type: none">• Drainage swales that were paved over and are no longer in use;• Silted in culverts; and/or• Insufficient storm sewer lines installed to allow parking that are also not in use. <p>Specific areas to be addressed will be identified and described during Phase I of the project. Phase II will result in storm water quality improvement and reduced maintenance problems for the Town of Silt. The vegetated swales will be connected to existing wetlands areas.</p>

Project Description

Background

The key component of the Town of Silt's 1981 plan was street side swales. Drainage inlet/boxes and connecting storm sewer were used infrequently. Cross culverts were included at most intersections with an occasional mid-block cross culvert.

The desired and primary function of the swales in 1981 was certainly conveyance. However, the swales and typically flat grades provided a de facto water quality treatment. Once vegetation was established it filtered out sediment. The pervious bottoms allowed stormwater to infiltrate rather than run off. During major events, the swales also acted as longitudinal detention/retention ponds and reduced the runoff peaks and sediment/pollutant load tributary to the Colorado River.

Over the years, many sections of swales were either paved over or converted to storm sewers to facilitate driveways and parking areas and the water quality benefits were lost. Many of the driveways and parking areas are now obsolete and receive no use. The pipes have corroded and have been damaged due to minimal cover. They continue to be maintenance problems, depleting Public Works resources and taxpayer dollars.

Project Objective and Description

Today's stormwater quality regulations and best management practices recognize the value of swales for water quality treatment. They are an important component of today's green infrastructure and Low Impact Development push and are often used in conjunction with rain gardens in a master planned green streets program.

As such, the Town of Silt is encouraging removal of obsolete storm sewers and asphalt/concrete lined ditches in favor of vegetated swales. These swales will connect to the existing wetland areas which were constructed per the 1981 plan. The wetlands receiving the drainage will continue to filter the water as it moves toward the river, 0.3 miles away.

This project will take place in two phases:

Phase I: Planning

Heyl will provide the Town of Silt with the necessary planning and survey work. Based on the survey and preliminary planning work, Heyl and the Town will come to an agreement on the scope of work to be implemented during Phase II.

- New survey of possible scope of work areas.
- Outline and creation of scope for phase II.
- New plan for scope of work.

Phase II: Implementation

Heyl will replace existing asphalt/concrete swales and inadequate storm sewers with vegetated swales which will create a more environmentally friendly storm drain system within old town Silt.

Prior to the start of any work or expenditures on Phase II, Heyl will submit a *Phase II SEP Proposal* to CDPHE. The Phase II proposal will include the following information:

- A description of planning and survey activities completed to date;

	<ul style="list-style-type: none"> • A budget summary table listing funds expended during Phase I by budget category; • A scope of work for Phase II which identifies and describes the specific areas to be addressed. • An itemized budget table identifying all direct costs by budget category for Phase II. <p>CDPHE will review the Phase II proposal and notify Heyl in writing of its approval or disapproval. If CDPHE disapproves of the Phase II proposal, SEP funds may not be spent on such project, but Heyl and CDPHE will work in good faith to modify the Phase II proposal to be acceptable to CDPHE or to develop a substitute project reasonably acceptable to CDPHE.</p>		
Expected Environmental and/or Public Health Benefits	To improve the Town of Silt's stormwater system to naturally filter the stormwater before entering the wetlands and into the Colorado river.		
Project Budget	Category	Description	Cost
	Phase I: Planning		
	Personnel - Salaries, Wages. (Include rates and # of hrs.)	Project Manager 40 hours @ \$47.00	\$1880.00
		Survey tech 20 hours @ \$24.00	\$480.00
	Materials and Supplies		
	Equipment	GPS Rover and Base Station 20 hours @ 50.00	\$1000.00
	Contractors/ Subcontractors	SGM Engineers 10 hours @ \$150.00	\$1500.00
	Other Direct Costs		
	Phase I Subtotal		\$4860.00
	Phase II: Implementation		
	Stormwater System Improvements	Vegetated swales will be constructed to replace: drainage swales that were paved over and are no longer in use; silted in culverts; and/or insufficient storm sewer lines installed to allow parking that are also not in use.	\$TBD
	Phase II Subtotal		\$
Project Total:		\$	
Budget Discussion	There will be no financial benefit to Heyl Construction resulting from the implementation of this project. An itemized budget for Phase II will be included in the Phase II SEP Proposal.		
Project Schedule	Proposed Implementation Start Date:	Within 30 days of the effective date of the Consent Order	

	Phase I Completion Date:	Within 90 days of the project start date
	Phase II SEP Proposal Due Date:	Within 120 days of the project start date
	Phase II Completion:	Within one year of the effective date of the Consent Order
	SEP Completion Report Due:	Within one year of the effective date of the Consent Order
Reporting	<p><u>SEP Completion Report</u></p> <p>A full expense accounting, including documentation of all payments, will be provided in the SEP Completion Report. The SEP Completion report will contain at a minimum:</p> <ul style="list-style-type: none"> • 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. <p>Additional information may include photographs of the completed SEP.</p>	
Other Relevant Information		
<p>Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.</p>	No.	