



**COLORADO**  
Department of Public  
Health & Environment

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

July 13, 2015

Michael Mathieson, Registered Agent  
4390 Tennyson Street, LLC  
1925 S. Clarkson Street  
Denver, Colorado 80210

Certified Mail Number: 7014 2870 0000 7699 5405

**RE: Expedited Settlement Agreement, Number EI-150713-1  
4390 Tennyson Street**

Dear Mr. Mathieson:

Enclosed for your records you will find 4390 Tennyson Street, LLC's copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was changed in order to place the correct ESA Number on the final document. The ESA is now fully enforceable and constitutes a final agency action.

The Water Quality Control Division acknowledges receipt of 4390 Tennyson Street LLC's payment of the settlement amount and will move forward with payment processing. The division acknowledges that 4390 Tennyson Street, LLC met its obligations pursuant to the settlement agreement. Therefore, the division hereby closes this case. No further action is required from 4390 Tennyson, LLC with regard to the settlement agreement.

Please be advised that 4390 Tennyson Street, LLC has an obligation of compliance with the Colorado Water Quality Control Act and its implementing regulations and permits for the company's Colorado operations and future non-compliance may result in additional enforcement activities.

If you have any questions regarding this matter, please do not hesitate to contact Andrea Beebout at 303.692.6498 or by electronic mail at [andrea.beebout@state.co.us](mailto:andrea.beebout@state.co.us).

Sincerely,

Andrea Beebout, Enforcement Specialist  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s): EI-150713-1*

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII  
Thomas Gregg, Denver Environmental Health  
Nicole Rowan, Watershed Section, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE



Doug Camrud, Engineering Section, CDPHE  
Kelly Jacques, Field Services Section, CDPHE  
Lillian Gonzalez, Permits Section, CDPHE  
Mike Harris, Clean Water Enforcement Unit, CDPHE  
Tania Watson, Data Management, CDPHE  
Nathan Moore, Clean Water Compliance Unit, CDPHE



Colorado Department of Public Health & Environment  
Water Quality Control Division

## EXPEDITED SETTLEMENT AGREEMENT

Number: EI-150713-1

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Expedited Settlement Agreement (“ESA”), pursuant to the Division’s authority under §§25-8-602, 25-8-605 and 25-8-608, C.R.S. of the Colorado Water Quality Control Act (the “Act”) §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of 4390 Tennyson Street, LLC. The Division and 4390 Tennyson Street, LLC may be referred to collectively as “the Parties.”

1. 4390 Tennyson Street, LLC is a “person” as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
2. 4390 Tennyson Street, LLC has been conducting construction activities at 4390 Tennyson Street located in the City and County of Denver, Colorado (the “Project”).
3. The Division has determined that 4390 Tennyson Street, LLC discharged pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., and its implementing permit regulation 5CCR 1002-61, §61.3(1)(a), as further described in the attached letter from the City and County of Denver (Attachment A).
4. The parties enter into this ESA in order to resolve the matter of civil penalties associated with the violation(s) alleged herein and in the attached letter for a penalty of \$ 5,000.00.
5. By accepting this ESA, 4390 Tennyson Street, LLC neither admits nor denies the violations or deficiencies specified herein and in Attachment A.
6. 4390 Tennyson Street, LLC certifies that all deficiencies identified in the attached letter have been corrected and that the Project is currently in full compliance with the Act. Additionally, 4390 Tennyson Street, LLC has attached to this ESA: (1) a written description detailing how the deficiencies were corrected; (2) representative photographs documenting the current conditions of the Facility; and (3) the dewatering plan for the remainder of the Project.
7. 4390 Tennyson Street, LLC agrees to the terms and conditions of this ESA. 4390 Tennyson Street, LLC agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 25-8-605 and 25-8-608, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, 4390 Tennyson Street, LLC waives: (1) the right to contest the finding(s) specified herein and in the attached inspection report; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.
8. This ESA is subject to the Division’s “Public Notification of Administrative Enforcement Actions Policy,” which includes a thirty-day public comment period. The Division and 4390 Tennyson Street, LLC each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.

9. This ESA constitutes a final agency order or action upon the date when the Executive Director or his designee signs the ESA and effectively imposes the civil penalty.
10. 4390 Tennyson Street, LLC agrees that within fifteen (15) calendar days of receiving the signed and final ESA from the Division, 4390 Tennyson Street, LLC shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the amount specified in paragraph 4 above, to:

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

11. Notwithstanding paragraph 5 above, the violations described in this ESA will constitute part of 4390 Tennyson Street, LLC'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 4390 Tennyson Street, LLC. 4390 Tennyson Street, LLC agrees not to challenge the use of the cited violations for any such purpose.
12. This ESA, when final, is binding upon 4390 Tennyson Street, LLC and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

**ACCEPTED BY 4390 TENNYSON STREET, LLC:**


5/23/15  
 \_\_\_\_\_  
 Signature Date

Michael Matheson Mge 4390 Tennyson St, LLC  
 \_\_\_\_\_  
 Name (printed) Title

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:**


Date: 13 Jul 15  
 \_\_\_\_\_  
 Patrick J. Pfaltzgraff, Division Director  
 WATER QUALITY CONTROL DIVISION

**DENVER**  
THE MILE HIGH CITY**ATTACHMENT A**

March 19, 2015

Andrea Beebout  
Water Quality Control Division  
Colorado Department of Public Health & Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

RE: 4390 W. 44<sup>th</sup>, Denver CO

Ms. Beebout,

In regards to recent issues related to 4390 W. 44<sup>th</sup>, the City and County of Denver has completed its investigation related to construction dewatering discharges at site with the following findings and observations:

**Project Background:**

On or about Friday, Jan 23, 2015, CCD received notification from the CDPHE Spills Tracking System (Data Entry Form 2015-0052) that dewatering activities were taking place at site that might pose environmental harm due to the site having previously been a gas station with known contaminants at site. Inspection of the site on Monday Jan 26, 2015 resulted in an order from CCD to cease and desist all pumping activities at site due to issues of non-compliance with Denver Public Works Rules and Regulations and the site issued Sewer Use and Drainage Permit #201307217. Prior to resuming pumping activities, the property owner was required to remediate observed fouling, sample source water at site, and apply for a dewatering permit through CDPHE. Sampling results and review of the dewatering application indicated that original discharges were comprised primarily of stormwater, with sampled results not in excess of limits reportable to the State. Consequently, owner was informed by CDPHE that a dewatering permit would not be required. Owner was allowed to resume work following confirmation of remediation / cleanup of flow line fouling, implementation of proper stormwater dewatering BMPs as required by the Sewer Use and Drainage Permit, and confirmation from CDPHE that a dewatering permit would not be required.

**Current Actions:**

On Friday, March 6, 2015 CCD received a citizen notification via the Denver 311 non-emergency services and communications line that dewatering at the above mentioned site was exceeding the capacity of the dewatering bag resulting in sediment discharges to the flowline and inlet. Staff was not available to inspect late Friday afternoon but inspection was scheduled for first thing Monday morning.

On Monday, March 9, 2015 site was inspected at start of day and found to be in non-compliance with dewatering requirements regarding adequacy of BMPs to prevent sediment discharge to the storm sewer. A Stop Work order for all activities at site was issued, effective immediately, with orders to remediate the storm line via Jet-Vac (200' minimum or until the line was clear), clean the flowline / gutter, and sample the water being discharged to test for potential pollutants.

At time of inspection and stop work, the areas being dewatered appeared to involve groundwater, not stormwater. Snowmelt in the area had already been evacuated, there was no significant ponding present in the excavation, and the only sources of water observed were in limited areas that appeared to have recently been drilled for caissons.

## ATTACHMENT A

At time of inspection, one pump was observed actively discharging. Pump was located in the immediate vicinity where historic fuel tanks were previously identified. (West side of site excavation.) Note: Photos available / previously provided. A discarded water bottle found at site was used to collect a qualitative sample of the source water being pumped. Upon later observation the sample was found to have a strong odor, such as that of degraded petroleum. Follow-up sampling as completed by the owner's contracted environmental consultant would later be identified as "Grab - 03" in a report titled "4390 W. 44<sup>th</sup> Avenue.rpt - 10MAR 15 Operation Pump Location.pdf."

A second pump was present at site but not "set-up" or active. The pump appeared to be staged where it had previously or would eventually discharge additional groundwater, located immediately adjacent to an area that had been drilled for a caisson. (South side of site.) Note: Photos available / previously provided. Sampling taken from this location by owner's contracted environmental consultant would later be identified as "Grab -2" in a report titled "4390 W. 44<sup>th</sup> Avenue.rpt - 10MAR 15 Non-operational pump location.pdf."

On March 11, 2015, sampling reports for both locations were provided to CCD and WQCD by the property owner. Additionally, details regarding planned remediation (Jet-Vac) and future management of all water at site were provided. Per the owner, all future water at site, whether groundwater or stormwater, would be removed via pumping into a tank truck and removed from site for treatment as needed and/or proper disposal and no additional pumping, of any sort, would take place at site that would discharge to a CCD inlet.

On March 13, 2015, owner was notified that he would be allowed to return to work basis completion of stated requirements, condition that there would be no further discharges of any type to the flowline, and the fact that remediation of the line was scheduled / pending basis approval from CCD Right of Way for necessary lane closures.

As of Thursday, March 19, 2015, remediation of the fouled line has not yet been completed due to issues related to lane closures. Owner has been notified that site will return to Stop Work status unless cleaning of the line is accomplished by 4:00 p.m. Friday, March 20, 2015.

Of note: CCD investigation staff directly observed pumping activities at site only on the morning of Monday March 09, 2015. Per the owner, pumping took place the previous Friday and Saturday but not at the locations observed. Per the site owner, pumping on the two previous days had been at a sump location that would only retrieve stormwater, not the groundwater from the caisson drilling observed on 3/9/15. CCD has no means of confirming or refuting this assertion.

At this time, CCD considers their investigation of issues at site to be completed and will continue to monitor for confirmation of remediation of any sediment fouling the storm line resulting from pumping activities observed on March 9, 2015.

Respectfully,



Scott D. Dickerson  
Chief Inspector  
Wastewater Management Division

ATTACHMENT A



Photograph 1: Pumped water discharge point



Photograph 2: pumped water from site entering storm drain

ATTACHMENT A



Photograph 3: Pumped water along flowline



Photograph 4: Excavation along west edge of site directly under photograph 7

ATTACHMENT A



Photograph 5: Drilled caisson hole on south side of site, roughly parallel with pickup truck in photograph 6



Photograph 6: Facing east. Two drilled caisson holes on south side of site.

ATTACHMENT A



Photograph 7: Along west side of site. Directly above location of groundwater pumping