Colorado Department of Public Health & Environment

EXPEDITED SETTLEMENT AGREEMENT

Number: EC-080129

The Colorado Department of Public Health and Environment (the "Department"), through the Water Quality Control Division (the "Division"), issues this Expedited Settlement Agreement ("ESA"), pursuant to the Division's authority under §§25-8-602 and 25-8-605, 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 Cactus Hill Ranch Company. The Division and Cactus Hill Ranch Company may be referred to collectively as "the Parties."

1. Cactus Hill Ranch Company ("Cactus Hill Ranch") is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and 5 CCR 1002-81, §81.3(20).

2. Cactus Hill Ranch operates a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(4) in the vicinity of 38990 Highway 257, in Larimer County, Colorado.

3. Pursuant to 5 CCR 1002-81, §81.5(2)(b), CAFO operators shall have available documentation prepared by a professional engineer, registered in Colorado, certifying that the impoundment liner provisions of 5 CCR 1002-81, §81.5(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay). For impoundments constructed prior to June 30, 2004, such documentation shall be available no later than April 13, 2006. *(See Attachment A)*

4. In documentation provided to the Department by Cactus Hill Ranch, dated March 25, 2007, Cactus Hill Ranch advised the Department that it did not have documentation prepared by a professional engineer certifying that the facility's impoundments meet the seepage rate standards of 5 CCR 1002-81, §81.5(2). Cactus Hill Ranch's failure to maintain such documentation constitutes violation(s) of 5 CCR 1002-81, §81.5(2)(B). *(See Attachment B)*

5. Pursuant to 5 CCR 1002-81, §81.5(3), CAFO operators shall submit to the Division for approval, by no later than December 31, 2004, a Standard Operating Procedure ("SOP") that demonstrates how manure, including sludge, will be removed such that the liner integrity of impoundments is not damaged. The SOP also shall indicate the expected frequency with which manure will be removed from impoundments. *(See Attachment A)*

6. Department records establish that Cactus Hill Ranch has not submitted its impoundment SOP to the Division in violation of 5 CCR 1002-81, §81.5(3).

7. The parties enter into this ESA in order to outline an enforceable compliance schedule to resolve the violations identified herein and to resolve the matter of civil penalties associated with the alleged violations for a civil penalty in the amount of six thousand dollars ($6,000.00).

8. Cactus Hill Ranch agrees to submit to the Department within two hundred and ten (210) calendar days of receipt of the final signed ESA documentation prepared by a professional engineer, registered in Colorado, certifying that the impoundment liner provisions of 5 CCR 1002-81, §81.5(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay). Cactus Hill Ranch further agrees to submit to the Department within two hundred and ten (210) calendar days of receipt of the final signed ESA a Standard Operating Procedure, developed in accordance with 5 CCR 1002-81, §81.5(3), that demonstrates how manure, including sludge, will be removed such that the liner integrity of its impoundments is not damaged. *(See Attachment C, SOP Examples)*

9. By accepting this ESA, Cactus Hill Ranch neither admits nor denies the violation specified herein.

10. Cactus Hill Ranch agrees to the terms and conditions of this ESA. Cactus Hill Ranch agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 25-8-605, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, Cactus Hill Ranch waives: (1) the right to contest the finding(s) specified herein; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.

11. 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 Cactus Hill Ranch 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.

12. This ESA constitutes a final agency order or action upon the date when the Department's Executive Director or his designee signs the ESA and effectively imposes the civil penalty.

13. Nothing in this ESA shall preclude the Department 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.

14. Cactus Hill Ranch agrees that, within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Cactus Hill Ranch shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the civil penalty amount specified in paragraph 7 above, to:

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

15. Notwithstanding paragraph 9 above, the violations described in this ESA will constitute part of Cactus Hill Ranch'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 Cactus Hill Ranch. Cactus Hill Ranch agrees not to challenge the use of the cited violations for any such purpose.

16. This ESA, when final, is binding upon Cactus Hill Ranch 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 CACTUS HILL RANCH COMPANY:

[signature] VP Date: Sept 27, 2007
Signature

Nels Nelson Title: VP
Name (printed)

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:

Lori M Gerzina Date: 1/29/08
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION