



Colorado Department of Public Health & Environment

EXPEDITED SETTLEMENT AGREEMENT

Number: EC-080201-5

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 Double W Farm Dairy, LP. The Division and Double W Farm Dairy, LP may be referred to collectively as "the Parties."

1. Double W Farm Dairy, LP ("Double W Dairy") 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. Double W Dairy operates a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(4) in the vicinity of 18453 County Road 37, in Phillips 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. During a November 7, 2006 inspection, a Department representative noted that Double W Dairy 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). Double W Dairy's failure to maintain such documentation constitutes violation(s) of 5 CCR 1002-81, §81.5(2)(B). (*See Attachment B*)
5. 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 violation(s) for a civil penalty in the amount of five thousand dollars (\$5,000.00).
6. Double W Dairy 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).
7. By accepting this ESA, Double W Dairy neither admits nor denies the violation specified herein.
8. Double W Dairy agrees to the terms and conditions of this ESA. Double W Dairy 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, Double W Dairy 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.

9. 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 Double W Dairy 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.
10. 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.
11. 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.
12. Double W Dairy agrees that, within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Double W Dairy 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 5 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

13. Notwithstanding paragraph 7 above, the violations described in this ESA will constitute part of Double W Dairy'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 Double W Dairy. Double W Dairy agrees not to challenge the use of the cited violations for any such purpose.
14. This ESA, when final, is binding upon Double W Dairy 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 DOUBLE W DAIRY:

Glenn D. Huwa Date: 9-27-07
 Signature

GLENN D. HUWA Title: PARTNER
 Name (printed)

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:

Lori M. Gerzina Date: 02/01/08

Lori M. Gerzina, Section Manager
 Compliance Assurance and Data Management Section
 WATER QUALITY CONTROL DIVISION