Colorado Department of Public Health & Environment

EXPEDITED SETTLEMENT AGREEMENT

Number: EC-080201-3

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 Harper Feedlot, LLC. The Division and Harper Feedlot, LLC may be referred to collectively as "the Parties."

1. Harper Feedlot, LLC ("Harper Feedlot") 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. Harper Feedlot operates a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(4) in the vicinity of 21560 WCR 76, in Weld 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 Harper Feedlot, dated February 28, 2007, Harper Feedlot 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). Harper Feedlot'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. Harper Feedlot 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, Harper Feedlot neither admits nor denies the violation specified herein.

8. Harper Feedlot agrees to the terms and conditions of this ESA. Harper Feedlot 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, Harper Feedlot 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 Harper Feedlot 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. Harper Feedlot agrees that, within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Harper Feedlot 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 Harper Feedlot'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 Harper Feedlot. Harper Feedlot agrees not to challenge the use of the cited violations for any such purpose.

14. This ESA, when final, is binding upon Harper Feedlot 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 HARPER FEEDLOT, LLC:

_____ Date: 10/9/07
Signature

HARPER _____ Title: Owner
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