

STATE OF COLORADO

Bill Ritter, Jr., Governor
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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

July 8, 2008

Mr. Mike Cervi, President
National Hog Farms, Inc.
30130 Weld County Road 49
Greeley, Colorado 80631

RE: Compliance Order on Consent, Number: HC-080708-1
CDPS Permit Number: COH-012000

Dear Mr. Cervi:

Enclosed for National Hog Farms, Inc.'s records you will find a copy of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period (paragraph 102). Upon initiation, if the Division receives any comments during this period we will contact you 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 me at (303) 692-3564 or by electronic mail at scott.klarich@state.co.us.

Sincerely,

Scott Klarich, Unit Manager
Enforcement & Clean Water Compliance Assurance Unit
Water Quality Protection Section
WATER QUALITY CONTROL DIVISION

cc: Weld County Dept of Public Health & Environment

ec: Aaron Urdiales, EPA Region VIII
Doug Camrud, Engineering Section, CDPHE
Ron Jepson, Environmental Agriculture Program
Dick Parachini, Outreach and Assistance Unit, CDPHE

Enclosure



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

COMPLIANCE ORDER ON CONSENT

NUMBER: HC-080708-1

**IN THE MATTER OF: NATIONAL HOG FARMS, INC., Delinquent August 1, 2006
CDPS PERMIT NO. COH-012000
WELD 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 National Hog Farms, Inc., Delinquent August 1, 2006 ("NHF"). The Division and NHF 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:
 - a. To resolve, without further litigation, the alleged violations of the Compliance Order on Consent executed between the Department and NHF on February 27, 2003 (effective date March 20, 2003); and
 - b. To establish specific compliance requirements and financial assurance for the final closure of NHF's Housed Commercial Swine Feeding Operation ("HCSFO") located in the vicinity of 40° 22' 40.04" North latitude and 104° 22' 53.98" West longitude, in Weld County, Colorado (the "Facility"); and
 - c. To supersede and replace the February 27, 2003, Compliance Order on Consent.

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 NHF, the Facility and NHF's compliance with the Act and the February 27, 2003 Compliance Order on Consent.

3. At all times relevant to the violations cited herein, NHF was a Colorado Corporation and was registered to conduct business in the State of Colorado.
4. NHF 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. In 1998, Colorado voters adopted Amendment 14. The Amendment revised the Act to add specific permitting, facility and operating requirements for HCSFOs. §25-8-501.1, C.R.S. The Amendment also directed the Water Quality Control Commission (“Commission”) to promulgate implementing regulations. The Commission added section 61.13 to its Colorado Discharge Permit System Regulation 61 (5 CCR 1002-61) for this program, effective April 30, 1999.
6. Regulation 61 imposes specific construction, operating, sampling, monitoring, permitting and financial assurance requirements on HCSFOs. HCSFOs are housed swine feeding operations that are capable of housing 800,000 pounds or more of live animal weight of swine at any one time.
7. NHF owned and operated a HCSFO subject to the requirements of section 25-8-501.1, C.R.S.
8. On July 1, 1999, the Division issued Colorado Discharge Permit COH-012000 (“permit”) to NHF effective August 1, 1999.
9. The NHF HCSFO operated swine feeding operations near Kersey on both fee land of its own and land leased from the State Land Board. The HCSFO housed swine in barns. Wastes from the swine were stored, subjected to some treatment and applied to cropland on both NHF’s and State Land Board land.
10. Regulation 61 requires, among other things, that HCSFOs such as NHF submit a financial assurance plan (“FAP”). The FAP requirement is intended to assure funds are available to remediate soil and groundwater contamination and other impacts of the HCSFO if the permittee fails to do so.
11. On December 21, 1999, NHF submitted a proposed FAP, which the Division determined to be incomplete.
12. On October 20, 2000, the Division issued to NHF a Notice of Violation and Cease and Desist Order (“NOV/CDO”), *attached herein as Attachment 1*, alleging that NHF had violated certain portions of the permit, Regulation No. 61 and the Act. The NOV/CDO required NHF to cease specified activities at the site and to submit to the Division required plans, monitoring results, and other specific information. These requirements included, among others:
 - a. Ceasing all land application of swine feeding process wastewater and residual solids in amounts in excess of the agronomic rate of application.
 - b. Submitting to the Division a complete FAP.
 - c. Submitting to the Division a complete monitoring plan.
 - d. Submitting to the Division baseline soils data.

- e. Submitting to the Division, in writing, within ten days after receipt of the NOV/CDO, a detailed statement of the measures taken or planned to be taken to achieve immediate and long-term compliance with the CDO.
13. As of January 2001 NHF no longer housed swine at the site.
 14. On February 27, 2003, as a result of the NOV/CDO, the Division and NHF entered into a Compliance Order on Consent (“Order”), *attached herein as Attachment 2*, which became effective March 20, 2003. The purpose of the Order was to resolve all violations and potential violations of Colorado’s water quality laws and regulations that occurred prior to the date of the Order. It was also the intent of the parties to reach a comprehensive settlement of all outstanding and potential disputes between the parties. About this time, NHF retained the services of Stewart Environmental Consultants, Inc. (“Stewart”) to assist in technical compliance and negotiations with the Division in this matter.
 15. Section II paragraphs 5 and 6 of the Order required NHF to monitor, as applicable, nitrogen, phosphorus, and heavy metals in soils under pivots on state and fee lands, and to remediate excess concentrations of these constituents.
 16. Section II paragraphs 7 and 8 of the Order required NHF to monitor nitrogen and to remediate excess nitrogen in soils under the compost and EHT-1 release sites.
 17. Section II paragraphs 7 and 8 of the Order required NHF to undertake phytoremediation activities at specified sites to be accomplished through the appropriate planting, harvesting and maintenance of either sunflowers or alfalfa.
 18. Section II paragraph 12 of the Order required NHF to submit a ground water monitoring plan.
 19. Section II paragraph 13 of the Order required NHF to monitor ground water unless the Division approved a written analysis that indicates there exists no ground water contamination or reasonable potential for contamination caused by NHF’s HCSFO activities.
 20. Section II paragraph 15 of the Order required NHF to submit a complete FAP to the Division by June 18, 2003.
 21. Section II paragraph 16 of the Order provided that, where NHF did not submit a complete FAP by the deadline, the Division could demand that NHF post financial assurance, within 45 days of written notice to NHF, in the amount identified by the Division.
 22. On June 17, 2003, NHF sent the Division a revised proposed FAP. The Division reviewed the proposal and found it to be incomplete. In subsequent meetings and correspondence the Division presented NHF with documents detailing the FAP deficiencies.
 23. On August 1, 2003, the Division and NHF met and discussed comments presented by the Division on July 30, 2003, regarding the Division’s July 30, 2003, FAP comments.

24. On September 4, 2003, the Division again met with NHF and discussed some elements associated with NHF's submitting a complete FAP; e.g., whether ammonium-nitrogen should be added to the nitrate-nitrogen concentrations found in the "first" soil samples. NHF also discussed with the Division what process and computer model it would use to identify HCSFO ground water contamination. The Division requested that NHF provide information and assumptions that would be used for the model.
25. On September 11, 2003, the Division approved NHF's ground water monitoring plan which provides that ground water monitoring must occur quarterly.
26. In related phone conversations and correspondence during October 2003, the Division and NHF discussed revision of the FAP, fulfillment of groundwater monitoring obligations and the Division's approval of certain soil monitoring release criteria.
27. On December 15, 2003, NHF declined to submit a complete FAP until some outstanding questions regarding the FAP were resolved.
28. In a December 30, 2003, e-mail to NHF, the Division requested information on the setup and calibration targets that Stewart was using in the 3D MODFLOW model for determining nitrogen contamination of ground water. The complete information on the setup and calibration of the model was not provided to the Division.
29. On January 30, 2004, NHF sent the Division the results of the November 2003 sampling event at NHF for all monitoring wells.
30. On April 27, 2004, the Division was informed that NHF had been sold to Mr. Mike Cervi. Mr. Cervi informed the Division that he had purchased NHF and that NHF would retain the services of Stewart. Mr. Cervi said NHF planned to run livestock on the property and that NHF intended to comply with the remediation requirements pursuant to the Order.
31. On May 12, 2004, the Division and the State Land Board met with NHF (represented by Mr. Cervi and Mr. Dave Stewart). Mr. Bob Lembke, owner of fee land purchased from NHF, also was present. Mr. Lembke stated that the pivot sprinklers had about two to three years of useful life remaining. In addition, he declared that NHF was short of enough water for annual phytoremediation of cropped ground on state trust lands as a result of NHF's sale of its fee lands in 2003. This information raised the concern whether NHF could comply with the phytoremediation requirements of the Order without acquiring additional water and replacement water application equipment. Mr. Cervi indicated NHF's intent to comply with the Order.
32. At the May 12, 2004, meeting, the Division distributed comments on deficient areas in NHF's June 17, 2003, FAP. The Division said that it intended to send a letter to NHF requesting that the complete FAP be submitted within sixty days. NHF requested the Division delay sending the letter for thirty days so it could provide ground water contamination modeling results. The Division agreed to this request, however, NHF did not provide acceptable ground water contamination modeling results within the thirty-day period after May 12, 2004.

33. On June 2, 2004, the State Land Board sent the Division a letter expressing its concerns about the actual ownership of the NHF land and indicating it was important to the Board that the Division continue to work with the correct corporate entity. The letter also expressed the Board's concerns about the sampling and monitoring results at NHF and requested that the Division address these concerns.
34. On June 3, 2004, NHF sent a letter to the Division indicating that Beutler Brothers and Cervi Rodeo Company had purchased all stock in NHF, and that Mike Cervi was its president.
35. On June 8, 2004, the Division sent a letter ("June 8 letter") to Mr. Cervi as President of NHF regarding additional soil monitoring required under paragraphs II.5 through II.8 of the Order. The letter advised NHF that the Division might require more monitoring of soils under these sites based on results from this additional monitoring.
36. The June 8, 2004 letter also confirmed acceptable soil sampling protocols and required NHF to submit a soil sampling and monitoring report no later than December 15, 2004.
37. During a June 17, 2004, telephone conversation, Mr. Cervi, as president of NHF, told the Division that in response to the June 8 letter Custom Auger Drilling Service, a drilling and boring contractor firm, was coming on the next Monday to sample soil below five pivots to a five-foot depth prior to planting sunflowers. In addition, Weld Labs would be on site to handle the samples, which would be analyzed for nitrogen by the end of the week.
38. On July 1, 2004, the Division and the State Land Board met with NHF to discuss the ground water contamination modeling results for the FAP. NHF did not provide written modeling results. The Division advised NHF that the model itself had a number of deficiencies.
39. On July 6, 2004, the Division sent an e-mail clarifying its concerns with deficiencies in the modeling.
40. On July 28, 2004, NHF informed the Division that soil composites from sampling were made incorrectly and that more sampling had been done. NHF indicated it would report back to the Division by the end of the week on the status of the soil sampling/analysis. Results from sampling of pivots were reported on February 8, 2005. No soil sampling/analysis for the compost and EHT-1 release areas have been provided, as required by the June 8 letter.
41. On August 25, 2004, NHF informed the State Land Board that it: (1) would not plant deep-rooted crops; (2) would not post financial assurance; (3) would pump and treat ground water at only the most contaminated locations; and (4) would not pay the commercial/industrial lease fee to the State Land Board.
42. On September 10, 2004, NHF sent the Division an updated ground water contamination modeling report.
43. On October 6, 2004, a Division letter to NHF stated that the updated ground water contamination modeling report was inadequate and failed to address any of the groundwater model-related report requirements that were discussed at the July 1, 2004, meeting. The letter provided a list of items regarding groundwater modeling that must be submitted prior to any further review of the conclusions based on the model.

44. On November 10, 2004, NHF sent to the Division its revised ground water contamination modeling report. The letter included responses to the Division's requests made in the October 6, 2004, letter.
45. On December 10, 2004, the Division sent a letter to NHF identifying continuing inadequacies in its ground water contamination modeling based on the November 10, 2004, report and requiring that requested information be provided by January 14, 2005.
46. Pursuant to a Division June 8, 2004 letter, NHF was required to submit soil monitoring results for nitrogen, phosphorus, and heavy metals by December 15, 2004. As of that date, NHF had submitted no results to the Division.
47. On January 6, 2005, the Division issued to NHF a Compliance Advisory ("Advisory"), *attached herein as Attachment 3*, identifying ten areas of noncompliance with the Order and outlining the compliance history for each. The Advisory itemized the materials that NHF must submit to the Division to attain compliance with the Order and the deadlines for those submittals. The Advisory specifically addressed a complete FAP and a written clarification of the current ownership status for each component of the HCSFO as operated by NHF under the permit.
48. On January 17, 2005, NHF submitted an updated ground water contamination modeling report in response to the Division's letter dated December 10, 2004.
49. On February 8, 2005, NHF sent a letter responding to the Division's January 6, 2005, Compliance Advisory. It provided sampling results for nitrogen ("N") on fee lands and on state lands and for phosphorus ("P") and heavy metals on state lands. The monitoring of N was done according to Order protocol; however, the Division alleges that the monitoring of P and metals was not done according to Order protocol. The letter stated that no additional groundwater sampling had been done since January 2004 but that sampling had been scheduled for February 22 and 23, 2005. The letter committed to providing an explanation of the groundwater monitoring program within 45 days of the Advisory date. The letter said NHF did not want to submit a FAP because they were trying to close on the trade of land with the State Land Board. NHF requested a meeting to discuss the issue. The letter also said NHF was compiling the ownership information the Division requested and would forward it during the next week.
50. By letter of February 15, 2005, the Division advised NHF that the groundwater contamination analysis was still not approvable, in part because NHF had not addressed several of the Division's comments regarding the model from its December 10, 2004, letter. As a result, the Division could not concur with NHF's conclusions that it had not impacted the groundwater system. The letter told NHF to provide the requested information by March 25, 2005.
51. On February 23, 2005, the Division sent a letter to NHF stating that it had not received an approvable written ground water contamination analysis by February 5, 2005 (30 days from the January 6, 2005, Advisory), as required by the Advisory. The letter stated that, as a result, NHF must submit an approvable ground water remediation protocol by March 7, 2005, in accordance with Part 7 of the Advisory.
52. In a March 11, 2005, e-mail, NHF said the groundwater sampling event would occur on March 24 and 25, 2005. The e-mail indicated NHF would respond to the Division's February 15, 2005, letter by March 25, 2005. NHF continued to ask for a meeting with the Division.

53. The Division has determined that NHF did not provided the following as required by the Order:
- a. An approvable model that determines ground water nitrate contamination or a reasonable potential of groundwater contamination, and the extent of such contamination;
 - b. Remediation of contaminated ground water, as appropriate.
 - c. A complete, approvable financial assurance plan;
 - d. Approvable financial assurance; and
 - e. Monitoring and remediation of soils with elevated levels of nitrogen, phosphorus, and heavy metals, as applicable;
54. The Division has determined that NHF's failure to comply with the conditions of the February 27, 2003 Compliance Order on Consent constitutes violation(s) of a final cease and desist order issued by the Department pursuant to 25-8-605 C.R.S.

ORDER AND AGREEMENT

55. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602, 605 and 606 C.R.S., and in satisfaction of the alleged violations cited herein, the Division orders NHF to comply with all provisions of this Consent Order, including all requirements set forth below.
56. Without admitting liability or a violation, NHF agrees to the terms and conditions of this Consent Order. NHF agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602, 605 and 606, C.R.S., and is an enforceable requirement of the Act. NHF also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by NHF 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.
57. Notwithstanding the above, NHF does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by NHF pursuant to this Consent Order shall not constitute evidence of fault by NHF with respect to the conditions of the Facility.

Compliance Requirements

State Land Board Pivot-21 (80 Acres) / Soil Nitrogen Remediation

58. NHF shall immediately initiate measures to establish and maintain a native/perennial grass crop throughout State Land Board Pivot-21 until soil nitrogen ($NH_3-N + NO_3-N$) levels in the 0-4 foot horizon are no more than 13 ppm.
59. NHF shall, immediately prior to planting State Land Board Pivot-21, flail mow the weed residue as low as possible to create an organic layer and shallow disk as needed.
60. NHF shall drill/broadcast native/perennial seed mix throughout State Land Board Pivot-21, as specified in NHF's March 14, 2008 proposal, *attached herein as Attachment 4*.

61. Promptly following seeding, NHF shall mulch the entire seeded area of the State Land Board Pivot-21 with long-fiber native grass hay at two (2) tons per acre and NHF shall crimp the mulch into the soil 4-6 inches.
62. NHF shall mow the State Land Board Pivot-21 by no later than the end of July during the seeding year to reduce heavy weed pressure competition.
63. NHF shall contract with a qualified individual or entity to evaluate the status/condition of the planted grass crop in each growing season (*October*) to ensure adequate establishment and/or maintenance (*1.5 seeded plants per square foot*) of the proposed native/perennial grass crop. NHF shall submit a report summarizing the conditions of the grass crop and any additional activities needed to establish or maintain the specified grass density by no later than November 30th of each calendar year. Any additional activities identified (e.g. inter-seeding, weed control or supplemental water ...etc.) shall become a condition of this Consent Order, and NHF shall implement the additional activities and time schedule as submitted unless notified by the Division, in writing, that alternate activities and/or time schedule are appropriate. If the Division imposes alternate activities and/or time schedules, they shall also become a condition of this Consent Order, subject to the provisions of paragraph 110.
64. In order to establish compliance with the remediation objective identified in paragraph 58, NHF shall perform soil monitoring to determine the nitrogen ($NH_3-N + NO_3-N$) concentration in the 0-4 foot soil horizon. A minimum of eight (8) 0-4 foot cores (*one core per 10 acres*) shall be acquired. The eight cores may be combined into a single composite for a single sample analysis. Soil monitoring sample results shall be compared and reported to the remediation objective (*13 ppm $NH_3-N + NO_3-N$*) for each monitoring event until the remediation objective is achieved.
65. NHF shall provide two weeks notice of each monitoring event to the Division.
66. NHF shall analyze all soil samples according to the methods specified in “Methods of Soil Analysis, Part 3, Chemical Methods”; Number 5 in the Soil Science Society of America Book Series; Soil Science Society of America, Inc. and American Society of Agronomy, Inc. Madison, Wisconsin. 1996.
67. NHF shall harvest and remove grass biomass starting in at least June 2010 and each subsequent calendar year until the remediation objective identified in paragraph 58 is achieved for State Land Board Pivot-21. The grass should be cut by no later than mid-July and to no lower than a 4-inch stubble height. Cattle grazing shall not be allowed during the balance of the growing season after the grass is cut for hay. Cattle grazing shall not be allowed during the planting year and until the grass stand is established such that it can withstand grazing pressure, which is when the majority of grasses are developing seed heads. Grazing shall not begin until the warm-season grasses have attained at least 12” to 14” of growth, stubble heights of the warm-season grasses shall be maintained at a minimum of 8”, and rest periods between grazings shall be at least forty five (45) calendar days.

Compost Area (50 Acres) / Soil Nitrogen Remediation

68. NHF shall immediately initiate measures to excavate nitrogen “hot-spot” areas and establish and maintain native/perennial grass crop throughout Compost Area until soil nitrogen levels ($NH_3-N + NO_3-N$) in the 0-4 foot horizon are no more than 25 ppm.

69. NHF shall excavate “hot-spot” nitrogen areas in the eastern half of the southeastern quarter of the Compost Area interior (inclusive of sample areas 2, 3, and 5) to a depth of 6 feet and spread at agronomic rate on other onsite areas or spread over low nitrogen site areas (*Defined as having ≤ 15 ppm $NH_3-N + NO_3-N$ in the 0-4 foot horizon*) no thicker than one (1) foot. Excavated areas shall be backfilled and/or graded so that pooling of normal precipitation is prevented or minimized.
70. NHF shall, immediately prior to planting the non-“hot-spot” placed material area, flail mow the weed residue as low as possible to create an organic layer and shallow disk as needed.
71. NHF shall drill/broadcast the non-“hot-spot” placed material area with native/perennial seed mix, as specified in NHF’s March 14, 2008 proposal, *attached herein as Attachment 4*.
72. NHF shall drill/broadcast “hot-spot” placed materials with Mammoth wild rye mix, as specified in NHF’s March 14, 2008 proposal, *attached herein as Attachment 4*.
73. Promptly following seeding, NHF shall mulch the entire seeded area of the Composite Area with long-fiber native grass hay at two (2) tons per acre and NHF shall crimp the mulch into the soil 4-6 inches.
74. NHF shall mow the Compost Area by no later than July during the planting year to reduce heavy weed pressure competition.
75. NHF shall irrigate the Compost Area as needed to adequately establish the seeded Mammoth wild rye crop on “hot-spot” placed materials throughout the 2008 growing season.
76. NHF shall contract with a qualified individual or entity to evaluate the status/condition of the planted grass crops each growing season (*October*) to ensure adequate establishment and/or maintenance (*1.5 seeded plants per square foot*) of the proposed native/perennial and Mammoth wild rye mix grass crops. NHF shall submit a report summarizing the conditions of the grass crops and any additional activities needed to establish or maintain the specified grass density by no later than November 30th of each calendar year. Any additional activities identified (e.g. inter-seeding, weed control or supplemental water ...etc.) shall become a condition of this Consent Order, and NHF shall implement the additional activities and time schedule as submitted unless notified by the Division, in writing, that alternate activities and/or time schedule are appropriate. If the Division imposes alternate activities and/or time schedules, they shall also become a condition of this Consent Order, subject to the provisions of paragraph 110.
77. In order to establish compliance with the remediation objective identified in paragraph 68, NHF shall perform soil monitoring to determine the soil nitrogen ($NH_3-N + NO_3-N$) concentration in the 0-4 foot soil horizon. A minimum of one core per acre shall be acquired for areas receiving “hot-spot” placed materials and a minimum of one core per 10 acres shall be acquired for all other areas. Collected cores for each area (*“Hot-spot” materials vs other compost site soils*) may be combined into a single composite for a single sample analysis. Soil monitoring sample results shall be compared and reported to the remediation objective (*25 ppm $NH_3-N + NO_3-N$*) for each monitoring event until the remediation objective is achieved.
78. NHF shall provide two weeks notice of each monitoring event to the Division.

79. NHF shall analyze all soil samples according to the methods specified in “Methods of Soil Analysis, Part 3, Chemical Methods”; Number 5 in the Soil Science Society of America Book Series; Soil Science Society of America, Inc. and American Society of Agronomy, Inc. Madison, Wisconsin. 1996.
80. NHF shall harvest and remove grass biomass starting in at least June 2010 and each subsequent calendar year until the remediation objective identified in paragraph 68 is achieved for the Compost Area. The grass should be cut by no later than mid-July and to no lower than a 4-inch stubble height. Cattle grazing shall not be allowed during the balance of the growing season after the grass is cut for hay. Cattle grazing shall not be allowed during the planting year and until the grass stand is established such that it can withstand grazing pressure, which is when the majority of grasses are developing seed heads. Grazing shall not begin until the warm-season grasses have attained at least 12” to 14” of growth, stubble heights of the warm-season grasses shall be maintained at a minimum of 8”, and rest periods between grazings shall be at least forty five (45) calendar days.

EHT-1 Area (5-Acres) / Soil Nitrogen Remediation

81. NHF shall immediately initiate measures to excavate nitrogen “hot-spot” areas and establish and maintain a native/perennial grass crop throughout the EHT-1 Area until soil nitrogen ($NH_3-N + NO_3-N$) levels in the 0-4 foot horizon are no more than 6 ppm.
82. NHF shall excavate the EHT-1 Area “hot-spot” nitrogen area (*sample area 5*) to a depth of eight (8) feet and spread the excavated soil at an agronomic rate on other onsite areas or spread over low nitrogen Compost Area locations no thicker than one (1) foot. Excavated areas shall be backfilled and/or graded so that pooling of normal precipitation is prevented or minimized.
83. NHF shall, immediately prior to planting the EHT-1 Area, flail mow the weed residue as low as possible to create an organic layer and shallow disk as needed.
84. NHF shall drill/broadcast native/perennial seed mix throughout the EHT-1 Area, as specified in NHF’s March 14, 2008 proposal, *attached herein as Attachment 4*.
85. Promptly following seeding, NHF shall mulch the entire seeded area of the EHT-1 Area with long-fiber native grass hay at two (2) tons per acre and NHF shall crimp the mulch into the soil 4-6 inches.
86. NHF shall mow the EHT-1 Area by no later than July during the planting year to reduce heavy weed pressure competition.
87. NHF shall contract with a qualified individual or entity to evaluate the status/condition of the planted grass crop each growing season (*October*) to ensure adequate establishment and/or maintenance (*1.5 seeded plants per square foot*) of the proposed native/perennial grass crop. NHF shall submit a report summarizing the conditions of the grass crop and any additional activities needed to establish or maintain the specified grass density by no later than November 30th of each calendar year. Any additional activities identified (e.g. inter-seeding, weed control or supplemental water ...etc.) shall become a condition of this Consent Order, and NHF shall implement the additional activities and time schedule as submitted unless notified by the Division, in writing, that alternate activities and/or time schedule are appropriate. If the Division imposes alternate activities and/or time schedules, they shall also become a condition of this Consent Order, subject to the provisions of paragraph 110.

88. In order to establish compliance with the remediation objective identified in paragraph 81, NHF shall perform soil monitoring to determine the nitrogen ($NH_3-N + NO_3-N$) concentration in the 0-4 foot soil horizon. A minimum of five (5) 0-4 foot cores (*one core per acre*) shall be acquired. The five cores may be combined into a single composite for a single sample analysis. Soil monitoring sample results shall be compared and reported to the remediation objective (*6 ppm $NH_3-N + NO_3-N$*) for each monitoring event until the remediation objective is achieved.
89. NHF shall provide two weeks notice of each monitoring event to the Division.
90. NHF shall analyze all soil samples according to the methods specified in “Methods of Soil Analysis, Part 3, Chemical Methods”; Number 5 in the Soil Science Society of America Book Series; Soil Science Society of America, Inc. and American Society of Agronomy, Inc. Madison, Wisconsin. 1996.
91. NHF shall harvest and remove grass biomass starting in at least June 2010 and each subsequent calendar year until the remediation objective identified in paragraph 81 is achieved for the EHT-1 Area. The grass should be cut by no later than mid-July and to no lower than a 4-inch stubble height. Cattle grazing shall not be allowed during the balance of the growing season after the grass is cut for hay. Cattle grazing shall not be allowed during the planting year and until the grass stand is established such that it can withstand grazing pressure, which is when the majority of grasses are developing seed heads. Grazing shall not begin until the warm-season grasses have attained at least 12” to 14” of growth, stubble heights of the warm-season grasses shall be maintained at a minimum of 8”, and rest periods between grazings shall be at least forty five (45) calendar days.

Groundwater and Surface Water Monitoring

92. NHF shall perform semi-annual (*April and October*) groundwater and surface water monitoring in calendar years 2008, 2009, 2010 and each subsequent calendar year until a stable or decreasing Nitrate trend is established for each groundwater monitoring well. The first groundwater/surface water monitoring event shall be initiated in June 2008.
93. NHF shall sample the groundwater wells, the South Platte River (*upstream/downstream*) and the Canal (*upstream/downstream*) for the same parameters, as was done during the 2007 groundwater sampling event. (*see Attachment 5 for specific monitoring locations*)
94. NHF shall provide two weeks notice of each monitoring event to the Division.
95. NHF shall perform the groundwater and surface water monitoring using appropriate and approved sample collection and analysis procedures and the methods as specified in the previously approved 2007 groundwater monitoring plan. Each groundwater well shall be evaluated during each monitoring event, dry wells or wells not producing enough water to sample shall be reported as such.
96. NHF shall report results of the groundwater and surface water monitoring within sixty (60) calendar days of each monitoring event and NHF shall include a current trend analysis for each groundwater monitoring location utilizing the Mann-Kendall test for trends along with the Sen’s Slope indicator.

Financial Assurance

97. Within thirty (30) calendar days of the effective date of this Consent Order, NHF shall supplement the existing letter of credit / closure bond (\$156,768.83) with a minimum of One Hundred Ninety Five Thousand Nine Hundred and Ten Dollars and Sixty Seven Cents (\$195,910.67) to complete the specifically identified closure activities within this Consent Order. (*see Attachment 6 – Closure Cost Estimate Table*) No further financial assurance shall be required from NHF.
98. Upon completion of each of the activities required by this Consent Order, NHF shall submit requests to the Division for the release of monies associated with the NHF letter of credit/closure bond. Each request shall include a detailed description of the activity and the actual cost incurred, along with copies of all supporting documentation. The Division shall review each request in a timely fashion, and if approved, the Division shall make a forthwith written request for payment of the approved amount to the standby trust fund of NHF. The Division hereby agrees not to unreasonably withhold approval of requests for release of monies.

Progress Reports

99. NHF shall submit quarterly (four times per year) progress reports to the Division outlining efforts taken to achieve compliance with this Consent Order. The first report shall be submitted to the Division on or before August 1, 2008. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next three (3) months to remain in compliance with this Consent Order.
100. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required.

SCOPE AND EFFECT OF CONSENT ORDER

101. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations alleged herein or that could have been alleged based upon facts known or that should have reasonably been known to the Division and in the lawsuit initiated by the Division captioned *Water Quality Control Division, Colorado Department of Public Health and Environment, v. National Hog Farms, Inc., and Michael Eugene Cervi*, Weld County, Colorado, District Court Case no. 05 CV 2025 (“Lawsuit”).
102. 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 NHF 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.
103. 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 NHF, 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.

104. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
105. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
106. Notwithstanding paragraph 57 above, the violations alleged in this Consent Order will constitute part of NHF'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 NHF. NHF agrees not to challenge the use of the cited violations for any such purpose.
107. This Consent Order does not relieve NHF from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and NHF 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

108. 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 the specific instances of violations alleged herein. 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.
109. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
110. 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, provided notice of the intent to impose additional requirements, the reasons therefore, and an opportunity to be heard regarding the same is given to NHF. Specifically, but not limited to, this Consent Order shall not limit the Division from seeking additional relief from NHF pursuant to this paragraph resulting from groundwater contamination originating from NHF activities that cause or may cause threats to public health and safety.
111. NHF 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 NHF, or those acting for or on behalf of NHF, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. NHF shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by NHF 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.

OFFSITE ACCESS

112. To the extent any plan submitted by or activity conducted by NHF requires access to property not owned or controlled by NHF, NHF shall use its best efforts to obtain site access from the present owners of such property to conduct required activities, and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, NHF shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

SITE ACCESS AND SAMPLING

113. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining NHF's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview NHF personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.
114. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by NHF. NHF shall notify the Division in writing or by electronic mail of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of two (2) weeks prior to the sampling being conducted, and shall provide split samples to the Division upon request.
115. NHF shall notify the Division in writing or by electronic mail of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. NHF shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

116. NHF shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of NHF, and which cannot be overcome by due diligence.
117. Within seventy-two (72) hours of the time that NHF knows or has reason to know of the occurrence of any event which NHF has reason to believe may prevent NHF from timely compliance with any requirement under this Consent Order, NHF shall provide verbal notification to the Division. Within seven (7) calendar days of the time that NHF knows or has reason to know of the occurrence of such event, NHF shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

118. The burden of proving that any delay was caused by a force majeure shall at all times rest with NHF. If the Division agrees that a force majeure has occurred, the Division will so notify NHF. The Division will also approve or disapprove of NHF's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of NHF's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to NHF. Pursuant to the dispute resolution section of this Consent Order, within fifteen (15) calendar days of receipt of the explanation, NHF may file an objection.
119. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, NHF shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

120. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by NHF to mitigate the delay caused by a force majeure are inadequate or that NHF's Notice of Completion should be rejected pursuant to paragraph 127, the Division shall provide a written explanation of its determination to NHF. Within fifteen (15) calendar days of receipt of the Division's determination, NHF shall:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute of the determination.

If NHF fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

121. If the Division disapproves or approves with modifications any original or revised plan submitted by NHF pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, NHF shall:
- a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
 - b. In the case of a disapproval only, submit a revised plan for Division review and approval. NHF may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by NHF (the alternate plan shall be subject to the notice of dispute provision of paragraph 121 (c) below); or
 - c. Submit a notice of dispute of the disapproval or approval with modifications.

If NHF fails to do any of the above within the specified time, NHF shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

122. If NHF submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify NHF in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by NHF. Such disapproval and plan 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. (the "APA"), unless NHF submits a notice of dispute, pursuant to paragraph 121 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.
123. If NHF files any notice of dispute pursuant to paragraph 121, 122, or 123 the notice shall specify the particular matters in the Division's determination that NHF seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by NHF. The Division and NHF 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 APA.

NOTICES

124. 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-CADM-B2
Attention: Scott Klarich
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3564
E-mail: scott.klarich@state.co.us

For National Hog Farms, Inc.:

Mr. Mike Cervi
30130 Weld County Road 49
Greeley, Colorado 80631
Telephone: 970.356.6000

With a copy to Jennifer Lynn Peters, Esq. by email at jlpeters@nocolegal.com.

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

125. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by NHF of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Further, the obligations imposed by this Consent Order are necessary for NHF and the Facility to achieve and maintain compliance with State law.

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

127. NHF 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 NHF's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects NHF'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. NHF 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.

If NHF fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

128. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following the closure of the public comment period referenced in paragraph 102.

BINDING EFFECT AND AUTHORIZATION TO SIGN

129. This Consent Order is binding upon NHF 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. NHF 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 forty five (45) 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 THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:

Lori M Gerzina Date: 07-08-08
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

FOR NATIONAL HOG FARMS, INC.:

Mike Date: 6-25-08
By: Michael Eugene Cervi
Its: President