STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

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

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department
of Public Health
and Environment

December 30, 2009

Mark A. McCulley
M2P2 L.L.C.
1615 Golden Aspen Drive, Suite 104
Ames, Iowa 50010

Certified Mail Number: 7005 1820 0000 3208 0978

RE: Final Compliance Order on Consent, Number: HC-091229-1

Dear Mr. McCulley,

Enclosed for Heritage Farms, LLC's records, you will find Heritage's copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period, as further described in paragraph 79 of the document. If the Division receives any comments during this period, we will contact your office to discuss. Also, please be advised that the first page of the Order was changed for the purpose of placing the assigned Order Number on the final document.

If you have any questions, please do not hesitate to contact me at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Michael Harris
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Lori Jacobson, Southeast Environmental Health (Prowers County Public Health Department)

ec: Aaron Urdiales, EPA Region VIII
Dick Parachini, Watershed Program, CDPHE
Ron Jepson, Environmental Ag Program, CDPHE
Carolyn Schachterle, OPA, CDPHE
Mark Mathews, Brownstein Hyatt Farber & Schreck, LLP

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: HC-091229-1**

IN THE MATTER OF: **HERITAGE FARMS, LLC**
CDPS PERMIT NO. COH-005000
KIOWA COUNTY & PROWERS 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 Heritage Farms, LLC ("Heritage Farms"). The Division and Heritage Farms 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 to resolve, without litigation, civil penalties for the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: HO-050112-3, which was issued to Heritage Farms on January 12, 2005.

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 Heritage and Heritage's compliance with the Act, the Colorado Discharge Permit System ("CDPS") Regulations, and its individual discharge permit.

3. At all times relevant to the violations cited herein, Heritage Farms was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.

4. Heritage Farms 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. Heritage Farms owns and operates a Housed Commercial Swine Feeding Operation ("HCSFO") that includes eleven sites located in Kiowa County and Prowers County, Colorado (collectively, the "Facility").

6. Until March 31, 2006, the Facility was covered under CDPS Permit Number COH-005000 (the "Permit"), authorizing Heritage Farms to apply swine feeding process wastewater and residual solids from the Facility to the land application sites identified in the Permit, under the terms and conditions of the Permit. On March 31, 2006, the Division issued Heritage Farms CDPS Permit Number COB-005000, which remains in effect until April 30, 2011.

7. Pursuant to 5 CCR 1002-61, §61.8 and Part II. A. 1. of the Permit, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.

8. On June 9, 2003 and May 5, 2004, an authorized representative from Southeastern Land & Environment (the "Inspector") conducted inspections of the Facility on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Heritage Farms' compliance with the Act, the CDPS Regulations, and the Permit. During the inspections, the Inspector spoke with Facility representatives and conducted a physical inspection of the sites.

Failure to Maintain Process Wastewater Impoundments

9. Pursuant to Part II. A. 3. of the Permit, Heritage Farms was required to, at all times, properly operate and maintain all facilities and systems of treatment and control used by Heritage Farms to achieve compliance with the conditions of the Permit.

10. Pursuant to 5 CCR 1002-61, §61.13(4)(a), Heritage Farms is required to develop, and submit to the Division, a complete Operations Plan, Swine Waste Management Plan ("SWMP"), Monitoring Plan, and Financial Assurance Plan for the Facility.

11. Pursuant to 5 CCR 1002-61, §61.13(4)(b)(ii), Heritage Farms is required to comply with all provisions of the Facility's submitted and approved plans.

12. Heritage Farms' Operations Plan states in part, "A protective cover of appropriate vegetation will be established on all disturbed areas (lagoon embankments, berms, pipe runs, etc.). Lagoon berms and structures should be inspected regularly for evidence of erosion, leakage, or discharge."

13. During the June 9, 2003 inspection, the Inspector observed severe shelf erosion on disturbed banks of the earthen liner at the impoundment(s) located at the Nucleus site. The banks did not have a protective cover of vegetation established to control erosion.

14. During the May 5, 2004 inspection, the Inspector observed the following deficiencies related to maintenance of the process wastewater impoundments at the Facility.

    a. The Inspector observed tears in the synthetic liner at the north end of the impoundment(s) at the Rush Creek Multiplier site.

b. The Inspector observed erosion beneath the pipe run discharge point, no erosion control device in place to prevent erosion at the pipe run discharge point, and moderate shelf erosion on the banks of the earthen liner at the impoundment(s) located at the Plainview Finisher #1 site.

c. The Inspector observed moderate shelf erosion on the south and west banks of the earthen liner at the impoundment(s) located at the New ITO Multiplier # 2 site.

d. The Inspector observed significant erosion on the banks of the earthen liner at the impoundment(s) located at the Wildhorse Finisher # 2 site.

15. Heritage Farms' failure to operate and maintain its swine feeding process wastewater impoundments properly, and failure to comply with the provisions of the Facility's Operations Plan concerning such impoundments, constitutes violation(s) of Part II. A. 3 of the Permit, and violation(s) of 5 CCR 1002-61, §§61.13(4)(b)(ii).

Failure to Properly Dispose of Mortalities

16. Pursuant to 5 CCR 1002-61, §61.13(3)(e), Heritage Farms' Operations Plan is required to include procedures to ensure that surface and ground water quality are not impacted due to storage and disposal of dead animals.

17. Pursuant to 5 CCR 1002-61, §61.13(4)(b)(ii), Heritage Farms is required to comply with all provisions of the Facility's submitted and approved plans.

18. Heritage Farms' Operations Plan states in part, "Animal carcasses are disposed of through rendering agreement. Carcasses are collected daily and transported to a common collection site for pick-up by the rendering contractor. Storage and disposal of dead animals will occur in such a manner to insure that surface and ground water quality is not impacted."

19. During the May 5, 2004 inspection, the Inspector observed mortality pits containing dead animals at the Rush Creek Multiplier site and the Nucleus site.

20. Division review of Heritage Farms' Operations Plan has determined that the Operations Plan does not contain procedures for disposal of dead animals through the use of mortality pits.

21. The Division has determined that Heritage Farms did not follow the procedures for storage and disposal of dead animals included in the Facility's Operations Plan to ensure that surface and ground water quality were not impacted.

22. Heritage Farms' failure to dispose of mortalities properly and failure to comply with the provisions of the Facility's Operations Plan concerning the disposal of dead animals, constitutes violation(s) of 5 CCR 1002-61, §61.13(4)(b)(ii).

Deficient or Incomplete Swine Waste Management Plan

23. Pursuant to Part I. B. 8. a. (i) of the Permit, Heritage Farms was required to submit proposed revisions to the Facility's SWMP as necessary to have the SWMP comply with 5 CCR 1002-61, §61.13(3)(e). *(On May 10, 2004, the CDPS Regulations were amended and, effective June 30, 2004, the citation listed as "5 CCR 1002-61, §61.13(3)(e)" in the Permit, became 5 CCR 1002-61, §61.13(3)(f).)*

24. Pursuant to 5 CCR 1002-61, §61.13(3)(f), Heritage Farms' SWMP shall quantify the disposition of all residual solids and swine feeding process wastewater produced at the Facility and shall identify the concentrations of specific constituents including, but not limited to, nitrogen, phosphorus, heavy metals, and salts present in the residual solids or swine feeding process wastewater as a result of the Facility operations.

25. Pursuant to 5 CCR 1002-61, §61.13(4)(k)(iii), Heritage Farms is required to provide, to the Division, a new assessment of the concentrations of specific constituents whenever changes to the operation occur that could significantly change the concentrations of these constituents.

26. On February 10, 2003 the Division received a Permit amendment application for the Facility that included a request to change the Barlow Nursery to a boar stud facility and a request to expand the Two Buttes Finisher #3 facility.

27. On March 4, 2003, Division representatives met with representatives from Heritage Farms and determined that additional information was necessary to complete the requested Permit amendment.

28. On March 17, 2003 and May 13, 2003, the Division received additional information from Heritage Farms concerning the Facility's Permit amendment request, which included a proposed addendum to the SWMP stating that the annual swine feeding process wastewater for land application at the Facility would increase, due to the proposed operations changes, by 36.94 acre-inches and include a net increase of 8,300 lbs. of ammonia (NH_4). The information submitted did not include a new assessment of other specific constituents, including other nitrogen species, phosphorus, heavy metals, or salts present in the residual solids or swine feeding process wastewater at the Facility.

29. On June 30, 2003, the Division sent Heritage Farms a letter stating that the additional information was inconsistent, contained unclear language, and was incomplete. Additionally, the letter stated that the Division would not proceed with the Permit amendment request and asked that Heritage Farms re-submit a complete and accurate Permit amendment application.

30. During the May 5, 2004 inspection, Heritage Farms representatives informed the Inspector that the Barlow Nursery had been renovated and was currently housing boar studs.

31. The Division records to date establish that Heritage Farms has not submitted a complete and accurate Permit amendment application nor proposed revisions to the Facility's SWMP which include the required new assessment of specific constituents in residual solids or swine feeding process wastewater, as a result of Facility alterations and changes in operation.

32. The Division has determined that Heritage Farms made changes to the Facility's operations, including changing the Barlow Nursery to a boar stud facility and expanding the Two Buttes Finisher #3 facility, which could significantly change the concentrations of constituents in the residual solids and/or swine feeding process wastewater at the Facility without submitting complete and accurate proposed revisions to the Facility's SWMP.

33. Heritage Farms' failure to submit, to the Division, proposed revisions to the Facility's SWMP as necessary to have the SWMP comply with the CDPS Regulations, and failure to provide the Division with a new assessment of the specific constituents in residual solids and swine feeding process wastewater at the Facility, due to changes in operation, constitutes violation(s) of Part I. B. 8. a. (i) of the Permit and 5 CCR 1002-61, §61.13(4)(k)(iii).

Deficient or Incomplete Monitoring Plan

34. Pursuant to 5 CCR 1002-61, §61.13(3)(g)(i), Heritage Farms is required to develop and implement a Monitoring Plan describing monitoring methods which demonstrate compliance with both the swine waste land application requirements and the requirements for monitoring/reporting for impoundments and land application activities.

35. Pursuant to 5 CCR 1002-61, §61.13(3)(g)(ii)(F), Heritage Farms' Monitoring Plan is required to include a geo-hydrologic report that includes the locations and uses of all existing wells and springs within a one mile radius of the proposed site(s).

36. Pursuant to Part I. B. 8. a. (ii) of the Permit, Heritage Farms was required to submit, to the Division, proposed revisions of the Facility's Monitoring Plan.

37. Heritage Farms' well test database report dated March 31, 2004, includes ground water analysis results for "Well 1" and "Hines South" well. The Division records establish that Heritage Farms' Monitoring Plan does not include a description of the locations and uses of these wells.

38. The Division records establish that Heritage Farms drilled "Well 3" in calendar year 2003, in the southeast quarter of Section 24, Township 17 South, Range 47 West. The Division records further establish that Heritage Farms did not submit a revised Monitoring Plan to reflect this new monitoring well.

39. Heritage Farms' failure to submit proposed revisions of the Facility's Monitoring Plan, which include the locations and uses of all existing wells, constitutes violation(s) of Part I. B. 8. a. (ii) of the Permit and violation(s) of 5 CCR 1002-61, §61.13(3)(g)(ii)(F).

Exceedance of Agronomic Rate of Application

40. Pursuant to Part I. B. 3. a. (i) of the Permit, Heritage Farms was prohibited from applying swine feeding process wastewater and residual solids to any sites or lands at a rate that exceeds the agronomic rate of application.

41. Pursuant to 5 CCR 1002-61, §61.13(4)(e)(ii)(E), a permittee will be presumed to have exceeded the agronomic rate of application if the soil nitrate-nitrogen ("NO_3-N") level in the four-to-six-foot increment or six-to-eight-foot increment, within the monitoring zone, exceeds the comparative concentration by greater than 10mg/kg (72 lbs/acre for 2-foot soil depth increments).

42. Pursuant to 5 CCR 1002-61, §61.13(4)(e)(ii)(E)(I), Heritage Farms is required to develop and submit to the Division, an approvable intervention protocol within ninety days of discovering a NO_3-N exceedance. The intervention protocol is required to describe adjustments to the SWMP that provide for strict minimization of future nitrogen loading within the monitoring zone.

43. Pursuant to Part II. B. 2. a. of the Permit, Heritage Farms was required to provide the Division with a non-compliance notification if, for any reason, the Facility is or will be in violation of the agronomic rate of application. At a minimum, the non-compliance notification shall include the following information:

    a. A description of the cause of violation.
    b. The period of violation, including the anticipated time the Facility will return to compliance.
    c. Steps being taken to reduce, eliminate, and prevent recurrence of the violation.

44. On April 29, 2004, the Division received the Facility's Quarterly Monitoring Report ("QMR") for the First Quarter 2004. Division review of the QMR identified the following comparative concentration exceedances related to NO_3-N levels in soils at the Facility:

Field ID	Date of Most Current Soil Sample	Sample Depth (Feet)	Current NO_3-N (lbs/acre)	Comparative NO_3-N (lbs/acre)	Comparative Concentration Exceedance (lbs/acre)
24-P5	2/23/04	4-6	270	22	248
1 W-2	2/25/04	4-6	151	72	79
17-P8 S/W 4	2/25/04	4-6	137	2	135

45. On May 28, 2004, the Division received a letter from Heritage Farms that included proposals to respond to the NO_3-N exceedances for each of the fields identified in paragraph 44.

46. Division review of Heritage Farms' proposals determined that the proposals do not meet all of the minimum requirements of an intervention protocol as required in 5 CCR 1002-61, §61.13(4)(e)(ii)(E)(I) and Part II. B. 2. a. of the Permit. The submitted proposals do not describe adjustments to the Facility's SWMP that will address minimization of future nitrogen loading within the monitoring zones. Additionally, the proposals do not describe the cause of the violations, the anticipated time the Facility will return to compliance, nor steps taken to prevent recurrence of the violations.

47. Heritage Farms' exceedance of the agronomic rate of application in the four-to-six-foot increment within the monitoring zones of fields 24-P5, 1 W-2 and 17-P8 S/W 4 constitutes violation(s) of Part I. B. 3. a. (i) of the Permit.

48. Heritage Farms' failure to provide a complete intervention protocol constitutes violation(s) of 5 CCR 1002-61, §61.13(4)(e)(ii)(E)(I). Additionally, Heritage Farms' failure to submit a complete permit required noncompliance notification constitutes violation(s) of Part II. B. 2. a. of the Permit.

Failure to Report Spills

49. Pursuant to Part I. B. 9. c. of the Permit and 5 CCR 1002-61, §61.13(4)(i), Heritage Farms was required to report any spill that is not "de minimis" to the Division and the county health department. The required written report shall describe the nature of the spill, any action taken to clean up the spill, and any additional action that may be necessary to ensure the spill does not result in permanent contamination of soils, surface water, or ground water. The written report is required to be submitted to the Division for approval no later than five working days after the spill occurs.

50. In accordance with Part I. B. 4. a. of the Permit and 5 CCR 1002-61, §61.13(4)(i)(v), the site-specific interpretation of "de minimis" proposed by Heritage Farms and approved by the Division read as follows:

> *"Any spill that occurs on Newsham property that can be remediated within 24 hours and does not exceed 5,000 gallons of swine feeding process wastewater will be considered 'de minimus.' A log will be kept of any such spills, and will be available to the Division upon request. The log will include estimated volume of spill, exact location and extent of contamination of spill, and method of remediation. Any spill that occurs off of Newsham property that can be remediated within 24 hours and does not exceed 5,000 gallon of swine feeding process wastewater will be considered 'de minimus.' Any spill that either enters or would threaten waters of the state or private or public wells shall be reported immediately to both the Division and local county health department, regardless of size. Any spill exceeding 5,000 gallons of swine feeding process wastewater will be handled in accordance with the provisions of subsection 61.13(4)(i) of the Colorado Discharge Permit System regulations."*

51. During the May 5, 2004 inspection, the Inspector observed significant spillage from the recycle pump located at the Rush Creek Multiplier site. The Inspector observed large pools of swine feeding process wastewater that had not been cleaned up and had collected adjacent to the pump and piping. Additionally, the Inspector observed channeling in the soils adjacent to the recycle pump that extended for several feet from the spill site. The Division has determined, due to the total area of the spill site, that the spill volume exceeded 5000 gallons and was, therefore, not "de minimis".

52. The Division records to date establish that Heritage Farms did not notify the Division that a spill took place at the Facility at any time surrounding May 5, 2004, nor did Heritage Farms submit a written report for such spill.

53. Heritage Farms' failure to report spills that exceeded the Facility's "de minimis" interpretation, to the Division and the county health department, constitutes violation(s) of Part I. B. 9. c. of the Permit and 5 CCR 1002-61, §61.13(4)(i).

Failure to Properly Monitor Ground Water

54. Pursuant to Part I. A. 1. of the Permit, Heritage Farms was authorized to land apply process wastewater and residual solids to the sites specified in Part I. A. 1. (ii) of the Permit.

55. Pursuant to 5 CCR 1002-61, §61.13(4)(k)(vi)(E), Heritage Farms is required to monitor the ground water beneath each land application site by sampling and analyzing the ground water in the monitoring well locations identified in the Facility's Monitoring Plan on a quarterly basis.

56. Division review of the Facility's Monitoring Plan and Permit establish that well "MW-3" is a monitoring well located beneath an authorized land application site and, thus, is subject to quarterly ground water monitoring requirements.

57. Heritage Farms' Well Test Database report, dated March 31, 2004, establishes that Heritage Farms failed to monitor the ground water in well "MW-3" during the following required quarterly monitoring periods:

Well ID	Quarter / Year *	Number of Samples Required	Number of Sample Results Reported
MW3	3rd/ 2002	1	0
MW3	1st/ 2003	1	0
MW3	4th/ 2003	1	0

* - Based on a calendar year, i.e., 1st Quarter = Jan-Mar, 2nd Quarter = Apr-Jun, etc.

58. Heritage Farms' failure to conduct quarterly ground water monitoring beneath each land application site constitutes violation(s) of 5 CCR 1002-61, §61.13(4)(k)(vi)(E).

Failure to Conduct Operations in a Manner to Protect Ground Water

59. Pursuant to Part I. A. 2. of the Permit, Heritage Farms was required to conduct operations in a manner that did not actually or potentially result in the contamination of ground water.

60. Pursuant to 5 CCR 1002-61, §61.13(4)(e)(iii), all land application activities at housed commercial swine feeding operations shall be conducted in a manner that does not result in impairment of existing beneficial uses of state waters or exceedances of applicable water quality standards for surface water or ground water.

61. Pursuant to 5 CCR 1002-41, §41.5, Table 1, the ground water quality standard for NO_3-N in the vicinity of the Facility is 10mg/L.

62. Pursuant to the Facility's Monitoring Plan, groundwater beneath the Facility's Livestock Oasis Units, which include the Nucleus and Rush Creek Multiplier sites, flows in a south to southeast direction.

63. According to Heritage Farms, the "Barlow M" well is located within authorized land application site 36-P7 in the northwest quarter of the northeast quarter of Section 36, Township 17 South, Range 47 West, directly south from the Rush Creek Multiplier site and southwest from the Nucleus site.

64. Heritage Farms' Well Test Database report, dated March 31, 2004, includes the following results of ground water analyses for the "Barlow M" well:

Sample Date	Sample Location	NO_3-N Results
8/24/1999	Barlow M	9.1 mg/L
10/3/2002	Barlow M	16.2 mg/L
3/31/2004	Barlow M	17.9 mg/L

65. The Division has determined that Heritage Farms' operations at the Facility's Nucleus and Rush Creek Multiplier sites, which include failures to maintain process wastewater impoundments, the unauthorized use of mortality pits, process wastewater spills, and exceedances of the agronomic rate of application for authorized land application site 24-P5, have potentially contributed to the elevated groundwater NO_3-N results identified in paragraph 64.

66. Heritage Farms' failure to conduct operations in a manner that does not actually or potentially result in contamination of ground water constitutes violation(s) of Part I. A. 2. of the Permit and violation(s) of 5 CCR 1002-61, §61.13(4)(e)(iii).

ORDER AND AGREEMENT

67. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the January 12, 2005 Notice of Violation / Cease and Desist Order (Number: HO-050112-3), the Division orders Heritage Farms to comply with all provisions of this Consent Order, including all requirements set forth below.

68. Heritage Farms agrees to the terms and conditions of this Consent Order. Heritage Farms agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Heritage Farms also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Heritage Farms 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.

69. Notwithstanding the above, Heritage Farms does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Heritage Farms pursuant to this Consent Order shall not constitute evidence of fault by Heritage Farms with respect to the conditions of the Facility.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

70. In addition to all other funds necessary to comply with the requirements of this Consent Order, Heritage Farms shall pay One Hundred Ninety Five Thousand One Hundred Twenty Eight Dollars ($195,128.00) in the form of civil penalties and expenditures on a Supplemental Environmental Project ("SEP") in order to achieve settlement of this matter.

71. Based upon the application of the Division's penalty policies, and consistent with Departmental policies for violations of the Act, Heritage Farms shall pay Thirty Five Thousand Twenty Six Dollars ($35,026.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Thirty Five Thousand Twenty Six Dollar ($35,026.00) civil penalty for the above violation(s) and Heritage Farms agrees to make the payment through three installment payments as described in the table below:

Payment	Amount	Due Date
1	$11,676.00	Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or his designee
2	$11,675.00	January 1, 2011
3	$11,675.00	January 1, 2012

Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Michael Harris
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

72. Heritage Farms shall also perform the SEP identified below. Heritage Farms' total expenditure for the SEP shall be not less than One Hundred Sixty Thousand One Hundred Two Dollars ($160,102.00).

73. Heritage Farms shall undertake the following SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements.

74. Heritage Farms shall donate One Hundred Sixty Thousand One Hundred Two Dollars ($160,102.00) to Southeast Environmental Health. The funds will be used for drinking water system improvements at three drinking water providers in Prowers and Kiowa counties, as further described in Attachment A. Heritage Farms shall make the donation through three installment payments as described in the table below:

Payment	Amount	Due Date
1	$53,368.00	Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or his designee
2	$53,367.00	January 1, 2011
3	$53,367.00	January 1, 2012

Each installment payment shall be sent to: Lori Jacobson, Southeast Environmental Health, 1001 S. Main Street, Lamar, CO 81052. Heritage Farms shall include with each installment payment a cover letter identifying the monies for the above-described project. Heritage Farms shall provide the Division with a copy of each cover letter and check within thirty (30) calendar days of the due dates described in the table above. Heritage Farms shall not deduct the payment of the SEP installments provided for in this paragraph for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

75. Heritage Farms hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. Heritage Farms further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Heritage Farms has or will receive credit under any other legal obligation for the SEP, Heritage Farms shall pay One Hundred Sixty Thousand One Hundred Two Dollars ($160,102.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be as specified in paragraph 71 above.

76. The SEP must be completed to the satisfaction of the Division by December 31, 2012. In the event that Heritage Farms fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, Heritage Farms shall be liable for payment of a penalty in the amount of One Hundred Sixty Thousand One Hundred Two Dollars ($160,102.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP. Heritage Farms shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 71 above. Apart from the SEP payments identified above, Heritage Farms shall have no further responsibility toward the SEP, including, but not limited to, the allocation of funds between drinking water providers or the implementation of the drinking water system improvements.

77. Heritage Farms shall include the following language in any public statement, oral or written, making reference to the SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."

SCOPE AND EFFECT OF CONSENT ORDER

78. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the January 12, 2005 Notice of Violation / Cease and Desist Order (Number: HO-050112-3).

79. 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 Heritage Farms 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.

80. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Heritage Farms, 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.

81. Notwithstanding paragraph 69 above, the violations described in this Consent Order will constitute part of Heritage Farms' 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 Heritage Farms. Heritage Farms agrees not to challenge the use of the cited violations for any such purpose.

82. This Consent Order does not relieve Heritage Farms from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and 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

83. 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 civil penalties for the specific instances of violations cited herein and in the January 12, 2005 Notice of Violation / Cease and Desist Order (Number: HO-050112-3). 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.

84. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

85. 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.

86. Upon the effective date of this Consent Order, Heritage Farms releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.

87. Heritage Farms 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 Heritage Farms, or those acting for or on behalf of Heritage Farms, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Heritage Farms shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Heritage Farms 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.

NOTICES

88. 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: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3598
E-mail: michael.harris@state.co.us

For Heritage Farms:

Mark A. McCulley
M2P2 L.L.C.
1615 Golden Aspen Drive, Suite 104
Ames, Iowa 50010

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

90. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

91. This Consent Order is binding upon Heritage Farms 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. In the event that a party does not sign this Consent Order within thirty (30) 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 HERITAGE FARMS, LLC:

_____ Date: 12/23/09
Mark A. McCulley, Vice President of Strategic Relations

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 12/29/09
Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP) PROPOSAL

Enforcement Action Information	Entity: Heritage Farms, LLC Case No.: HO-050112-3
Regulated Entity Contact Information	Mark McCulley Heritage Farms, LLC 109 W. Lee Avenue, Suite 13 Lamar, CO 81052
3rd Party SEP Contact	Lori Jacobson, Program Manager Southeast Environmental Health (SEH) Prowers County Public Health Department 1001 S. Main Street Lamar, CO 81052 (719)336-8721
CDPHE Contact Person	Technical Contact: Jon Erickson, WQCD, 303-692-3593 General SEP Contact: Rachel Wilson-Roussel, OEIS, 303-692-2976
Geographical Area to Benefit Most Directly From Project	Kiowa and Prowers County
Project Name	Drinking Water System Improvements, Radionuclide Violations
Project Type	Third Party SEP Donation
SEP Category	Public Health
Project Summary	Sheridan Lake Water Company, A & B Water Association, and May Valley Water are identified by the Colorado Department of Public Health and Environment's Water Quality Control Division (the Division) as drinking water systems that exceed the maximum contaminant level (MCL) value for regulated radionuclides. This proposal for Supplemental Environmental Projects entails the distribution of funds, administered by Southeast Environmental Health (SEH), to these water providers for the purposes of supporting activities to identify and implement improvements to achieve compliance with radionuclide MCLs. The proposed SEP funding would only be applied to costs associated with a project to achieve compliance with radionuclide MCLs. The radionuclide compliance project components that are eligible to be paid or reimbursed with these SEP funds are limited to those costs associated with the Scope of Work for a contractor to develop, execute, and/or perform the following items: • Preliminary Engineering Report; • Pilot study of radionuclide removal or waste handling processes;

	• Environmental Assessment; • Technical, Managerial, and Financial Capacity Review; • Final Design Report; • Residuals Management Plan; • Final Design Plans and Specifications (including associated forms and supplemental information to constitute a complete submittal for review by CDPHE); • Public outreach campaign; • Consumer rate impact study; • Site remediation associated with radionuclide contamination from prior drinking water treatment operations; • Project implementation and/or construction costs; and/or • Legal fees associated with the project.
Project Description	**Water systems identified** Sheridan Lake Water Company is located in central Kiowa County, approximately 60 miles west of the Colorado-Kansas border, and serves approximately 138 people through 55 taps. The Company's primary well (Well No. 1) supplies water with uranium concentrations that exceed the MCL. A & B Water Association is located near the town of Granada. The Association is a private utility and currently serves an estimated 100 customers through 40 residential and non-residential taps. Samples collected from the Association's wells have concentrations of combined radium exceeding the MCL. May Valley Water Association is located in the lower Arkansas River Valley, approximately 8 miles north of Lamar, CO. The Association is a private utility and currently serves an estimated 1,520 customers through 629 residential and non-residential taps. Samples collected from the Association's wells have concentrations of gross alpha activity and combined radium exceeding the MCLs. **Water System compliance dates and cost estimates** Sheridan Lake Water Company, A & B Water Association, and May Valley Water Association are under an enforcement order issued by the Colorado Department of Public Health and Environment. These orders have established the following compliance schedule*: • October 31, 2009 submit a Preliminary Engineering Report • February 28, 2010 submit a Final Design Report • August 1, 2010 submit Final Design Plans and Specifications • October 15, 2011 complete construction/implementation of project The estimated cost for planning and final design for Sheridan Lake is $40,000. The estimated cost for planning and design for A & B Water Association is unknown at this time. The estimated cost for planning and final design for May Valley Water Association is $1,542,000. Cost estimates for a traditional treatment approach for the three water systems are as follows: Sheridan Lakes, $160,000; A & B Water Association, unknown at this time; and May Valley Water Association, $6,170,000. It is expected that these systems will need to procure additional funding through other sources to be able to complete construction/implementation of a project. *Please note, these compliance schedules will be re-evaluated on a case-by-case basis following the submission of the Preliminary Engineering Report and are subject to

modification based upon site specific factors.

SEH will act as the fiscal agent for this SEP and be responsible for the following tasks:

- Receiving the SEP funds from Heritage Farms;
- Executing multi-year contracts with the three water systems in order to administer SEP funding for the eligible activities identified in the project summary and according to the project schedule detailed in this document;
- Making payments to the three water systems (see **note** below);
- Tracking invoices, financial payments and administrative costs and submitting a financial report on an annual basis to the Division; and
- Forwarding all reports, documentation and other information received from the water systems to the Division.

Note: SEH's contracting process may require payment to be made to the water systems on a reimbursement basis. In this case, proof of payment from the water systems for eligible activities would be required for documentation purposes before reimbursements would be made. SEH will forward all documentation to the Division and will require a letter of evaluation from the Division by the CO-RADS project manager which will include an opinion on whether the activities completed were appropriate and whether the associated costs are eligible under this SEP proposal.

To reduce the financial burden placed on the water systems, SEH will investigate whether the contract could include upfront annual payments to the water systems. In this case, the contract will describe the specific eligible activities that may be implemented using the funds. Specific milestones and deliverables for the water systems will be identified in the contract. SEH will submit deliverables and other documents to the Division and will require a letter of evaluation from the Division by the CO-RADS project manager to verify that the funds were expended on eligible activities.

The Division will be responsible for the following tasks:

- Determining whether or not activities implemented by the three water systems are eligible to receive SEP funding;
- Monitoring all SEP-eligible activities;
- Submitting a SEP Completion Report to Heritage Farms and the department's SEP Coordinator 30 days after the completion of the SEP.

Expected Environmental and/or Public Health Benefits

Water systems will achieve greater gains towards providing safe drinking water to their residents.

Project Budget

Category	Description	Cost
Engineered plans and/or infrastructure	Sheridan Lake Water Company	$31,226
Engineered plans and/or infrastructure	A & B Water Association	$33.635
Engineered plans and/or infrastructure	May Valley Water Association	$87,236
Administrative (5%)	SLE will maintain accounting records for project expenses and accounts payable.	$8,005
	Total:	**$160,102.00**

Budget Discussion	See Project Schedule below for annual payment allocations to each water system.	
Project Schedule	Proposed Implementation Start Date:	January 1, 2010
	Initial Annual Payment Allocations	
	Sheridan Lake Water Company	$10,000.00
	A & B Water Association	$33,635
	May Valley Water Association	$7,064
	SEH Expense Report Due:	December 31, 2010
	Second Annual Payment Allocations	
	Sheridan Lake Water Company	$21,226
	A & B Water Association	-
	May Valley Water Association	$29,473
	SEH Expense Report Due:	December 31, 2011
	Third Annual Payment Allocations	
	Sheridan Lake Water Company	-
	A & B Water Association	-
	May Valley Water Association	$50,699
	SEH Expense Report Due:	December 31, 2012
	Final SEP Completion Report Due (WQCD):	January 31, 2013
Reporting	SEH will track and report payments and expenses on an annual basis to CDPHE. The Division will be responsible for the SEP Completion Report.	
Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.	No.	