

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

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

March 9, 2009

Bell Properties, LLP
Attention: Leland Stenehjem, CO Managing Partner
3001 25th Street South
Fargo, North Dakota

RE: Compliance Order on Consent, Number: HC-090306-1

Dear Mr. Leland Stenehjem:

Enclosed for Bell Properties, LLP records you will find your 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 (paragraph 25). Upon initiation, 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 in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Kelly Morgan at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Kristi-Raye Beaudin, Legal Assistant
Water Quality Protection Section
WATER QUALITY CONTROL DIVISION

cc: Southeastern Land and Environment
MS-3 File

cc: Aaron Urdiales, EPA Region VIII
Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE

Enclosure(s)



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: HC-090306-1

IN THE MATTER OF: BELL PROPERTIES, LLP
HOLLY FARM: CDPS PERMIT NO. COB-013000
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 §25-8-605, 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 Bell Properties, LLP (“Bell Properties”). The Division and Bell Properties 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 establish compliance requirements and schedules for the continued operation of the Housed Commercial Swine Feeding Operation (“HCSFO”) known as Holly Farm located at or near 33405 County Road P, near the town of Holly, Prowers County, Colorado (the “Holly Facility”).
 - b. To resolve certain permit violations that occur or may occur upon transfer of Colorado Discharge Permit System Permit Number COB-013000 (the “Permit”) from WhiteStone Farms, LLP (“WhiteStone”) to Bell Properties.
 - c. To provide a legal framework for transferring the Permit to Bell Properties and as necessary to modify and amend the Permit and update certain documents, and require submittal of financial assurance to the Department in connection with the Permit.

DIVISION’S FINDINGS OF FACT

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 Bell Properties and the Holly Facility.

3. At all times relevant to the violations cited herein, Bell Properties was a North Dakota limited liability partnership existing in the state of Colorado.
4. Bell Properties 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. WhiteStone operated the HCSFO known as the Holly Facility beginning in 2004. On January 23, 2008, and as amended January 29, 2008, the District Court, City and County of Denver appointed a Receiver to manage, operate, protect and/or liquidate the assets owned by WhiteStone.
6. On May 16, 2008, the Division issued WhiteStone a Notice of Violation, Cease and Desist, Clean-Up Order, Number: HO-080516-1 (the "WhiteStone NOV") for WhiteStone's alleged violations of the Permit.
7. In partial resolution of the WhiteStone NOV, the Receiver and WhiteStone have agreed to transfer the Permit to Bell Properties, and Bell Properties desires to accept the Permit upon the terms of this Consent Order. Bell Properties will provide the Permit transfer documentation required by the Division, and these documents will be reviewed and, if appropriate, approved by the Division.
8. Upon transfer of the Permit, Bell Properties has agreed to accept all the terms, conditions, liabilities, and rights of the Permit from the transfer date forward.
9. Upon transfer of the Permit, Bell Properties will begin incurring the following violations of the Permit unless Bell Properties has submitted corrections to and documents required by the Department as identified in this paragraph below (subparagraphs 9.a.-c.) which address the violations and the Department has approved these corrections and documents prior to the effective date of the Permit transfer :
 - a. Deficient intervention protocol for the East Pivot that is in accordance with Part I.B.3(g)(i) of the Holly Permit;
 - b. Deficient Operations Plan that is in accordance with Part I.B.7(a) of the Permit;
 - c. Incorrect identification of the maximum permitted swine capacity in the Permit.
10. Bell Properties has advised the Division that it may enter into an agreement with a third party (herein the "Operator") to lease, manage, or otherwise operate the Holly Facility, provided the Operator will not be WhiteStone or the WhiteStone Receiver. The Division has advised that in the event that such an agreement is entered into by Bell Properties, the Operator must become a co-permittee under the Permit before said Operator may begin operating the Holly Facility. To address this situation, if it occurs, Bell Properties shall request a permit modification that includes the certification set forth in Attachment A to this Consent Order in which the Operator will agree to accept, as a co-permittee with Bell Properties, the terms, conditions, liabilities, and rights provided by the Permit.
11. The Division acknowledges that Bell Properties will need additional time to return the Holly Facility to compliance with the terms and conditions of the Permit.

ORDER AND AGREEMENT

12. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605 C.R.S., the Division orders Bell Properties to comply with all provisions of this Consent Order, including all requirements set forth below.
13. Bell Properties agrees to the terms and conditions of this Consent Order. Bell Properties agrees that this Consent Order constitutes a notice of alleged violations and an order issued pursuant to §§ 25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Bell Properties also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Bell Properties 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.
14. Notwithstanding the above, Bell Properties does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Bell Properties pursuant to this Consent Order shall not constitute evidence of fault, violation of any law, regulation, or permit by Bell Properties with respect to the conditions of the Holly Facility.

Compliance Requirements

Permit Certification or Amendment

15. Within sixty (60) calendar days of the effective date of this Consent Order, Bell Properties shall submit the maximum animal capacity of the operation units in accordance with 5 CCR 1002-61, §61.2(40) as well as the calculations and rationale used for identifying this capacity.
16. Within sixty (60) calendar days of the effective date of this Consent Order, if an operational change(s) requiring a permit amendment has not occurred and is not currently proposed, Bell Properties shall provide a written certification, in the form of Attachment B hereto, stating that the operation units (including the associated maximum animal capacity and the land application sites specified in Part I(A)(1) of the Permit) have not changed. In addition, the certification shall state that no other operational changes have been or will be made prior to the permit having been amended authorizing such a change(s). If an operational change requiring a permit amendment has occurred or is currently proposed, Bell Properties shall submit a complete permit amendment application to reflect such a change. Any such change shall not be implemented prior the issuance of a permit amendment by the Division authorizing such a change.
17. If the Department notifies Bell Properties that an operational change is necessary, Bell Properties shall submit a complete permit amendment application to reflect such a proposed change within sixty (60) calendar days of receiving such notification. Any such change shall not be implemented prior to the issuance of a permit amendment by the Division authorizing such a change.

Revised Plans

18. Within sixty (60) calendar days of the effective date of this Consent Order, Bell Properties shall submit for Department approval, a revised operations plan for the Holly Facility that satisfies the requirements of Part I(B)(7)(a) of the Permit, reflects the current or proposed configuration of the operation, and specifically includes or addresses any applicable Division comments previously provided to WhiteStone and the Receiver.
19. Within sixty (60) calendar days of the effective date of this Consent Order, Bell Properties shall review the Swine Waste Management Plan (SWMP) for the Holly Facility and either: 1) submit a written statement that the current SWMP accurately reflects the current configuration/operation of the Holly Facility; or 2) submit for Department approval a SWMP that accurately reflects the proposed changes to the configuration/operation of the Holly Facility. Within thirty (30) calendar days of receiving any Division comments on the revised plan, Bell Properties shall respond to or address such comments and provide the Division with a revised plan.
20. Within sixty (60) calendar days of the effective date of this Consent Order, Bell Properties shall review the Monitoring Plan (MP) for the Holly Facility and either: 1) submit a written statement that the current MP accurately reflects the current configuration/operation of the facility; or 2) submit for Department approval, a revised MP that reflects the proposed changes to the configuration/operation of the facility. Within thirty (30) days of receiving any Department comments on the revised plan, Bell Properties shall submit to the Division a plan that has been revised in response to such.

Intervention Protocol

21. Within sixty (60) calendar days of the effective date of this Consent Order, Bell Properties shall submit, for Department approval, an intervention protocol for the East Pivot land application site at the Holly Facility that is prepared in accordance with Part I.B.3(g)(i) of the Permit. The intervention protocol shall include a timeframe under which the specified intervention protocol activities will occur and the criteria that will be used to signal the end of the need for intervention protocol activities. The approved timeframe shall become a condition of this Consent Order and the transferred permit and Bell Properties shall comply with the actions and timeframe as submitted unless notified by the Division, in writing, that alternate actions and/or timeframe are appropriate. The intervention protocol as approved by the Department shall become an addendum to the Swine Waste Management Plan for the Holly Facility. If the Division imposes alternate actions and/or timeframe, it shall also become a condition of this Order and the transferred permit.

Financial Assurance

22. Within sixty (60) calendar days of the effective date of this Consent Order, Bell Properties shall submit for Department approval, a revised Financial Assurance Plan for the Holly Facility that meets the requirements of the Permit and in accordance with the Department's "*Financial Assurance Plan (FAP) Template*" which is included with this Consent Order as Attachment C.

23. Within ninety (90) calendar days of the submittal of the revised Financial Assurance Plan for the Holly Facility, Bell Properties shall establish the financial assurance instrument as specified in the plan, pursuant to the terms of the Permit and 5 CCR 1002-61, §61.13(4)(h).
24. Within thirty (30) calendar days of the receipt of any Department comments on the submitted Financial Assurance Plan, Bell Properties shall respond to or address such comments and provide the Division with a revised plan. If the revised plan establishes the need for supplemental financial assurance, Bell Properties shall supplement the established financial assurance with the specified additional amount within thirty (30) calendar days.

SCOPE AND EFFECT OF CONSENT ORDER

25. 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 Bell Properties 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.
26. 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 Bell Properties, 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.
27. 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.
28. 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.
29. This Consent Order does not relieve Bell Properties 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

30. 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 matters identified 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.
31. This Consent Order does not grant any release of liability for any matters or violations not specifically cited herein.

32. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in accordance with applicable laws and regulations in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
33. Upon the effective date of this Consent Order, Bell Properties 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.
34. Bell Properties 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 Bell Properties, or those acting for or on behalf of Bell Properties, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Bell Properties shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Bell Properties 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.

SITE ACCESS AND SAMPLING

35. 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 Bell Properties' 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 Bell Properties 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.
36. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Bell Properties. Bell Properties shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
37. Bell Properties shall notify the Division in writing 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. Bell Properties shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

NOTICES

38. 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: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3634
E-mail: kelly.morgan@state.co.us

For Bell Properties, LLP:

Bell Properties, LLP
Attention: Leland Stenehjem, Co-Managing Partner
3001 West 25th Street South
Fargo, North Dakota 58103
Telephone: (701) 232-1700
E-mail: lstenehjem@firstintilbank.com

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

39. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Bell Properties 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. Bell Properties agrees that penalties, if any, assessed under this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Bell Properties to achieve and maintain compliance with State law.

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

41. Bell Properties 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 Bell Properties' Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Bell Properties' 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. Bell Properties 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 Bell Properties fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

42. If Bell Properties files any notice of dispute pursuant to paragraph 41 the notice shall specify the particular matters in the Division's determination that Bell Properties seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Bell Properties. The Division and Bell Properties 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 Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S.

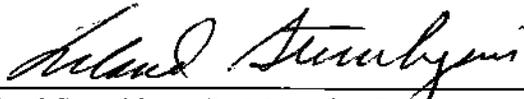
NOTICE OF EFFECTIVE DATE

43. 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 25.

BINDING EFFECT AND AUTHORIZATION TO SIGN

44. This Consent Order is binding upon Bell Properties and their 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. Bell Properties 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 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.

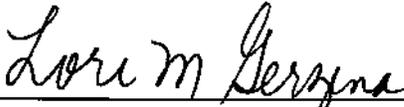
FOR BELL PROPERTIES, LLP:



Date: 2/12/09

Leland Stenehjelm, Co-Managing Partner

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER
QUALITY CONTROL DIVISION:**



Date: 3/6/09

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