

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

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Colorado Department
of Public Health
and Environment

January 28, 2010

George H. Ottenhoff
Mountain View Feeders, LLC
355 Eastman Park Drive, Suite 200
Windsor, Colorado 80550

Certified Mail Number: 7005 1820 0000 3212 8366

RE: Expedited Settlement Agreement, Number: EC-100127-1

Dear Mr. Ottenhoff:

Enclosed for your records you will find Mountain View Feeders, LLC's copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was changed in order to place the correct ESA Number on the final document. The ESA is now fully enforceable and constitutes a final agency action.

As specified in the enclosed ESA, Mountain View Feeders, LLC must, within fifteen (15) calendar days, submit a certified or cashier's check for the amount specified in the ESA to the Water Quality Control Division in order for this matter to be resolved.

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

Sincerely,

Kelly Morgan
Clean Water Compliance Assurance Unit
WATER QUALITY CONTROL DIVISION

cc: Russ Schaefer, Mountain View Feeders, LLC (5200 N. County Road 19, Fort Collins, CO 80524)
Larimer County Health Department
Aaron Urdiales, EPA Region VIII
Erin Kress, Environmental Agriculture Program, CDPHE
Chris Hill, Environmental Agriculture Program, CDPHE

Enclosure(s)



EXPEDITED SETTLEMENT AGREEMENT

Number: EC-100127

The Colorado Department of Public Health and Environment (the "Department"), through the Water Quality Control Division (the "Division"), issues this Expedited Settlement Agreement ("ESA"), pursuant to the Division's authority under §§25-8-602 and 25-8-605, C.R.S. of the Colorado Water Quality Control Act (the "Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Mountain View Feeders, LLC ("Mountain View"). The Division and Mountain View Feeders, LLC may be referred to collectively as "the Parties."

1. Mountain View is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and 5 CCR 1002-81, §81.3(24).
2. Mountain View operates a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(5) in the vicinity of 5200 N. County Road 19, in Larimer County, Colorado.
3. Pursuant to 5 CCR 1002-81, §81.8(2)(b), CAFO operators shall have available documentation prepared by a professional engineer, registered in Colorado, certifying that the impoundment liner provisions of 5 CCR 1002-81, §81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay). For impoundments constructed prior to June 30, 2004, such documentation shall be available no later than April 13, 2006. (*See Attachment A*)
4. In documentation provided to the Department by Mountain View, dated September 9, 2009, Mountain View advised the Department that its impoundments do not meet the seepage rate standards of 5 CCR 1002-81, §81.8(2). Mountain View's failure to construct and maintain its impoundments to comply with the seepage rate standards by no later than April 13, 2006 constitutes violation(s) of 5 CCR 1002-81, §81.8(2). (*See Attachment B*)
5. Pursuant to 5 CCR 1002-81, §81.8(3), CAFO operators shall submit to the Division for approval, by no later than December 31, 2004, a Standard Operating Procedure ("SOP") that demonstrates how manure, including sludge, will be removed such that the liner integrity of impoundments is not damaged. The SOP also shall indicate the expected frequency with which manure will be removed from impoundments. (*See Attachment A*)
6. Department records establish that Mountain View has not submitted its impoundment SOP to the Division in violation of 5 CCR 1002-81, §81.8(3).
7. The parties enter into this ESA in order to outline an enforceable compliance schedule to resolve the violations identified herein and to resolve the matter of civil penalties associated with the alleged violations for a civil penalty in the amount of six thousand dollars (\$6,000.00).
8. By accepting this ESA, Mountain View neither admits nor denies the violation specified herein.

9. Mountain View agrees to the terms and conditions of this ESA. Mountain View agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 25-8-605, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, Mountain View waives: (1) the right to contest the finding(s) specified herein; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.
10. Mountain View agrees to submit to the Department within two hundred and ten (210) calendar days of receipt of the final signed ESA documentation prepared by a professional engineer, registered in Colorado, certifying that the impoundment liner provisions of 5 CCR 1002-81, §81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay). Mountain View further agrees to submit to the Department within two hundred and ten (210) calendar days of receipt of the final signed ESA a Standard Operating Procedure, developed in accordance with 5 CCR 1002-81, §81.8(3), that demonstrates how manure, including sludge, will be removed such that the liner integrity of its impoundments is not damaged. *(See Attachment C, SOP Template)*
11. This ESA is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Mountain View each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.
12. This ESA constitutes a final agency order or action upon the date when the Department's Executive Director or his designee signs the ESA and effectively imposes the civil penalty.
13. Nothing in this ESA shall preclude the Department from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
14. Mountain View agrees that, within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Mountain View shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the civil penalty amount specified in paragraph 7 above, to:

Ms. Kelly Morgan
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
15. Notwithstanding paragraph 8 above, the violations described in this ESA will constitute part of Mountain View'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 Mountain View. Mountain View agrees not to challenge the use of the cited violations for any such purpose.
16. This ESA, when final, is binding upon Mountain View and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

ACCEPTED BY MOUNTAIN VIEW FEEDERS, LLC:

Russell Schaefer Date: 10-27-09
Signature

Russell Schaefer Title: OWNER
Name (printed)

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:

Lori M. Gerzina Date: 01/27/10
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

RECEIVED

NOV 04 2009

WQCD - CADMI

By: _____