

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
Executive Director and Chief Medical Officer

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

4300 Cherry Creek Dr. S.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
Phone (303) 692-2000      Denver, Colorado 80230-6928  
Located in Glendale, Colorado      (303) 692-3090

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



Colorado Department  
of Public Health  
and Environment

March 19, 2012

David J. McAndrews, Registered Agent  
Big M Feedlot  
5013 West 12th Street Drive  
Greeley, Colorado 80634

**Certified Mail Number: 7010 2780 0002 8752 3802**

**RE: Service of Notice of Violation/Cease and Desist Order, Number: CO-120319-1**

Dear Mr. McAndrews:

Big M Feedlot is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the Colorado Water Quality Control Act, (the "Act"). The Division bases this NOV/CDO upon findings that Big M Feedlot has violated the Act, and/or Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Big M Feedlot is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Big M Feedlot desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,



Russell Zigler, Legal Assistant  
Compliance Assurance Section  
Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

ec: Weld County Dept. of Public Health and Environment  
Natasha Davis, EPA Region VIII  
Doug Camrud, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Janet Kieler, Permits Section, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Phyllis Woodford, Environmental Agricultural Program, CDPHE  
Kelly Morgan, Case Person  
Tania Watson, Compliance Assurance, CDPHE



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

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: CO-120319-1**

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**IN THE MATTER OF:           BIG M FEEDLOT**  
**WELD COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation/ Cease and Desist Order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, Big M Feedlot was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. Big M Feedlot is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Big M Feedlot operates a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(5) in the vicinity of 18027 WCR 84, in Weld County, Colorado, (the "Facility").
4. Department records establish that the Facility has the capacity to stable or confine 2,500 cattle and therefore is a "Large Concentrated Animal Feeding Operation" as defined by 5 CCR 1002-81, §81.3(15).
5. Department records establish that the Facility's impoundment was constructed prior to June 30, 2004.
6. 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.
7. In self-certification documentation provided to the Department by Big M Feedlot, dated May 28, 2010, Big M Feedlot certified, under penalty of law, that the Facility's impoundment was constructed and maintained so that the seepage rate from the impoundment will not exceed  $1 \times 10^{-6}$  cm/sec. Big M Feedlot further certified that Big M Feedlot did not have documentation prepared by a professional engineer certifying that the Facility's impoundment met the seepage rate standards of 5 CCR 1002-81, §81.8(2).

8. In a letter dated July 9, 2010, the Division sent Big M Feedlot an Expedited Settlement Agreement offer to resolve the violation and penalty associated with Big M Feedlot's failure to have documentation prepared by a professional engineer certifying that the Facility's impoundment met the seepage rate standards of 5 CCR 1002-81, §81.8(2).
9. On August 26, 2010, Big M Feedlot accepted the expedited settlement offer and signed the Expedited Settlement Agreement.
10. Pursuant to Paragraph 7 of the ESA, Big M Feedlot agreed to the terms and conditions of the ESA. Further, Big M agreed that the 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.
11. On December 3, 2010, pursuant to the authority provided the Division by §§25-8-602 and 25-8-605, C.R.S., the Division signed and executed Expedited Settlement Agreement, Number EC-101203-1 (the "ESA") to Big M Feedlot, with the expressed consent of Big M Feedlot. The executed ESA constitutes a final agency action. *(A copy of the ESA is provided in Attachment A.)*
12. The ESA included, among other requirements, an enforceable compliance schedule for Big M Feedlot to provide documentation certifying that the Facility's impoundment met the seepage rate standards of 5 CCR 1002-81, §81.8(2). Specifically, pursuant to Paragraph 8 of the ESA, Big M Feedlot agreed 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.
13. The United States Postal Service records establish that the final signed ESA was received by Big M Feedlot on December 8, 2010 and therefore, the documentation required under Paragraph 8 of the ESA was due to the Department by no later than July 5, 2011.
14. In a letter sent on behalf of Big M Feedlot dated July 18, 2011, the Division received a request to extend the compliance date required in Paragraph 8 of the ESA. The July 18, 2011 letter stated that Big M Feedlot was working on developing, designing, and constructing a new impoundment that would meet the impoundment liner provisions of 5 CCR 1002-81, §81.8(2). The July 18, 2011 letter stated that Big M Feedlot did not have adequate land for the sizing of the new impoundment and therefore Big M Feedlot needed to obtain an easement from the City of Thornton for the parcel of land adjacent to Big M Feedlot's property. The July 18, 2011 letter stated that the City of Thornton had tentatively agreed to the easement, but a final agreement had not been negotiated. In order to allow time for the City of Thornton to agree to and approve the easement and for Big M Feedlot to construct the new impoundment, Big M Feedlot requested that the compliance date outlined in Paragraph 8 of the ESA be extended to November 30, 2011.
15. On July 27, 2011 the Division issued the Required Corrective Action Extension #1 to the ESA ("Extension #1"), which formally revised Paragraph 8 of the ESA to require Big M Feedlot to submit, by no later than November 30, 2011, 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. *(A copy of Extension # 1 is provided in Attachment B.)*
16. In a letter sent on behalf of Big M Feedlot dated November 29, 2011, the Division received a second request to extend the compliance date required in Paragraph 8 of the ESA (as revised by Extension #1). The November 29, 2011 letter stated that Big M Feedlot intended on downsizing to an animal feeding operation with less than

one thousand (1,000) head by February 15, 2012 and that Big M Feedlot intended on abandoning the Facility and leasing another feedyard within one hundred and fifty (150) days.

17. The Division did not grant Big M Feedlot a second extension to the compliance date required in Paragraph 8 of the ESA (as revised by Extension #1) and in an email correspondence dated December 20, 2011, the Division advised Big M Feedlot that Big M Feedlot was out of compliance with the ESA.
18. Department records establish that Big M Feedlot did not submit to the Division by November 30, 2011, nor has Big M Feedlot submitted to-date, 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.
19. Big M Feedlot's failure to provide to the Division 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 constitutes ongoing violations of 5 CCR 1002-81, §81.8(2)(b) and Paragraph 8 of the ESA (as revised by Extension #1).

### NOTICE OF VIOLATION

20. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Big M Feedlot has violated the following section of the Colorado Water Quality Control Act's implementing regulation, 5 CCR 1002-81 and the following paragraph of the ESA.

**5 CCR 1002-81, §81.8(2)(b):** Which states in part "CAFO operators shall have available documentation, including the supporting information required by section 81.8(2)(b)(iii), prepared by a professional engineer registered in Colorado certifying that the provisions of section 81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay)... (i) For impoundments constructed prior to June 30, 2004, the liner certification shall be available no later than April 13, 2006.

**ESA Paragraph 8 (as revised By Extension #1):** Which states "Big M Feedlot agrees to submit to the Department by November 30, 2011 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)."

### REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Big M Feedlot is hereby ordered to:

21. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto and the ESA.

Furthermore, the Division hereby orders Big M Feedlot to comply with the following specific terms and conditions of this Order:

22. Within thirty (30) calendar days of receipt of this Order, Big M Feedlot shall retain the services of a qualified individual or entity specifically experienced in animal feeding operation wastewater management to evaluate the methods of wastewater control at the Facility. The evaluation shall consider, but not be limited to, surface

water protection measures, groundwater protection measures, and nutrient transport minimization measures utilized and implemented at the Facility. The evaluation must consider in detail the design, construction, operation, and maintenance of the impoundment, all conveyance structures, all diversion structures, solid/liquid waste separation facilities, and/or wastewater treatment strips at the Facility. The evaluation shall also consider inspection and recordkeeping practices and protocols. The evaluation shall be conducted for the purpose of recommending system improvements to ensure compliance with the Water Quality Control Act and its implementing regulations, specifically including 5 CCR 1002-81.

23. Within forty five (45) calendar days of receipt of this Order, Big M Feedlot shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 22. This documentation shall include, at a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
24. Within sixty (60) calendar days of receipt of this Order, Big M Feedlot shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 22 above. The report must include a statement that establishes the category of animal feeding operation Big M Feedlot will operate as and the maximum type and number of animals that the Facility will stable or confine. Further, the report shall address the following:
  - a. If Big M Feedlot chooses to operate as a Large CAFO as defined by 5 CCR 1002-81, §81.3(15), the report shall identify specific short-term and long-term measures that will be taken by Big M Feedlot to comply with the requirements of 5 CCR 1002-81, §81.7 and 5 CCR 1002-81, §81.8. For each short-term and long-term measure identified, Big M Feedlot shall also submit a time schedule for completion of each measure. The implementation time schedule submitted must identify completion of all measures by no later than June 30, 2012.
  - b. If Big M Feedlot chooses to operate as an Animal Feeding Operation ("AFO") as defined by 5 CCR 1002-81, §81.3(2) with animal numbers at or below those established for a Medium AFO as defined by 5 CCR 1002-81, §81.3(18), the report shall identify specific short-term and long-term measures that will be taken by Big M Feedlot to comply with the requirements of 5 CCR 1002-81, §81.9. For each short-term and long-term measure identified, Big M Feedlot shall also submit a time schedule for completion of each measure. The implementation time schedule submitted must identify completion of all measures by no later than June 30, 2012.

The measures and time schedule submitted shall become a condition of this Order and Big M Feedlot shall implement the measures and time schedule as submitted unless notified by the Division in writing that alternate measures and/or time schedules are appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Order.

25. Within sixty (60) calendar days of receipt of this Order, if Big M Feedlot chooses to operate as an AFO as defined by 5 CCR 1002-81, §81.3(2) with animal numbers at or below those established for a Medium AFO as defined by 5 CCR 1002-81, §81.3(18), Big M Feedlot shall submit an "Animal Feeding Operation Identification Form" certifying the maximum type and number of animals that the Facility will stable or confine. A copy of the "Animal Feeding Operation Identification Form" is attached to this Order as *Attachment C*.
26. By no later than June 30, 2012, if Big M Feedlot chooses to operate as a Large CAFO, Big M Feedlot shall submit the "Facility Management Plan Check List" and "Facility Management Plan (FMP) Self-Certification" forms documenting that Big M Feedlot has a complete, accurate, and updated Facility Management Plan ("FMP") that complies with the requirements of 5 CCR 1002-81, §81.6. Copies of the "Facility Management

Plan Check List” and “Facility Management Plan (FMP) Self-Certification” forms are attached to this Order as *Attachment D and Attachment E, respectively.*

27. Beginning in March 2012, and every calendar month thereafter, until such time as this Order is closed or the Division decrees so in writing, Big M Feedlot shall submit written progress reports to the Division by the end of each calendar month. At a minimum, each report shall describe the activities undertaken during the previous calendar month to comply with this Order and shall specify what activities will occur within the next calendar month to comply with this Order. Each report shall also include local precipitation records from the previous calendar month and information describing any discharge from the Facility that occurred during the previous calendar month.
28. Big M Feedlot shall notify the Division of any discharge of manure or wastewater from the Facility to surface water within twenty four (24) hours of Big M Feedlot becoming aware of the discharge. The notification shall be made to the Colorado Environmental Release and Incident Reporting Line at 1-877-518-5608. The notification shall describe, at a minimum, the date, time, cause of the discharge, the estimated length of time of the discharge, the estimated volume of the discharge, measures that are being taken or have been taken to contain or reduce the discharge, and the discharge pathway.
29. If Big M Feedlot becomes aware of any situation or circumstances that cause Big M Feedlot to become unable to comply with any condition or time schedules set forth by this Order, Big M Feedlot shall provide written notice to the Division within five (5) calendar days of Big M Feedlot becoming aware of such circumstances. Big M Feedlot’s notice shall describe what, if any, impacts will occur on Big M Feedlot’s ability to comply with the Colorado Water Quality Control Act, its implementing regulations and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
30. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Big M Feedlot shall revise the submitted document(s) to properly address the Division’s comments and resubmit the document(s) for Division review.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the Big M Feedlot shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-B2-CAS  
Compliance Assurance Section  
Attention: Kelly Morgan  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Email: [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us)  
Phone: (303) 692-3634  
Fax: (303) 782-0390

*(For any facsimile transmittals, please include a cover sheet addressed to Ms. Morgan.)*

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **OBLIGATION TO ANSWER AND REQUEST FOR HEARING**

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

### **FALSIFICATION AND TAMPERING**

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

### **POTENTIAL CIVIL AND CRIMINAL PENALTIES**

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the “Act”), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

**RELEASE OR DISCHARGE NOTIFICATION**

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

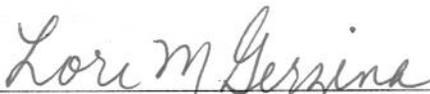
**EFFECT OF ORDER**

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 19<sup>th</sup> day of March, 2012.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**



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

# 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.      Laboratory Services Division  
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TDD Line (303) 691-7700      (303) 692-3090  
Located in Glendale, Colorado  
<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

December 6, 2010

David J. McAndrews, Registered Agent  
Big M Feedlot  
5013 West 12<sup>th</sup> Street Drive  
Greeley, Colorado 80634

Certified Mail Number: 7009 1680 0000 2094 4978

**RE: Expedited Settlement Agreement, Number: EC-101203-1**

Dear Mr. McAndrews:

Enclosed for your records you will find Big M Feedlot'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, Big M Feedlot 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 Kelly Morgan at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,

Russell Zigler, Legal Assistant  
Water Quality Protection Section  
WATER QUALITY CONTROL DIVISION

cc: Weld County Dept of Public Health & Environment

cc: Aaron Urdiales, EPA Region VIII  
Phyllis Woodford, Environmental Agriculture Program, CDPHE

Enclosure(s)



Colorado Department of Public Health & Environment

## EXPEDITED SETTLEMENT AGREEMENT

Number: EC-101203-1

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 Big M Feedlot. The Division and Big M Feedlot may be referred to collectively as "the Parties."

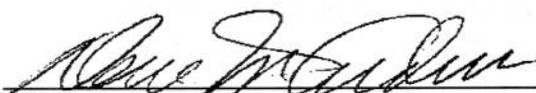
1. Big M Feedlot is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and 5 CCR 1002-81, §81.3(24).
2. Big M Feedlot operates a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(5) in the vicinity of 5013 W. 12<sup>th</sup> Street Drive, in Weld 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 Big M Feedlot, dated May 28, 2010, Big M Feedlot advised the Department that it did not have documentation prepared by a professional engineer certifying that the facility's impoundments meet the seepage rate standards of 5 CCR 1002-81, §81.8(2). Big M Feedlot'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. 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 five thousand dollars (\$5,000.00).
6. By accepting this ESA, Big M Feedlot neither admits nor denies the violation specified herein.
7. Big M Feedlot agrees to the terms and conditions of this ESA. Big M Feedlot agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 25-8-605, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, Big M Feedlot waives: (1) the right to contest the finding(s) specified herein; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.
8. Big M Feedlot agrees to submit to the Department within two hundred and ten (210) calendar days of receipt of the final signed ESA documentation prepared by a professional engineer, registered in Colorado, certifying that the impoundment liner provisions of 5 CCR 1002-81, §81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay).

9. This ESA is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Big M Feedlot each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.
10. This ESA constitutes a final agency order or action upon the date when the Department's Executive Director or his designee signs the ESA and effectively imposes the civil penalty.
11. Nothing in this ESA shall preclude the Department from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
12. Big M Feedlot agrees that, within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Big M Feedlot shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the civil penalty amount specified in paragraph 5 above, to:

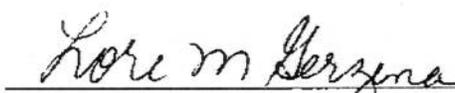
Ms. Kelly Morgan  
 Colorado Department of Public Health and Environment  
 Water Quality Control Division  
 Mail Code: WQCD-CADM-B2  
 4300 Cherry Creek Drive South  
 Denver, Colorado 80246-1530

13. Notwithstanding paragraph 6 above, the violations described in this ESA will constitute part of Big M Feedlot's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Big M Feedlot. Big M Feedlot agrees not to challenge the use of the cited violations for any such purpose.
14. This ESA, when final, is binding upon Big M Feedlot and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

**ACCEPTED BY BIG M FEEDLOT:**

 Date: 8-26-10  
 Signature  
DAVE M. ANDREWS Title: owner  
 Name (printed)

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:**

 Date: 12/3/10  
 Lori M. Gerzina, Section Manager  
 Compliance Assurance and Data Management Section  
 WATER QUALITY CONTROL DIVISION

Attachment A

*Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)*

**81. 8 GROUND WATER PROTECTION REQUIREMENTS - CONCENTRATED ANIMAL FEEDING OPERATIONS (PERMITTED AND NON-PERMITTED)**

(1) Tanks at concentrated animal feeding operations shall be operated and maintained so as not to discharge wastewater to ground water.

**(2) Impoundment liners**

(a) An impoundment at a concentrated animal feeding operation shall be constructed and maintained to comply with one of the following standards, as applicable:

(i) The seepage rate from an impoundment shall not exceed  $1 \times 10^{-6}$  cm/sec; or

(ii) Where approved by the Division for an impoundment with an earthen liner, the seepage rate from the impoundment shall not exceed  $7.35 \times 10^{-6}$  cm/sec. The operator of the impoundment shall submit to the Division a request that the impoundment be approved to meet this seepage standard. Such a request shall include, but not be limited to, information documenting that only open-lot wastewater will be diverted to the impoundment, that the impoundment is not designed as an evaporation impoundment, and that the ten (10) foot soil depth zone immediately beneath the impoundment has a cation exchange capacity of at least 15 meq/100 g of soil. Demonstration of compliance with the cation exchange capacity criteria requires the following:

- (A) At least seven soil samples shall be acquired from below the entire surface area of the impoundment and analyzed for cation exchange capacity.
- (B) The soil samples shall be reasonably equidistant from each other, with five locations being within ten feet of, and downslope of, the two-foot freeboard elevation of the impoundment, and two locations from the middle of the impoundment.
- (C) The operator shall have available a map of the impoundment and soil sampling locations.
- (D) Where soil samples were taken below existing impoundments, the operator shall have available documentation from a professional engineer registered in the State of Colorado of how the core locations were sealed to meet a  $1 \times 10^{-6}$  cm/sec maximum seepage rate.

(b) CAFO operators shall have available documentation, including the supporting information required by section 81.8(2)(b)(iii), prepared by a professional engineer registered in Colorado certifying that the provisions of section 81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay).

(i) For impoundments constructed prior to June 30, 2004, the liner certification shall be available no later than April 13, 2006.

(ii) For any impoundment constructed by an operator on or after June 30, 2004 and before February 27, 2009, the liner certification shall be available prior to wastewater entering the impoundment.

Attachment A

**Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)**

**(iii) For any impoundment constructed by an operator on or after February 27, 2009, the liner certification and, where applicable, the seepage rate calculations using Darcy's Law shall be available prior to wastewater entering the impoundment.**

**(iv) Copies of the liner certification and supporting information shall be made available to the Division and its designee, upon request. In addition, these documents shall be submitted to the Division as follows:**

**(A) For impoundments constructed after February 1, 2007, and before December 30, 2008, submit the documents by February 27, 2009.**

**(B) For an impoundment constructed after December 30, 2008, submit the documents by no later than 30 days after construction of the impoundment is complete.**

**(c) A CAFO operator shall visually inspect the exposed liner of an impoundment weekly to identify physical changes or deficiencies that may affect the integrity of the liner. Such deficiencies and physical changes shall be corrected within thirty (30) days of having been identified.**

**(i) The operator shall record the date of the inspection, deficiencies identified, corrective actions taken, and dates that corrective action was completed.**

**(ii) Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing completion of corrective actions within this time period.**

**(iii) The records shall be maintained on-site for five years from the date of creation and shall be made available to the Division upon request.**

**(3) Removal of manure or wastewater from an impoundment shall be accomplished in a manner that does not damage the integrity of the liner. The operator shall submit to the Division for approval 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.**

**(a) The approved SOP must be available on-site and be submitted to the Division upon request.**

**(b) The operator shall follow the approved SOP whenever manure, including sludge, is removed. Where the SOP was not followed, the Division may require that the operator make the liner available for inspection. Where the Division has just cause as a result of the inspection, the Division may require re-certification of the liner by a professional engineer registered in Colorado.**

**(c) An existing CAFO shall submit the SOP no later than December 31, 2004.**

**(i) A CAFO that comes into existence after December 31, 2004 shall submit the SOP no later than 120 days after animals are placed on the production area.**

**(ii) The operator shall submit a revised SOP for approval within 30 days of a change having been made to the impoundment(s) at the facility that requires a revision of the SOP, such as a new impoundment or different liner having been constructed.**

**(d) The operator shall certify after each manure or sludge removal event that the manure or sludge was removed in accordance with the approved SOP.**

Attachment A

**Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)**

(i) For a concrete-lined impoundment, where a certification for each removal event is not completed, the operator shall:

(A) Drain and clean the impoundment every five years and use best professional judgment to determine whether the liner integrity is damaged such that the impoundment is no longer capable of having a maximum seepage rate of  $1 \times 10^{-6}$  cm/sec.

(B) Where the operator determines that the liner integrity is such that the impoundment remains capable of having a maximum seepage rate of  $1 \times 10^{-6}$  cm/sec, the operator shall so certify within five days of the liner inspection. The certification shall include photographs supporting the determination.

(C) Where the operator determines that the liner integrity is damaged such that the impoundment is no longer capable of having a maximum seepage rate of  $1 \times 10^{-6}$  cm/sec, the operator shall:

(I) Repair the impoundment within 30 days of the liner inspection so that the liner integrity is such that the impoundment is capable of having a maximum seepage rate of  $1 \times 10^{-6}$  cm/sec.

(II) Within 14 days of the impoundment having been repaired, submit to the Division evidence of the repair having been properly completed. The evidence shall consist either of photographs with accompanying written documentation or of other evidence approved by the Division.

(ii) The certifications must be available on-site and be submitted to the Division upon request.

(e) Where the SOP is not followed the operator shall provide notice to the Division within 30 days of the date of manure removal.

(4) Any depth marker in an impoundment shall be installed in a manner that maintains the integrity of the liner and maintains the required seepage rate standard.

(5) Earthen Wastewater Conveyance Structures - Earthen conveyance structures shall be maintained to minimize ponding of wastewater. In addition, such structures shall be constructed and maintained as follows for the purpose of limiting seepage of wastewater in the structures:

(a) Conveyance structures that carry open-lot wastewater

(i) Where constructed in soils that have 35-60 percent gravel, a conveyance structure shall be constructed by sufficiently compacting the existing soil material (less than 60 percent gravel) in place with at least two passes of rubber-tired construction equipment, four passes of track-type equipment, or equivalent, over the entire surface of the conveyance structure. Moisture content of the soil material during compaction shall be maintained to promote sufficient compaction of the in-place materials. The soil should be wet to the touch and leave a stain on the hand when squeezed.

(ii) Where constructed in soils that have greater than 60 percent gravel, or in loamy sand or sandy soils with greater than 35 percent gravel, a conveyance structure shall be constructed by placing a compacted liner over the entire surface of the conveyance structure. A conveyance structure liner shall be constructed of soils having less than 60 percent gravel, shall be twelve (12) inches thick, and shall be compacted with at least two passes of rubber-tired construction equipment, four passes of track-type equipment, or equivalent, over the entire surface of the conveyance structure. Moisture content of the soil material during compaction shall be maintained to promote sufficient compaction of the soil

Attachment A

***Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)***

liner material. The soil should be wet to the touch and leave a stain on the hand when squeezed. In addition, the constructed liner shall be maintained to retain these standards.

(iii) Where constructed in soils having less than 35 percent gravel, a conveyance structure does not need to be lined or compacted.

(b) Conveyance structures that carry process-generated wastewater intermittently (greater than 48 hours between conveyance events) – Earthen conveyance structures that carry process-generated wastewater intermittently shall be constructed and maintained in accordance with the standards specified in section 81.8(5)(a)(ii), above.

(c) Conveyance structures that carry process-generated wastewater non-intermittently (48 hours or less between conveyance events) – Earthen and non-earthen (e.g., pipe or concrete) conveyance structures that carry process-generated wastewater non-intermittently shall be constructed and maintained to have a maximum seepage rate of  $1 \times 10^{-6}$  cm/sec.

(d) Where upon inspection the Division has just cause to determine that the required liner is not in place, the Division may require that the operator submit to the Division a certification that the conveyance structure meets the requirements of section 81.8(5)(b) or (c), or 81.8(5)(a)(ii). The certification shall be made by a professional engineer registered in the State of Colorado.

(6) Setbacks for New and Expanded Impoundments – A completely new impoundment constructed after June 30, 2008, and an existing impoundment that is expanded by 50 percent or more of existing storage capacity after June 30, 2008, shall not be located:

(a) Except as provided below, where the seasonally high ground water level is located within four (4) feet of the bottom of the impoundment liner; and

(i) Where the seasonally high ground water level is located within four (4) feet of the bottom of the impoundment liner, the impoundment shall be constructed and maintained in accordance with the design by a professional engineer registered in the state of Colorado that prevents ground water from contacting the impoundment's liner.

(b) Within 150 feet of a private domestic water supply well or within 300 feet of a community domestic water supply well.

(7) Ground Water Monitoring - Where an impoundment is not in compliance with section 81.8(2), or where the Division determines that an impoundment liner is not being properly maintained, the Division may require the operator to conduct site-specific ground water quality monitoring of, but not limited to, total nitrogen, ammonia-nitrogen, nitrate-nitrogen, and fecal coliform. In making a determination of whether ground water monitoring is required, the Division shall consider all pertinent factors, including but not limited to: whether the impoundment poses a significant potential risk to beneficial uses of ground water, whether there is suspected contamination of ground water attributable to the facility, whether early detection of ground water contamination is essential to protect valuable drinking water sources, and whether there has been a significant failure on the part of the operator to comply with Section 81.8(2), (3), (4), (6), or (7).

(8) Ground Water Remediation - When the Division determines that non-compliance with Section 81.8(2), (3), (4), (6), or (7) has caused, or contributed to, the exceedance of established ground water quality standards, the operator shall:

(a) Submit, in consultation with the Division, an approvable investigation plan (IP) within 60 days of being notified by the Division of the exceedance, unless an extension of time is granted by the Division based on good faith efforts made by the operator.

Attachment A

***Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)***

(i) The IP must indicate how the nature and extent of the contamination will be delineated and shall include the following, at minimum:

- (A) A plan to determine the full vertical and horizontal extent of ground water contamination.
- (B) All potential human and environmental receptors, including: 1) all surface water features including springs, streams, and lakes that could be impacted; and 2) all municipal, agricultural, and domestic ground water users.
- (C) A plan to obtain other site-specific hydrogeologic data necessary to fully determine the nature and extent of the contamination. These shall include, as appropriate, but not be limited to, the hydraulic conductivity of all hydrogeologic units, associated porosity values, ground water flow directions, regional and local hydraulic gradients, and pumping rates associated with all wells. The Division may require that the operator install additional monitoring wells for the purpose of fully determining the nature and extent of the contamination.
- (D) A reasonable timeline for completing the investigation.

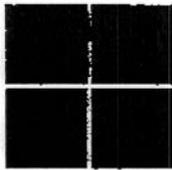
(ii) The operator shall implement the IP within 30 days of it being approved by the Division.

(b) The operator shall submit the following information by no later than 60 days after completion of the approved IP, unless an extension of time is granted by the Division based on good faith efforts made by the operator:

- (i) A summary report of the findings of the investigation conducted pursuant to section 81.8(8)(a).
  - (ii) A comparison of all appropriate and applicable remediation alternatives, including innovative technologies, the associated performance and costs of each alternative, the estimated timelines to achieve the required remediation goals, and the monitoring that will be done until the remediation goal(s) is reached. The Division shall review remediation alternatives based on technological, economic, and environmental risk factors. In determining economic reasonableness, the Division shall take into account such factors as costs of the various alternatives, the potential impact of the alternatives on a project's profitability or competitive position, and any long-term energy impacts. In determining environmental risk factors the Division will include potential exposures of sensitive human and environmental receptors. In cases where sensitive human and environmental impacts could occur, the Division may require interim, or emergency, remedial activities.
- (c) The operator shall submit an approvable remediation plan (RP) by no later than 60 days of being notified of the Division's preferred remediation alternative, unless an extension of time is granted by the Division based on good faith efforts made by the operator. The RP shall contain designs and plans for implementation of the preferred alternative.

(i) The operator shall implement the RP within 30 days of it being approved by the Division.

(9) Impoundment Closure – The operator of a facility shall remove manure and wastewater from a closed impoundment, to the fullest extent practicable within 60 days of the impoundment being closed, unless an alternative timeline is approved by the Division. Within one hundred twenty (120) days of an impoundment being closed, an impoundment shall be backfilled with soil that is graded to blend with surface topography and



**AGPRO**essionals, LLC  
DEVELOPERS OF AGRICULTURE

May 28, 2010

CDPHE  
OEIS-EAP-B2  
Attn: Erin Kress  
4300 Cherry Creek Dr., South  
Denver, CO 80246-1530

Subject: Big M Feedlot, Self Certification  
AGPRO Project #1224-01

**RECEIVED**

**JUN 02 2010**

**WATER QUALITY  
CONTROL DIVISION**

Dear Mrs. Kress,

Please find enclosed a revised self certification for the above named facility, located northeast of Ault, Colorado. The runoff from the facility currently enters a single impoundment and the facility is in process of decision making to determine whether to construct a new impoundment or to change their operations.

As always if you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Travis Hertneky, PE  
Agricultural Engineer

CC: Dave McAndrews, Big M Feedlot  
Enclosure: Self Certification



Colorado Department of Public Health and Environment

Colorado Department of Public Health and Environment  
Environmental Agriculture Program

RECEIVED

JUN 02 2010

WATER QUALITY CONTROL DIVISION

2007 Compliance Self-Certification for  
Concentrated Animal Feeding Operations – Regulation No. 81  
Liner Certification Requirement

A. Facility Information

Big M Feedlot, (aka: Black and White Cattle Company)

Facility Name

18027 WCR 84, Ault, CO 80610

Facility Physical Address (Street Number, City, State, Zip)

David McAndrews

Owner/Operator Name (Contact Person)

David McAndrews

Contact Person Title

970-302-1220

Contact Telephone Number

5013 W. 12th Street Drive, Greeley, CO 80634

Contact Mailing Address (Street Number, City, State, Zip)

Contact Email Address

Contact Fax Number

Has Facility changed any of the following information in the last year? (check all that apply)

Location  Name  Ownership  Operator

Please Provide Updated Information: \_\_\_\_\_

Type of Animals at Facility:

Mature Dairy Cows

Swine (>55#)

Turkeys

Other (specify) \_\_\_\_\_

Dairy Heifers

Swine (<55#)

Laying Hens

Cattle

Sheep

Other Chickens

Veal Calves

Maximum Number of Animals Facility Intends to Stock at any One Time: 2,500

B. Compliance Information

Please answer all questions, unless you are guided to skip a question. Do not answer questions that you are guided to skip.

1. Does the facility have tanks<sup>1</sup>?  Yes  No

<sup>1</sup> "Tank" means a stationary device, designed to contain an accumulation of pollutant-containing water, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

If yes, are they operated and maintained so as not to discharge wastewater to groundwater?  Yes  No

2. Does the operation have an impoundment(s)?  Yes- if yes, how many? 1  No - if no, skip to question #4.  
<sup>2</sup> "Impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is used for storage, treatment, evaporation or discharge of pollutant-containing waters, sludge or associated sediment.  
 If yes, are they constructed and maintained so that the seepage rate from any impoundment will not exceed  $1 \times 10^{-6}$  cm/sec?  Yes  No - if no, has the facility submitted a request to the Ag Program that the impoundment be approved to meet the alternative seepage rate in Regulation No. 81.  Yes  No
3. Does the facility have on-site documentation prepared by a professional engineer registered in Colorado certifying that the facility's impoundment(s) meet a regulatory seepage rate and stating what constitutes each constructed liner (e.g., synthetic, clay)?  Yes  No  
 If an impoundment(s) was constructed on or after June 30, 2004 was the documentation available at least 30 days prior to wastewater entering the impoundment(s)?  Yes  No
4. Does the facility plan to or is in the process of constructing any impoundment(s)?  Yes - if yes, date construction will be complete May 2011  No - if no and question #2 is "no", skip to Section D, otherwise, continue to question #5.
5. Since July 1, 2004, has the facility visually inspected weekly the exposed liner of its earthen impoundment(s) to identify physical changes or deficiencies that may affect the integrity of the liner(s)?  Yes  No  
 If yes, have identified deficiencies and physical changes been corrected within 30 days of having been identified unless an explanation of the factors preventing completion of corrective actions within this time period is documented?  Yes  No  Have not, to date, identified any deficiencies or physical changes.  
 If no, please indicate whether any such inspections have occurred and, if applicable, the frequency with which they were made (other than weekly).  Yes  No Inspection frequency \_\_\_\_\_
6. Does the facility keep records on-site of the date of the inspection, deficiencies identified, corrective actions taken, and dates that corrective action was completed?  Yes  No

### C. Requirement to Submit Information to the Environmental Agriculture Program

If you answered "yes" for Question #3 above, please provide the documentation certifying that the facility's impoundment(s) meet a regulatory seepage rate and stating what constitutes each constructed liner. Please be aware that the documentation provided must also include supporting information such as how the determination was made that the impoundment met the seepage rate (e.g., Colorado registered professional engineer certification that the seepage rate is met as well as the methodology used for determining the seepage rate). Submit this information to the address in Section E. after completing Section D.

### D. Certification Statement

I certify under penalty of law that:

- (i) I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
- (ii) the information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects;
- (iii) systems to maintain compliance are in place at the facility and will be maintained from this point forward even if processes or operating procedures are changed; and
- (iv) I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.

*Dave Andrews*  
Signature of Owner or Operator

5-21-10  
Date (MM/DD/YYYY)

DAVE M ANDREWS  
Print Name

owner  
Title

---

**E. Submittal Address**

Please return the completed self-certification form within 30 days of receipt to:  
Colorado Department of Public Health and Environment  
Attention: Erin P. Kress  
Environmental Agriculture Program – SP-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
Executive Director and Chief Medical Officer

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

4300 Cherry Creek Dr. S.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
Phone (303) 692-2000      Denver, Colorado 80230-6928  
Located in Glendale, Colorado      (303) 692-3090  
<http://www.cdph.state.co.us>



Colorado Department  
of Public Health  
and Environment

July 27, 2011

David McAndrews  
Big M Feedlot  
5013 West 12<sup>th</sup> Street Drive  
Greeley, CO 80634

**RE: Required Corrective Action Extension #1/ Big M Feedlot Expedited Settlement Agreement  
Number EC-101203-1**

Dear Mr. McAndrews:

In a letter from AGPROfessionals, LLC on behalf of Big M Feedlot ("Big M") dated July 18, 2011 the Water Quality Control Division (the "Division") received a request to extend the compliance date required under paragraph 8 of the Expedited Settlement Agreement Number EC-101203-1 (the "ESA"). Paragraph 8 requires Big M to submit, 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. The final signed ESA was received by Big M on December 8, 2010, which meant that the documentation required by paragraph 8 of the ESA was due to the Division no later than July 5, 2011.

AGPROfessionals, LLC is currently developing the design for a new impoundment that will meet the regulatory requirements of Regulation 81. In order to construct the proposed impoundment, Big M will need to obtain an easement from the City of Thornton for the parcel of land adjacent to Big M's property. The City of Thornton has tentatively agreed to the easement, but a final agreement has not been negotiated. In order to allow time for the City of Thornton to agree to and approve the easement, Big M requested additional time to complete the requirements of Paragraph 8.

The Division hereby approves the request and formally revises Paragraph 8 of the ESA to read as follows:

***By no later than November 30, 2011, Big M agrees to submit to the Department 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).***

Should you or representatives of Big M have any further questions regarding these matters, please do not hesitate to contact me at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

*Big M Feedlot*  
*Required Corrective Action Extension #1*  
*Page 2 of 2*

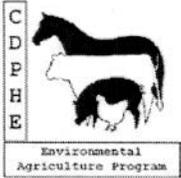
Sincerely,



Kelly Morgan  
Enforcement Unit  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION

cc: Lindsay Sartorius, AGPROfessionals, LLC (4350 Highway 66, Longmont, CO 80504)

ec: Sean Scott, Environmental Agriculture Program  
Chad Devolin, Environmental Agriculture Program



Colorado Department  
of Public Health  
and Environment

### Animal Feeding Operation Identification Form

A facility may want to submit this form to the Colorado Department of Public Health and Environment in situations where it has the capacity to confine livestock in numbers that qualify it as a Large Concentrated Animal Feeding Operation (CAFO), but operates at lower livestock numbers (i.e., as an animal feeding operation (AFO)). Submitting this form will notify the state about the facility's operating intentions. As long as the facility operates as an AFO, it does not need to meet the Large CAFO requirement to register with the state.

Facility Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Facility Contact: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Facility Maximum Capacity: \_\_\_\_\_

Planned Operating Capacity: \_\_\_\_\_

Please be aware that section 81.9 of Regulation No. 81 of the Water Quality Control Commission (5CCR 1002-81) contains best management practice requirements for AFOs for the purpose of protecting waters of the state.

**Reminder:** If at any time in the future your facility confines livestock at the threshold number or above (see table below) for 45 days or more in a 12-month period, the facility is defined as a Large CAFO and must submit a registration that meets the requirements in section 81.5 of Regulation No. 81. A form for this purpose can be found at [://www.cdphe.state.co.us/oeis/eap/forms.html](http://www.cdphe.state.co.us/oeis/eap/forms.html).

Livestock Type	Large CAFO Threshold Number
Mature Dairy Cows, whether milked or dry	700
Cattle, including heifers, steers, bulls and cow/calf pairs	1,000
Sheep or Lambs	10,000
Please see section 81.3(15) of Regulation No. 81 for threshold numbers for other livestock types.	

\_\_\_\_\_  
Owner/Operator's signature

\_\_\_\_\_  
Date

Please mail this form to:

Environmental Agriculture Program  
Colorado Department of Public Health and Environment  
OE-B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530



Colorado Department of Public Health and Environment
Environmental Agriculture Program



Concentrated Animal Feeding Operations – Regulation No. 81
Facility Management Plan Check List

Facility Information

Facility Name \_\_\_\_\_ CONPC- \_\_\_\_\_
Registration Number

Completed by \_\_\_\_\_ Title \_\_\_\_\_

Please complete the following checklist to ensure that all required elements, as stated in Colorado Water Quality Control Commission Regulation No. 81, are contained in your Facility Management Plan (FMP) and maintained in one discrete location at your facility.

Production Area – Impoundments

Impoundments are not required at my facility.

- 1. Documentation showing that impoundments are designed, constructed and maintained so they are capable of storing the volume of all liquid manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or Chronic storm, whichever is greater, plus two feet of freeboard. [Regulation 81.6(1)(b)]
2. Documentation prepared by a professional engineer registered in Colorado certifying that all impoundments used in the storage, treatment, evaporation, or discharge of wastewater are constructed and maintained that seepage from the impoundment will not exceed 1x10^-6 cm/sec. [81.8(2)(b)]
3. If No to item 2, documentation of approval from the Ag Program that the impoundment meets an alternative seepage rate. [81.8(2)(ii)]
4. Records of weekly inspections of the exposed portion of the liner in earthen impoundments to identify physical changes or deficiencies that may affect the integrity of the liner. [81.8(2)(c)]
5. Documentation that a depth marker, clearly marked in one foot increments and indicating the minimum capacity required to contain the applicable storm event (pump down level), is installed in all impoundments necessary to contain the 25-year, 24-hour storm or Chronic Storm, whichever is greater. [81.6(1)(c)]
6. Documentation that required depth markers were installed in a manner that maintained the integrity of the liner and the required seepage rate of 1x10^-6 cm/sec. [81.8(4)]
7. Records of weekly inspections of depth markers and the wastewater level in each impoundment containing a depth marker. [81.6(1)(c)(i)]
8. An approved Standard Operating Procedure (SOP) that demonstrates how manure or sludge will be removed from impoundments in a manner that prevents damage to the impoundment liner. [81.8(3)]
9. Documentation certifying that the approved SOP was followed each time manure or sludge was removed from an impoundment. [81.8(3)(d)] \*Please check N/A if manure or sludge has not been removed from the impoundment(s).

### Production Area – Conveyance/Diversion Structures

\*Please ✓ N/A if not applicable at your facility

- Yes  No  N/A 1. Documentation that conveyance structures used to transport wastewater are designed, constructed and maintained so that they are capable of carrying the flow expected from a 25-year, 24-hour storm or Chronic storm, whichever is greater. [81.6(1)(b)(ii)]
- Yes  No  N/A 2. Documentation that earthen wastewater conveyances were constructed and are maintained to limit the seepage of wastewater. Documentation, at minimum, should contain soil maps or analysis that shows the percentage of gravel found in the soils where earthen wastewater conveyances are constructed. The percentage of gravel, the type of wastewater (open-lot, process generated), and the frequency of which wastewater is transported (intermittent, non-intermittent) will determine what additional documentation is required in the FMP. [81.8(5)]
- Yes  No  N/A 3. Documentation that structures used to divert clean stormwater from running onto the production area are designed, constructed, and maintained so that they are capable of diverting the flow expected from a 25-year, 24-hour storm or Chronic storm, whichever is greater. [81.6(1)(d)]

### Production Area – Additional Requirements

- Yes  No 1. Records documenting proper management of animal mortalities to ensure they are not disposed of in the wastewater storage system. [81.6(2)(e)]
- Yes  No 2. Documentation showing that animals confined at the facility are prevented from having direct contact with surface water. [81.6(2)(f)]
- Yes  No 3. Records documenting that chemicals and other contaminants are not disposed of in the wastewater storage system. [81.6(2)(g)]

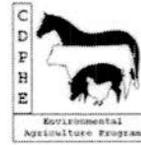
### Land Application

- Yes  No 1. Do you land apply manure or wastewater on land application sites owned by or under your operational control? **\*If No, skip the Land Application section of the checklist.**
- Yes  No 2. Documentation of site-specific conservation practices to control runoff of pollutants from land application areas to surface water. [81.6(2)(b)(i)]
- Yes  No 3. Results of annual manure and wastewater nutrient analyses for nitrogen and phosphorus content. [81.6(2)(b)(ii)(A)]
- Yes  No 4. Results of current phosphorus soil analysis. Note that the top one foot of soil at land application sites must be sampled and analyzed for available phosphorus once every 5 years. [81.6(2)(b)(ii)(B)]
- Yes  No 5. Documentation of protocols used for land applying manure and wastewater in accordance with your site specific nutrient management practices that ensure appropriate utilization of nutrients. [81.6(2)(b)(iii)]
- Yes  No 6. Nitrogen and Phosphorus transport risk assessments for each land application site. [81.6(2)]
- Yes  No 7. Inspection records for land application equipment showing, at a minimum, that inspections are conducted annually and within a six month period prior to the first application of manure or wastewater and at least daily when wastewater is being applied. [81.6(2)]
- Yes  No  N/A 8. Documentation showing compliance with setback requirements when land applying manure and wastewater. [81.6(2)(d)] **\*Please ✓ N/A if setbacks are not required.**

ATTACHMENT E



Colorado Department of Public  
Health and Environment  
Environmental Agriculture Program



**Facility Management Plan (FMP)  
Self-Certification**

\_\_\_\_\_  
Facility Name

\_\_\_\_\_  
Registration Number

By checking the following boxes, I certify that:

- I have personally examined and am familiar with the information contained in the Facility Management Plan;
- The information contained in the Facility Management Plan is true, accurate, and complete to the best of my knowledge;
- I am fully authorized to make this certification on behalf of the facility.

I am aware that there are significant penalties including but not limited to possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.

\_\_\_\_\_  
Signature of Owner/Operator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title